R13. Administrative Services, Administration.
R13-1. Public Petitions for Declaratory Orders.
R13-1-1. Purpose.

(1) As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

(2) In order of importance, procedures governing declaratory orders are:

(a) procedures specified in this rule pursuant to Title 63G, Chapter 4;

(b) the applicable procedures of Title 63G, Chapter 4;

(c) applicable procedures of other governing state and federal law; and

(d) the Utah Rules of Civil Procedure.

R13-1-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

(a) "agency" means the pertinent division or office of the Department of Administrative Services;

(b) "applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts;

(c) "declaratory order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule, or order;

(d) "director" means the agency head or governing body with jurisdiction over the agency's adjudicative proceedings;

(e) "order" is defined in Section 63G-3-102; and

(f) "superior agency" means the Executive Director's Office of the Department of Administrative Services.

R13-1-3. Petition Form and Filing.

(1) The petition, or request for agency action, shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

(2) The petition shall:

(a) be clearly designated as a request for an agency declaratory order;

(b) identify the statute, rule, or order to be reviewed;

(c) describe in detail the situation or circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous;

(e) include an address and telephone where the petitioner can be contacted during regular work days;

(f) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(g) be signed by the petitioner.

R13-1-4. Reviewability.

The agency may not review a petition for declaratory orders that is:

(a) not within the jurisdiction and competence of the agency;

(b) trivial, irrelevant, or immaterial; or

(c) otherwise prohibited by state or federal law.

R13-1-5. Intervention.

A person may file a petition for intervention under Section 63G-4-207 if delivered to the director within 20 days of the director's receipt of the declaratory order petition filed under Section R13-1-3.

R13-1-6. Petition Review and Disposition.

(1) The director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with counsel or the Attorney General; and

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

(2) The director may issue an order pursuant to Subsection 63G-4-503(6).

(3) If the director orders an adjudicative proceeding under Subsection 63G-4-503(6):

(a) the proceeding shall be formal and governed by the procedures of Title 63G, Chapter 4 or other applicable law if a petition for intervention has been filed within the limits of Section R13-1-5; and

(b) shall be designated as informal and follow the appropriate procedures of Title 63G, Chapter 4, agency rules, or other applicable law, if a petition for intervention has not been filed within the limits of Section R13-1-5.

R13-1-7. Administrative Review.

A petitioner may seek review or reconsideration of a declaratory order by petitioning the director under the procedures of Sections 63G-4-301 and 63G-4-302.

(a) If the presiding officer issuing the declaratory order is the director, the petitioner may seek the review of the superior agency.

(b) The petitioner may appeal a director's review or reconsideration decision to the superior agency.

(c) If the petitioner receives no response from the superior agency within 20 days of filing a petition for review or reconsideration, the appeal shall be considered denied.

KEY: appellate procedures, administrative procedures
1988 63G-4
Notice of Continuation September 10, 2003

R13. Administrative Services, Administration.
R13-2. Access to Records.
R13-2-1. Purpose and Authority.

Under authority of Subsections 63G-2-204(2)(d), and 63A-12-104(2), this rule provides procedures for access and denial of access to government records.

R13-2-2. Definitions.

Terms used in this rule are defined in Section 63G-2-103. Additional terms are defined as follows:

(1) "Department" means the Department of Administrative Services.

(2) "Division" means a division of the Department of Administrative Services.

(3) "Office" means an office of the Department of Administrative Services.

R13-2-3. Records Officer.

Each division director shall comply with Section 63A-12-103 and shall appoint a records officer to perform the following functions:

(a) the duties set forth in Section 63A-12-103; and

(b) review and respond to requests for access to division records.

R13-2-4. Requests for Access.

(1) Except as provided by R13-2-8, a request for access to records shall be directed to the records officer of the office or division which the requester believes generated or possesses the records.

(2) The offices and divisions of the department are as described in Sections 63A-1-104 and 63A-1-109 and are located at the corresponding address indicated below:

(a) Administrative Services Executive Director's Office, 3120 State Office Building, Salt Lake City, UT 84114.

(b) Administrative Rules, 4120 State Office Building, Salt Lake City, UT 84114.

(c) Archives and Records Service, 346 S. Rio Grande Street, Salt Lake City, UT 84101-1106.

(d) Child Welfare Parental Defense, 3120 State Office Building, Salt Lake City, UT 84114.

(e) Debt Collection, 5110 State Office Building, Salt Lake City, UT 84114.

(f) Facilities Construction and Management, 4110 State Office Building, Salt Lake City, UT 84114.

(g) Finance, 2110 State Office Building, Salt Lake City, UT 84114.

(h) Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.

(i) Purchasing and General Services, 3150 State Office Building, Salt Lake City, UT 84114.

(j) Risk Management, 5120 State Office Building, Salt Lake City, UT 84114.

(k) Surplus Property, Division of Fleet Operations, 4120 State Office Building, Salt Lake City, UT 84114.

R13-2-5. Appeal of Office or Division Decision.

(1) Except as provided by R13-2-8, if a requester is dissatisfied with the initial decision rendered by an office or division, the requester may appeal the decision to the department executive director under the procedures of Section 63G-2-401 et seq.

(2) An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63G-2-603. This type of request shall be made to the records officer.

R13-2-6. Fees.

(1) A fee schedule for the actual costs of providing a record may be obtained from an office or division by contacting the records officer. The fee schedule is also available in the annual appropriations bill.

(2) Fees for providing a record may be waived under certain circumstances described in Subsection 63G-2-203(4). Requests for this waiver of fees may be made to the records officer.

R13-2-7. Forms.

Request forms are available from the records officer of each office or division.

R13-2-8. Access to Records in the Custody of the Division of Archives and Records Service.

(1) An individual need not submit a formal records request to inspect public records of permanent or historical value stored at the state archives.

(2) An individual may request access to records that are noncurrent records of permanent or historical value in the custody of the state archives. The individual shall direct that request to the state archives' research center, 346 S Rio Grande, Salt Lake City, UT 84101-1106.

(3) If the requester is dissatisfied with the initial decision rendered by the research center, or if the state archives' research center denies access to these records, the requester may appeal the decision to the state archivist under the procedures of Section 63G-2-401 et seq.

KEY: freedom of information, public information, confidentiality of information, access to information
May 22, 2007 63G-2-204(2)(d)
Notice of Continuation April 2, 2007 63A-12-104(2)

R15. Administrative Services, Administrative Rules.
R15-1. Administrative Rule Hearings.
R15-1-1. Authority.

(1) This rule establishes procedures and standards for administrative rule hearings as required by Subsection 63G-3-402(1)(a).

(2) The procedures of this rule constitute the minimum requirements for mandatory administrative rule hearings. Additional procedures may be required to comply with any other governing statute, federal law, or federal regulation.

R15-1-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) In addition:

(a) "hearing" means an administrative rule hearing; and

(b) "officer" means an administrative rule hearing officer.

R15-1-3. Purpose.

(1) The purpose of this rule is to provide:

(a) procedures for agency hearings on proposed administrative rules or rules changes, or on the need for a rule or change;

(b) opportunity for public comment on rules; and

(c) opportunity for agency response to public concerns about rules.

R15-1-4. When Agencies Hold Hearings.

(1) Agencies shall hold hearings as required by Subsection 63G-3-302(2).

(2) Agencies may hold hearings:

(a) during the public comment period on a proposed rule, after its publication in the bulletin and prior to its effective date;

(b) before initiating rulemaking procedures under Title 63G, Chapter 3, to promote public input prior to a rule's publication;

(c) during a regular or extraordinary meeting of a state board, council, or commission, in order to avoid separate and additional meetings; or

(d) to hear any public petition for a rule change as provided by Section 63G-3-601.

(3) Voluntary hearings, as described in this section, follow the procedures prescribed by this rule or any other procedures the agency may provide by rule.

(4) Mandatory hearings, as described in this section, follow the procedures prescribed by this rule and any additional requirements of state or federal law.

(5) If an agency holds a mandatory hearing under the procedures of this rule during the public comment period described in Subsection 63G-3-301(6), no second hearing is required for the purpose of comment on the same rule or change considered at the first hearing.

R15-1-5. Hearing Procedures.

(1) Notice.

(a) An agency shall provide notice of a hearing by:

(i) publishing the hearing date, time, place, and subject in the bulletin;

(ii) mailing copies of the notice directly to persons who have petitioned for a hearing or rule changes under Section 63G-3-302 or 63G-3-601, respectively; and

(iii) posting for at least 24 hours in a place in the agency's offices which is frequented by the public.

(b) If a rules hearing becomes mandatory after the agency has published the proposed rule in the bulletin, the agency shall notify in writing persons requesting the hearing of the time and place.

(c) An agency may provide additional notice of a hearing, and shall give further notice as may otherwise be required by law.

(2) Hearing Officer.

(a) The agency head shall appoint as hearing officer a person qualified to conduct fairly the hearing.

(b) No restrictions apply to this appointment except the officer shall know rulemaking procedure.

(c) However, if a state board, council, or commission is responsible for agency rulemaking, and holds a hearing, a member or the body's designee may be the hearing officer.

(3) Time. The officer shall open the hearing at the announced time and place and permit comment for a minimum of one hour. The hearing may be extended or continued to another day as necessary in the judgment of the officer.

(4) Comment.

(a) At the opening of the hearing, the officer shall explain the subject and purpose of the hearing and invite orderly, germane comment from all persons in attendance. The officer may set time limits for speakers and shall ensure equitable use of time.

(b) The agency shall have a representative at the hearing, other than the officer, who is familiar with the rule at issue and who can respond to requests for information by those in attendance.

(c) The officer shall invite written comment to be submitted at the hearing or after the hearing, within a reasonable time. Written comment shall be attached to the hearing minutes.

(d) The officer shall conduct the hearing as an open, informal, orderly, and informative meeting. Oaths, cross-examination, and rules of evidence are not required.

(5) The Hearing Record.

(a) The officer shall cause to be recorded the name, address, and relevant affiliation of all persons speaking at the hearing, and cause an electronic or mechanical verbatim recording of the hearing to be made, or make a brief summary, of their remarks.

(b) The hearing record consists of a copy of the proposed rule or rule change, submitted written comment, the hearing recording or summary, the list of persons speaking at the hearing, and other pertinent documents as determined by the agency.

(c) The hearing officer shall, as soon as practicable, assemble the hearing record and transmit it to the agency for consideration.

(d) The hearing record shall be kept with and as part of the rule's administrative record in a file available at the agency offices for public inspection.

R15-1-8. Decision on an Issue Regarding Rulemaking Procedure.

(1) When a hearing issue requires a decision regarding rulemaking procedure, the officer shall submit a written request for a decision to the director as soon as practicable after, or after recessing, the hearing, as provided in Section R15-5-6. The director shall reply to the agency head as provided in Subsection R15-5-6(2). The director's decision shall be included in the hearing record.

R15-1-9. Appeal and Judicial Review.

(1) Persons may appeal the decision of the agency head or the division by petitioning the district court for judicial review as provided by law.

KEY: administrative law, government hearings
June 1, 1996 63G-3-402
Notice of Continuation September 29, 2005

R15. Administrative Services, Administrative Rules.
R15-2. Public Petitioning for Rulemaking.
R15-2-1. Authority.

As required by Subsection 63G-3-601(2), this rule prescribes the form and procedures for submission, consideration, and disposition of petitions requesting the making, amendment, or repeal of an administrative rule.

R15-2-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "rule change" means:

(i) making a new rule;

(ii) amending, repealing, or repealing and reenacting an existing rule;

(iii) amending a proposed rule further by filing a change in proposed rule under the provisions of Section 63G-3-303;

(iv) allowing a proposed (new, amended, repealed, or repealed and reenacted) rule or change in proposed rule to lapse; or

(v) any combination of the above.

(b) "petitioner" means an interested person who submits a petition to an agency pursuant to Section 63G-3-601 and this rule.

R15-2-3. Petition Procedure.

(1) The petitioner shall send the petition to the head of the agency authorized by law to make the rule change requested.

(2) The agency receiving the petition shall stamp the petition with the date of receipt.

R15-2-4. Petition Form.

The petition shall:

(a) be clearly designated "petition for a rule change";

(b) state the petitioner's name;

(c) state the petitioner's interest in the rule, including relevant affiliation, if any;

(d) include a statement as required by Subsection 63G-3-601(4) regarding the requested rule change;

(e) state the approximate wording of the requested rule change;

(f) describe the reason for the rule change;

(g) include an address, an E-mail address when available, and telephone where the petitioner can be reached during regular business hours; and

(h) be signed by the petitioner.

R15-2-5. Petition Consideration And Disposition.

(1) The agency head or designee shall:

(a) review and consider the petition;

(b) write a response to the petition stating:

(i) that the petition is denied and reasons for denial, or

(ii) the date when the agency is initiating a rule change consistent with the intent of the petition; and

(c) send the response to the petitioner within the time frame provided by Section 63G-3-601.

(2) The petitioned agency may, within the time frame provided by Section 63G-3-601, interview the petitioner, hold a public hearing on the petition, or take any action the agency, in its judgment, deems necessary to provide the petition due consideration.

(3) The agency shall retain the petition and a copy of the agency's response as part of the administrative record.

(4) The agency shall mail copies of its decision to all persons who petitioned for a rule change.

KEY: administrative law
December 25, 2006 63G-3-601

Notice of Continuation September 29, 2005

R15. Administrative Services, Administrative Rules.
R15-3. Definitional Clarification of Administrative Rule.
R15-3-1. Authority, Purpose, and Definitions.

(1) This rule is authorized under Subsection 63G-3-402(1) which requires the division to administer the Utah Administrative Rulemaking Act, Title 63G, Chapter 3.

(2) This rule clarifies when rulemaking is required, and requirements for incorporation by reference within rules.

(3) Terms used in this rule are defined in Section 63G-3-102.

R15-3-2. Agency Discretion.

(1) A rule may restrict agency discretion to prevent agency personnel from exceeding their scope of employment, or committing arbitrary action or application of standards, or to provide due process for persons affected by agency actions.

(2) A rule may authorize agency discretion that sets limits, standards, and scope of employment within which a range of actions may be applied by agency personnel. A rule may also establish criteria for granting exceptions to the standards or procedures of the rule when, in the judgment of authorized personnel, documented circumstances warrant.

(3) An agency may have written policies which broadly prescribe goals and guidelines. Policies are not rules unless they meet the criteria for rules set forth under Section 63G-3-201(2).

(4) Within the limits prescribed by Sections 63G-3-201 and 63G-3-602, an agency has full discretion regarding the substantive content of its rules. The division has authority over nonsubstantive content under Subsections 63G-3-402(2) and (3), and 63G-3-403(2) and (3), rulemaking procedures, and the physical format of rules for compilation in the Utah Administrative Code.

R15-3-3. Use of Incorporation by Reference in Rules.

(1) An agency incorporating materials by reference as permitted under Subsection 63G-3-201(7) shall comply with the following standards:

(a) The rule shall state specifically that the cited material is "incorporated by reference."

(b) If the material contains options, or is modified in its application, the options selected and modifications made shall be stated in the rule.

(c) If the incorporated material is substantively changed at a later time, and the agency intends to enforce the revised material, the agency shall amend its rule through rulemaking procedures to incorporate by reference any applicable changes as soon as practicable.

(d) In accordance with Subsection 63G-3-201(7)(c), an agency shall describe substantive changes that appear in the materials incorporated by reference as part of the "summary of rule or change" in the rule analysis.

(2) An agency shall comply with copyright requirements when it provides the division a copy of material incorporated by reference.

R15-3-4. Computer-Prohibited Material.

(1) All rules shall be in a format that permits their compatibility with the division's computer system and compilation into the Utah Administrative Code.

(2) Rules may not contain maps, charts, graphs, diagrams, illustrations, forms, or similar material.

(3) The division shall issue and provide to agencies instructions and standards for formatting rules.

R15-3-5. Statutory Provisions that Require Rulemaking Pursuant to Subsection 63G-3-301(11).

For the purposes of Subsection 63G-3-301(11), the phrase "statutory provision that requires the rulemaking" means a state statutory provision that explicitly mandates rulemaking.

KEY: administrative law
April 30, 2007 **63G-3-201**
Notice of Continuation September 29, 2005 **63G-3-301**
63G-3-402

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

(1) This rule establishes procedures for filing and publication of agency rules under Sections 63G-3-301, 63G-3-303, and 63G-3-304, as authorized under Subsection 63G-3-402(1).

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

R15-4-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-3-102.

(2) Other terms are defined as follows:

(a) "Anniversary date" means the date that is five years from the original effective date of the rule, or the date that is five years from the date the agency filed with the division the most recent five-year review required under Subsection 63G-3-305(3), whichever is sooner.

(b) "Digest" means the Utah State Digest that summarizes the content of the bulletin as required by Subsection 63G-3-402(1)(f);

(c) "Codify" means the process of collecting and arranging administrative rules systematically in the Utah Administrative Code, and includes the process of verifying that each amendment was marked as required under Subsection 63G-3-301(2)(b);

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

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

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

(g) "Savings" means:

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

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

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

(iv) any combination of these aggregated monetary amounts.

(h) "Unmarked change" means a change made to rule text that was not marked as required by Subsection 63G-3-301(2)(b).

R15-4-3. Publication Dates and Deadlines.

(1) For the purposes of Subsections 63G-3-301(2) and 63G-3-303(1), an agency shall file its rule and rule analysis by 11:59:59 p.m. on the fifteenth day of the month for publication in the bulletin and digest issued on the first of the next month, and by 11:59:59 p.m. on the first day of the month for publication on the fifteenth of the same month.

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

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

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

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

(1) For the purposes of Sections 63G-3-301 and 63G-3-303, "30 days" shall be computed by:

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

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

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

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

(1)(a) Pursuant to Subsection 63G-3-301(9), upon expiration of the comment period designated on the rule analysis and filed with the rule, and before expiration of 120 days after publication of a proposed rule, the agency proposing the rule shall notify the division of the date the rule is to become effective and enforceable.

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

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

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

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

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

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

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

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

(1)(a) Upon expiration of the 30-day period required by Section 63G-3-303, and before expiration of the 120th day after publication of a change in proposed rule, the agency promulgating the rule shall notify the division of the date the rule is to become effective and enforceable.

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

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

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

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

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

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

subsequent notice in the bulletin.

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

R15-4-6. Nonsubstantive Changes in Rules.

(1) Pursuant to Subsections 63G-3-201(4)(d) and 63G-3-303(2), for the purpose of making rule changes that are grammatical or do not materially affect the application or outcome of agency procedures and standards, agencies shall comply with the procedures of this section.

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

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

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

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

(b) rules already effective.

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

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

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

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

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

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

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

(1) Pursuant to Section 63G-3-303, agencies shall comply with the procedures of this section when making a substantive change in a proposed rule.

(a) The procedures of this section apply if:

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

(ii) the change is substantive under the criteria of Subsection 63G-3-102(19);

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

(iv) the rule has not been made effective under the procedures of Subsection 63G-3-303(1)(d) and Section R15-4-5.

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

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

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

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

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

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

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

(1) Pursuant to Section 63G-3-304, for the purpose of filing a temporary rule, an agency shall comply with the procedures of this section.

(2) The agency proposing a temporary rule shall determine if the need for the rule complies with the criteria of Subsection 63G-3-304(1).

(a) The division interprets the criteria of Subsection 63G-3-304(1) to include under "welfare" any substantial material loss to the classes of persons or agencies the agency is mandated to regulate, serve, or protect.

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

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

(b) no comment period is necessary;

(c) no public hearing is necessary; and

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

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

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

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

R15-4-9. Underscoring and Striking Out.

(1)(a) Pursuant to Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in proposed rules.

(b) Consistent with Subsection 63G-3-301(2)(b), an agency shall underscore language to be added and strike out language to be deleted in changes in proposed rules, 120-day rules, and nonsubstantive changes.

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

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

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

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

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

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

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

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

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

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

(5) The director's refusal to codify an unmarked change means that the change is not operative for the purposes of Section 63G-3-701 and that the agency must comply with

regular rulemaking procedures to make the change.

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

(1) Pursuant to Subsections 63G-3-301(3), 63G-3-303(1), 63G-3-304(2), and 53C-1-201(3), when an agency files a proposed rule, change in proposed rule, 120-day (emergency) rule, or expedited rule and provides anticipated cost or savings, and compliance cost information in the rule analysis, the agency shall:

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

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

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

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

(2) In addition, an agency may:

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

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

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

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

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

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

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

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

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

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

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

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

KEY: administrative law
August 24, 2007 **63-46a-1063G-3-301**
Notice of Continuation September 29, 2005 **63-46a-463G-3-303**
63-46a-663G-3-304
63G-3-402

R15. Administrative Services, Administrative Rules.
R15-5. Administrative Rules Adjudicative Proceedings.
R15-5-1. Purpose.

(1) This rule provides the procedures for informal adjudicative proceedings governing:

(a) appeal and review of a decision by the division not to publish an agency's proposed rule or rule change or not to register an agency's notice of effective date; and

(b) a determination by the division whether an agency rule meets the procedural requirements of Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

(2) The informal procedures of this rule apply to all other division actions for which an adjudicative proceeding may be required.

R15-5-2. Authority.

This rule is required by Sections 63G-4-202 and 63G-4-203, and is enacted under the authority of Subsection 63G-3-402(1)(m) and Sections 63G-4-202, 63G-4-203, and 63G-4-503.

R15-5-3. Definitions.

(1) The terms used in this rule are defined in Section 63G-4-103.

(2) In addition, "digest" means the Utah State Digest which summarizes the content of the bulletin as required under Subsection 63G-3-402(1)(f).

R15-5-4. Refusal to Publish or Register a Rule or Rule Change.

(1) The division shall not publish a proposed rule or rule change when the division determines the agency has not met the requirements of Title 63G, Chapter 3, or of Rules R15-3 or R15-4.

(2) The division shall not register an agency's notice of effective date, nor codify the rule or rule change in the Utah Administrative Code, if the agency exceeds the 120-day limit required by Subsection 63G-3-301(6)(a) as interpreted in Section R15-4-5.

(3) The division shall notify the agency of a refusal to publish or register a rule or rule change, and shall advise and assist the agency in correcting any error or omission, and in re-filing to meet statutory and regulatory criteria.

R15-5-5. Appeal of a Refusal to Publish or Register a Rule or Rule Change.

(1) An agency may request a review of a division refusal to publish or register a rule or rule change by filing a written petition for review with the division director.

(2) The division director shall grant or deny the petition within 20 days, and respond in writing giving the reasons for any denial.

(3) The agency may appeal the decision of the division director by filing a written appeal to the Executive Director of the Department of Administrative Services within 20 days of receipt of the division director's decision. The Executive Director shall respond within 20 days affirming or reversing the division director's decision.

R15-5-6. Determining the Procedural Validity of a Rule.

(1) A person may contest the procedural validity, or request a determination of whether a rule meets the requirements of Title 63G, Chapter 3, by filing a written petition with the division.

(a) The rule at issue may be a proposed rule or an effective rule.

(b) The petition must be received by the division within the two-year limit set by Section 63G-3-603.

(c) The petition may emanate from a rulemaking hearing as in Section R15-1-8.

(d) The petition shall specify the rule or rule change at issue and reasons why the petitioner deems it procedurally flawed or invalid.

(e) The petition shall be accompanied by any documents the division should consider in reaching its decision.

(f) The petition shall be signed and designate a telephone number where the petitioner can be contacted during regular business hours.

(2) The division shall respond to the petition in writing within 20 days of its receipt.

(a) The division shall research all records pertaining to the rule or rule change at issue.

(b) The response of the division shall state whether the rule is procedurally valid or invalid and how the agency may remedy any defect.

(c) The division shall send a copy of the petition and its response to the pertinent agency.

(3) The petitioner may request reconsideration of the division's findings by filing a written request for reconsideration with the division director.

(a) The director may respond to the request in writing.

(b) If the petitioner receives no response within 20 days, the request is denied.

R15-5-7. Remedies Resulting from an Adjudicative Proceeding.

(1) A rule the division determines is procedurally invalid shall be stricken from the Utah Administrative Code and notice of its deletion published in the next issues of the bulletin and digest.

(2) The division shall notify the pertinent agency and assist the agency in re-filing or otherwise remedying the procedural omission or error in the rule.

(3) A rule the division determines is procedurally valid shall be published and registered promptly.

KEY: administrative procedures, administrative law

June 1, 1996	**63G-3-402**
Notice of Continuation September 29, 2005	**63G-4-202**
	63G-4-203
	63G-4-503

R25. Administrative Services, Finance.
R25-2. Finance Adjudicative Proceedings.
R25-2-1. Informal Proceedings.

(1) All matters over which the division has jurisdiction and which are subject to Section 63G-4-203 will be informal in nature for purposes of adjudication. The division director or his designee will preside over any proceeding.

(2) Procedures Governing Informal Adjudicatory Proceedings.

(a) No response need be filed to the notice of division action or request for division action.

(b) The division shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for hearing is made within ten days after receipt of the notice of division action or request for division action.

(c) Only the parties named in the notice of division action or request for division action will be permitted to testify, present evidence, and comment on the issues.

(d) A hearing will be held only after timely notice of the hearing has been given.

(e) No discovery, either compulsory or voluntary will be permitted except that all parties to the action shall have access to information contained in the division's files and investigatory information and materials not restricted by law.

(f) No person, as defined in the Utah Administrative Procedures Act, Subsection 63G-4-103(1)(g), may intervene in a division action unless federal statute or rule requires the division to permit intervention.

(g) Any hearing held under this rule is open to all parties.

(h) Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the division director shall issue a written decision stating the decision, the reasons for the decision, notice of right of judicial review, and the time limits for filing an appeal to the appropriate district court.

(i) The division director's decision shall be based on the facts in the division file and if a hearing is held, the facts based on evidence presented at the hearing.

(j) The division shall notify the parties of the division order by promptly mailing a copy thereof to each at the address indicated in the file.

(k) Whether a hearing is held or not, an order issued under the provisions of this rule shall be the final order of the division and may be appealed to the appropriate district court.

(3) Appeals regarding administrative offsets must be made in writing and within 30 days of the date of receipt of a letter of notification of an administrative offset and directed to the Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114.

(4) All other appeals must be made in writing and directed to the Division of Finance, 2110 State Office Building, Salt Lake City, Utah 84114.

KEY: government hearings, finance
1992 **63G-4-203**
Notice of Continuation September 25, 2006

R123. Auditor, Administration.
R123-3. State Auditor Adjudicative Proceedings.
R123-3-1. Definitions.

A. The terms used in this rule are defined in Section 63G-4-103, U.C.A.

B. Agency means the Utah State Auditor's Office.

R123-3-2. Designation.

A. The agency designates all agency action subject to the scope and applicability of the Utah Administrative Procedures Act, Utah Code Ann. Section 63G-4-102 et seq. as informal proceedings.

R123-3-3. Adjudicative Proceedings.

A. The following categories of proceedings are hereby designated as informal proceedings under Utah Administrative Procedures Act, Utah Code Annotated Section 63G-4-202:

1. All agency actions with respect to local government accounting, budgeting and financial reporting procedures.

2. All agency actions with respect to audits or special projects performed by the agency or audits under their jurisdiction.

B. Procedures for all categories of informal adjudicative proceedings shall comply with applicable provisions of U.C.A 63G-4-203.

1. No response need be filed to the notice of agency action or request for agency action.

2. The agency shall hold a hearing only if a hearing is required by statute, or is permitted by statute and a request for hearing is made within ten working days after receipt of the notice of agency action or request for agency action, otherwise, at the discretion of the State Auditor no hearing will be held.

3. Only the parties named in the notice of agency action or request for agency action will be permitted to testify, present evidence, and comment on the issues.

4. A hearing will not be held before ten working days after notice of the hearing has been given.

5. No discovery, either compulsory or voluntary, will be permitted except that all parties to the action shall have access to information contained in the agency's files and investigatory information and materials not restricted by law.

6. Intervention is prohibited unless a federal statute or rule requires that a state permit intervention.

7. Any hearing held under this rule is open to all parties.

8. Within thirty days after the close of any hearing held under this rule, or after the failure of a party to request a hearing, the agency shall issue a written decision and the reasons for the decision, notice of any right of judicial review available to the parties and the time limits for filing an appeal to the appropriate District Court.

9. The State Auditor's decision shall be based on the facts in the agency file and if a hearing is held, the facts based on evidence presented at the hearing.

10. The agency shall notify the parties of the agency's order by promptly mailing copy thereof to each at the address indicated in the file.

11. All hearings recorded, shall be at the agency's expense. Any party, at his own expense, may have a reporter approved by the agency prepare a transcript from the agency's record of the hearing.

12. Nothing in this section restricts or precludes any investigative right or power given to the agency by another statute.

KEY: administrative procedures, appellate procedures, auditing
1990 63G-4
Notice of Continuation October 24, 2007

R123. Auditor, Administration.
R123-4. Public Petitions for Declaratory Orders.
R123-4-1. Authority.

A. As required by Section 63G-4-503, this rule provides the procedures for submission, review and disposition of petitions for agency declaratory orders on the applicability of statutes, rules and orders governing or issued by the agency.

R123-4-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

A. Agency means the Utah State Auditor's Office.

B. "Applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

C. "Declaratory Order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

R123-4-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the State Auditor, who shall mark the petition with the date of receipt.

B. The petition shall:

1. be clearly designated as a request for an agency declaratory order;

2. identify the statute, rule or order to be reviewed;

3. describe in detail the situation or circumstances in which applicability is to be reviewed;

4. describe the reason or need for the applicability review, addressing, in particular, why the review should not be considered frivolous;

5. include an address and telephone where the petitioner can be contacted during regular work days; and

6. be signed by the petitioner.

R123-4-4. Reviewability.

A. The agency may not issue a declaratory order if the subject matter is:

1. not within the jurisdiction and expertise of the agency;

2. frivolous, trivial, irrelevant or immaterial;

3. likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding;

4. one in which the person requesting the declaratory order has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; or

5. otherwise excluded by state and federal law.

R123-4-5. Intervention.

A. A person may file a petition for intervention in a declaratory proceeding only if they deliver to the State Auditor a petition complying with all of the requirements of Section 63G-4-207 within 20 days of the director's receipt of the petition for a declaratory order filed under Section 63G-4-503(4).

B. Petitions seeking declaratory orders will be designated as informal adjudicative proceedings.

R123-4-6. Petition Review and Disposition.

A. The agency will be governed by the provisions of Sections 63G-4-503 (6) and (7):

R123-4-7. Administrative Review.

A. A petitioner may seek review or reconsideration of a declaratory order by petitioning the State Auditor under the procedures of Section 63G-4-302.

KEY: declaratory orders
1990 **63G-4**
Notice of Continuation October 24, 2007

R137. Career Service Review Board, Administration.
R137-2. Government Records Access and Management Act.
R137-2-1. Purpose.

The purpose of this rule is to provide procedures for access to government records of the Career Service Review Board.

R137-2-2. Authority.

The authority for this rule is found in Sections 63-2-204 and 63-2-904 of the Government Records Access and Management Act (GRAMA).

R137-2-3. Definitions.

A. "Administrator" means the Administrator of the Career Service Review Board as set forth at Sections 67-19a-101(1) and 67-19a-204.

B. "CSRB" means the Career Service Review Board.

C. "Chairman" means the person mentioned at Section 67-19a-201(5).

D. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63-2-101 through -909, Utah Code Annotated.

E. "Records Officer" means the individual responsible to fulfill Section 63-2-103(21) of the GRAMA.

R137-2-4. Records Officer.

A. The records officer for the CSRB shall be the administrator.

B. The records officer shall review and respond to requests for access to CSRB records, according to Section 63-2-903.

R137-2-5. Requests for Access.

A. Requests for access to CSRB records shall be in writing and must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the records being requested. A records access form may be obtained from the CSRB upon request, but this form is not required in order to petition for access to CSRB records.

B. Requests should be directed to either Records Officer or Administrator, Career Service Review Board, 1120 State Office Building, Salt Lake City, UT 84114.

C. The CSRB is not required to respond to requests submitted to the wrong person, agency or location within the time limits set by the GRAMA.

R137-2-6. Fees.

A. Reasonable fees may be charged for copies of records provided upon request. Fees for photocopying may be charged as authorized by Section 63-2-203. A fee schedule may be obtained from the CSRB office by telephoning (801) 538-3048 or by making a personal inquiry at the CSRB office during regular business hours.

B. The CSRB may require payment of past fees and future fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63-2-203(3). Requests for application of a waiver of a fee may be made to the CSRB records officer.

R137-2-8. Requests to Amend a Record.

A. An individual may contest the accuracy or completeness of a document pertaining to the requester, pursuant to Section 63-2-603. Requests to amend a record shall be processed as informal adjudications under the Utah Administrative Procedures Act. All requests to amend a record must include the requester's name, mailing address, daytime telephone number if available, and a brief but reasonably specific description of the record to be amended.

B. Adjudicative proceedings concerning requests to amend a record or records under the GRAMA shall be informal adjudicative proceedings and shall comply with Section 63-2-401 et seq.

R137-2-9. Time Periods under GRAMA.

The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R137-2-10. Appeal of Agency Decision.

A. If a requester is dissatisfied with the CSRB's initial decision, the requester may appeal that decision to the CSRB chairman under the procedures of Section 63-2-401 et seq.

B. A person may contest the accuracy or completeness of a document pertaining to that individual according to Section 63-2-603. The initial request must be made to the CSRB administrator. An appeal from the CSRB administrator's decision may be made to the CSRB chairman under the procedures of Section 63-2-603.

C. Appeals of requests to amend a record shall be informal adjudications under the Utah Administrative Procedures Act.

R137-2-11. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by GRAMA under Section 63-2-202(8). Requests for access to such records for research purposes may be made directly to the CSRB records officer.

KEY: public records, records access*
1993 **63-2-101 through**
Notice of Continuation May 21, 2008 **63-2-909**
67-19a-203(8)

R151. Commerce, Administration.
R151-2. Government Records Access and Management Act Rule.
R151-2-1. Purpose and Authority.

This rule is made pursuant to Section 63G-2-204, which allows agencies to specify where and to whom requests for access to records shall be directed; Subsection 63A-12-104 (2), which allows an agency to specify at which levels certain requirements shall be undertaken; and Section 63G-2-603, concerning requests to amend a record.

R151-2-2. Duties of Divisions within the Department.

Each division director shall comply with Section 63A-12-103 and shall appoint a records officer to perform, or to assist in performing, the following functions:

(1) the duties set forth in Section 63A-12-103; and

(2) responding to requests for access to division records.

R151-2-3. Requests for Access.

(1) Waiver of Written Requests: Notwithstanding Subsection 63G-2-204 (1) requiring written requests for records, a division may at its discretion waive the requirement for a written request if the records requested are public, the records are readily accessible, and the request is filled promptly by allowing access or copying at the time the request is made.

(2) To whom directed: All requests for access to records shall be directed to the records officer of the particular division which the requester believes generated or possesses the records.

(3) Fees: A fee shall be charged for copies of records provided. That fee shall be established pursuant to Title 63J, Chapter 1 and Subsection 63G-2-203 (1). Fees must be paid at the time of the request or before the records are provided to the requester.

R151-2-4. Forms.

(1) The forms described as follows, or a written document containing substantially similar information to that requested in the forms, shall be completed by requesters in connection with records requests, unless a division waives written requests.

(a) Form 2-204(1), "Request for Records", shall be used by all persons requesting records from the department or its divisions. It is intended to assist persons who request records to comply with the requirements of Subsection 63G-2-204 (1) regarding the contents of a request. The form requires the requester's name, address, telephone, organization, if any, a description of the records requested, and information regarding the requester's status, for records which are not public.

(b) Form 2-206(2), "Certification by Requesting Governmental Entity", shall be used by another governmental entity requesting controlled or private records from a division or the department, pursuant to Subsection 63G-2-206 (2). This form requires both the information to be provided in Form 2-204(1) and certain representations required from the governmental entity, if the information sought is not public.

(c) Form 2-206(5), "Disclosure and Agreement", shall be used when another governmental entity requests controlled, private or protected records, pursuant to Subsection 63G-2-206 (5). This form discloses to the governmental entity certain information regarding restrictions on access and obtains the written agreement of the governmental entity to abide with those restrictions.

(2) The department or its divisions may use forms to respond to requests for records.

R151-2-5. Designation of Authorized Officers.

(1) The determinations or weighing of interests permitted or required under the following sections by a "governmental entity" or the "head of a governmental entity" shall be made by the division director which has custody or control of the records, or his designee:

(a) Subsection 63G-2-201 (5) (b), which governs disclosure of certain private or protected records;

(b) Section 63G-2-308, which governs business confidentiality claims;

(c) Subsection 63G-2-202 (8), which governs disclosure for research purposes;

(d) Subsection 63G-2-201 (10) (a), which governs intellectual property rights.

(2) The "chief administrative officer of the governmental entity" for purposes of appeals under Sections 63G-2-401 and 63G-2-603 shall be the Executive Director of the Department of Commerce or the Executive Director's designee.

R151-2-6. Designation of Requests to Amend Record.

Requests to amend a record under Section 63G-2-603 are hereby designated as informal proceedings.

KEY: government documents, freedom of information, public records
July 2, 2002 **63G-2-204**
Notice of Continuation February 15, 2007 **63G-2-201(5)(b)**
63G-2-201(10)(a)
63G-2-202(8)
63G-2-308
63G-2-401
63G-2-603

R151. Commerce, Administration.
R151-3. Americans With Disabilities Act Rules.
R151-3-1. Authority and Purpose.

This rule is adopted pursuant to federal regulation (28 CFR 35.107) to provide procedures for the prompt and equitable resolution of complaints filed in accordance with 42 U.S.C. 12201. Title II of that federal statute provides no qualified individual with a disability, by reason of such disability, be excluded from participation in or denied the benefits of the services, programs, or activities of a public entity, or subjected to discrimination by this or any such entity. This rule also is adopted pursuant to Subsection 63G-3-201(2).

R151-3-2. Definitions.

(1) "The ADA Coordinator" means the department's coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

(2) "The ADA State Coordinating Committee" means the committee appointed or authorized by the governor to oversee the ADA coordinators of the various state agencies.

(3) "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(4) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(5) "Individual with a disability" (hereinafter "individual") means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

(6) "Department" means the Department of Commerce, its divisions, commissions or boards, or any other instrumentality of the department.

R151-3-3. Filing of Complaints.

(1) Any individual who believes the department has discriminated against him in violation of 42 U.S.C. 12201 or regulations thereunder may file a complaint with the department.

(2) The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination.

(3) The complaint shall be filed with the department's ADA Coordinator in writing, or in another accessible format suitable to the individual.

(4) Each complaint shall:

(a) include the individual's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the 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 by the individual; and

(e) be signed by the individual or his legal representative.

(5) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

R151-3-4. Investigation of Complaint.

(1) The ADA Coordinator shall investigate each complaint received to the extent necessary to assure that all relevant facts are determined. This may include gathering all information listed in R151-3-3 (4) if it is not made available by the individual.

(2) When conducting the investigation and preparing a decision, the ADA Coordinator may consult the department's, or the state's legal, human resource, and budget staffs in determining what action, if any, should be recommended. Before making any decision that would involve the following, the ADA Coordinator shall consult with the ADA State Coordinating Committee:

(a) an expenditure of funds which is not absorbable within the department's budget and would require appropriation authority; or

(b) facility modifications; or

(c) reclassification or reallocation in grade.

R151-3-5. Issuance of Decision.

(1) Within 20 working days after receiving the complaint, the ADA Coordinator shall issue a decision in writing or other suitable format stating what action, if any, should be taken by the department on the complaint.

(2) If the ADA Coordinator is unable to reach a decision within 20 working days, he shall notify the individual in writing or other suitable format why the decision is being delayed and what additional time will be needed to reach a decision.

(3) Decisions shall include a statement of the individual's right of further appeal, if any.

R151-3-6. Appeals.

(1) The individual may appeal the decision of the ADA Coordinator by filing an appeal within five working days from the receipt of the decision.

(2) The appeal shall be in writing and filed with the executive director of the department, or his designee, other than the ADA Coordinator.

(3) The filing of an appeal shall be considered as authorization by the individual to allow access to all information, including information classified as private, protected or controlled, by the executive director or his designee.

(4) The appeal shall describe in sufficient detail the reasons the individual believes the ADA Coordinator's decision was in error, incomplete, ambiguous, or otherwise improper, and the relief sought on appeal.

(5) The executive director or his designee shall issue a written decision stating the reasons for his conclusions and recommendations. Additional investigation may be conducted if necessary to clarify questions of fact. The executive director shall comply with the provisions of R151-3-4 (2) in reaching a decision.

(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 his designee is unable to reach a decision within ten working days, he shall notify the individual in writing or in another acceptable format why the decision is being delayed and the additional time needed to reach a decision.

R151-3-7. 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 under Section 63-2-304 until the ADA Coordinator or executive director issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private or controlled. All other information gathered as part of the complaint record shall be classified as private. Only the written decision of the ADA Coordinator or the executive director shall be public.

R151-3-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the provisions of the Utah Antidiscrimination Act; 28 CFR Subpart F, Part 35.170 et seq., 1991 edition, which governs Federal ALA Complaint Procedures or any other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, physically handicapped persons

1993 63G-2-304

Notice of Continuation May 1, 2007 63G-3-201(2)

R151. Commerce, Administration.
R151-14. New Automobile Franchise Act Rule.
R151-14-1. Title.

This rule shall be known as the "New Automobile Franchise Act Rule".

R151-14-2. Authority - Purpose.

In accordance with the New Automobile Franchise Act, Title 13, Chapter 14, this rule governs adjudicative proceedings before the Utah Motor Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce, and is adopted under the authority of Subsection 13-14-104(2).

R151-14-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Utah Administrative Procedures Act, any adjudicative proceedings under the New Automobile Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63G-4-103(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the New Automobile Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Motor Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63G-4-201(2). A request to commence an adjudicative proceeding pursuant to Section 13-14-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH MOTOR VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63G-4-201(3), and the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63G-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-14-4. Registration.

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Department.

(2) The Department shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Department to renew its registration or may submit a renewal request in another format so long as that request contains the following information:

(a) Name of dealership/manufacturer;

(b) Address of dealership/manufacturer;

(c) Owners or stockholders and percentage of holding (5% or above only);

(d) Line-makes manufactured, distributed, or sold;

(e) If applicable, dealer number; and

(f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the New Automobile Franchise Act.

(4) The processing of an application for registration by the Department may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: automobiles, motor vehicles, franchises, recreational vehicles
May 2, 2006 13-14-101 et seq.
Notice of Continuation September 6, 2006

R151. Commerce, Administration.
R151-35. Powersport Vehicle Franchise Act Rule.
R151-35-1. Title.

This rule shall be known as the "Powersport Vehicle Franchise Act Rule".

R151-35-2. Authority - Purpose.

In accordance with the Powersport Vehicle Franchise Act, Title 13, Chapter 35, this rule governs adjudicative proceedings before the Utah Powersport Vehicle Franchise Advisory Board and the Executive Director of the Department of Commerce, and is adopted under the authority of Subsection 13-35-104(2).

R151-35-3. Adjudicative Proceedings.

(1) Informal Proceeding. Adjudicative proceedings before the Board and the Executive Director are designated as informal adjudicative proceedings.

(2) Applicable Rules. In addition to Title 63G, Chapter 4, Utah Administrative Procedures Act, any adjudicative proceedings under the Powersport Vehicle Franchise Act shall be conducted in accordance with this rule and with the Department of Commerce Administrative Procedures Act Rule, R151-46b.

(3) Procedure for Substitution of Presiding Officer. In accordance with Section 63G-4-103(1)(h), the Executive Director of the Department may upon his/her own motion substitute an administrative law judge as the presiding officer to conduct certain aspects of the adjudicative proceedings before the Board if he/she determines that fairness to the parties would not be compromised by such substitution. The substitution order shall give any party who feels that such substitution would compromise fairness an opportunity to request the Executive Director to reconsider the substitution by submitting written objections and supporting arguments to the Executive Director. Upon reconsideration, the Executive Director may leave the order intact or make such other orders as he/she deems appropriate.

(4) Submissions. Except as otherwise expressly required or permitted in this Rule or in the Powersport Vehicle Franchise Act, all correspondence or other submissions shall be directed to the Chair of the Utah Powersport Vehicle Franchise Advisory Board at the Utah Department of Commerce.

(5) Form of Pleadings. A notice of agency action by the agency shall comply with the requirements of the Utah Administrative Procedures Act, Section 63G-4-201(2). A request to commence an adjudicative proceeding pursuant to Section 13-35-107(1), shall be a pleading headed "BEFORE THE DEPARTMENT OF COMMERCE, UTAH POWERSPORT VEHICLE FRANCHISE ADVISORY BOARD" and captioned "Request for Agency Action." The pleading shall substantially comply with the Utah Administrative Procedures Act, Section 63G-4-201(3), and the Department of Commerce Administrative Procedures Act Rule, R151-46b-7.

(6) Answer. If the presiding officer determines that an answer to any notice of agency action or request for agency action would be helpful to the proceedings, the presiding officer may order a party to the proceedings to file an answer.

(7) Memoranda. If the presiding officer determines that prehearing briefs would be helpful to the proceedings, the presiding officer may order the parties to submit memoranda in accordance with any scheduling order entered by the presiding officer.

(8) GRAMA. Any request for records of the proceedings before the Board and the Executive Director will be governed by GRAMA (Government Records Access and Management Act), Utah Code Ann. Section 63G-2-101 et seq. Any schedule of records classifications maintained by the Department shall be made available to the parties upon request.

R151-35-4. Registration.

(1) Each newly formed or otherwise not previously registered franchisor or franchisee shall request an initial registration form from the Department.

(2) Annual Renewals. The Department shall provide a renewal form to each registered franchisor and franchisee at least 30 and not more than 60 days prior to the expiration of the current registration.

(3) A registrant may use the form provided by the Department as its initial or renewal registration or may submit a registration or renewal request in another format so long as that request contains the following information:

(a) Name of dealership/manufacturer;

(b) Address of dealership/manufacturer;

(c) Owners or stockholders and percentage of holding (5% or above only);

(d) Line-makes manufactured, distributed, or sold;

(e) If applicable, dealer number; and

(f) Name and address of person designated for the purpose of receiving notices or process pursuant to the provisions of the Powersport Vehicle Franchise Act.

(4) The processing of an application for registration by the Department may be delayed for a reasonable time to give the registrant an opportunity to cure technical defects in an application for registration.

KEY: motorcycles, powersport vehicles, off road vehicles, franchises
May 2, 2006 13-35-101 et seq.
Notice of Continuation July 13, 2007

R152. Commerce, Consumer Protection.
R152-1. Utah Division of Consumer Protection: "Buyer Beware List".
R152-1-1. Purposes, Policies and Rules of Construction.

A. These rules are promulgated pursuant to Subsection 13-2-5(1) to assist the orderly administration of the statutes listed in Utah Code Section 13-2-1.

B.(1) These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to general authority of Utah Code Section 13-2-5, and specific authority of the following statutory sections:

(a) Utah Code Subsection 13-11-8(2);

(b) Utah Code Subsection 13-15-3(1); and

(c) Utah Code Section Section 13-16-12.

(2) Without limiting the scope of any statute or rule, this rule shall be liberally construed and applied to promote its stated purposes and policies. The purposes and policies of this rule are to:

(a) protect consumers from individuals and businesses who have engaged in and committed deceptive acts or practices, or have engaged in and committed unconscionable acts or practices.

(b) supply consumers with pertinent information on the nature of those individuals or businesses who may be engaging in and committing deceptive acts or practices, or may be engaging in and committing unconscionable acts or practices, so as to aid consumers in their decision making.

(c) encourage the development of fair consumer sales practices and wise decision making by consumers in all their consumer purchase decisions.

R152-1-2. Definitions.

A. For the purposes of this rule:

(1) "Buyer Beware List" means the list of individuals or business compiled by the Division in accordance with this rule.

(2) "Department" means the Utah Department of Commerce.

(3) "Director" means the director of the Utah Department of Commerce, Division of Consumer Protection.

(4) "Division" means the Utah Department of Commerce, Division of Consumer Protection.

(5) "Emergency" means facts known or presented to the Utah Department of Commerce, Division of Consumer Protection that show:

(a) an immediate and significant danger to the public health, safety, or welfare exists with respect to the statutes listed in Utah Code Section 13-2-1; and

(b) the threat requires immediate action by the Division.

(6) "Executive Director" means the executive director of the Utah Department of Commerce.

(7) "Order" means an order of adjudication or a final order by default issued by the Utah Department of Commerce, Division of Consumer Protection after proper notice and hearing, as applicable, in accordance with Utah Code Title 63G, Chapter 4, Administrative Procedures Act.

R152-1-3. Placement on "Buyer Beware List".

A.(1) The Division shall place the name of an individual or business on the "Buyer Beware List" if the Division concludes through issuance of an order that the individual or business has violated any of the statutes listed in Utah Code Section 13-2-1.

(2) The Division shall provide fifteen (15) business days written notice by certified mail prior to placing an individual or business on the Buyer Beware List unless notice has otherwise been given by a previously issued Division subpoena or written inquiry or unless the Director finds that an emergency exists. All individuals and businesses placed on the Buyer Beware List shall be notified in writing of the reasons for the proposed inclusion on the list. They will also be advised of what actions, if any, they can take to remove their name from the list.

B. (1) When the Director finds the public interest would be served, the Division may place the name of an individual or business on the "Buyer Beware List" for:

(a) failure or refusal to respond to an administrative subpoena of the Division; or

(b) failure or refusal to respond to a consumer complaint on file with the Division alleging violation of one or more of the acts administered by the Division after the business or individual has received notification from the Division and had an opportunity to respond to the Division and address the complaint.

(2) Unclaimed, returned or refused certified mail properly addressed to the individual or business that is received back by the Division shall constitute proof of failure or refusal to respond.

C.(1) Prior to placement on the Buyer Beware List for any reason set forth in R152-1-3B the Division shall, upon receipt of a consumer complaint, make reasonable efforts to communicate with an individual or business identified in the complaint including:

(a) at least one (1) initial written notice by certified mail or facsimile transmission;

(b) at least one (1) initial telephone call; and

(c) if the individual or business identified in the complaint is a Utah resident at least one initial (1) face to face contact by a Division representative either at the Division's offices or at the individual's or business' Utah address.

(2)(a) If the initial efforts set forth at R152-1-3C(1) have proven unsuccessful the Division shall provide fifteen (15) business days written notice by certified mail prior to placing an individual or business on the Buyer Beware List unless:

(i) notice has otherwise been given by a previously issued Division subpoena or written inquiry properly addressed; or

(ii) the Director finds that an emergency exists.

(b) All individuals and businesses placed on the Buyer Beware List shall be notified in writing of the reasons for the proposed inclusion on the list. They will also be advised of what actions, if any, they can take to remove their name from the list.

D. Each listing on the Buyer Beware List shall contain a listing of the individual's or businesses:

(1) name(s), including "doing businesses as";

(2) address(es);

(3) phone number(s); and

(4) a detailed basis for the individual or business being placed on the list, including whether:

(a) an administrative fine has been assessed and if so what amount; and

(b) a cease and desist order has been issued in accordance with Utah Code Section 13-2-6(1).

E. The Buyer Beware List is a public document under Utah Code Title 63G, Chapter 2, Government Records Access and Management Act.

R152-1-4. Removal from "Buyer Beware List".

A. The Division of Consumer Protection shall remove the name of the business or individual from the Buyer Beware List if:

(1) the individual or business:

(a) has had no other complaints with respect to a statute listed in Utah Code Section 13-2-1 for a period of 90 consecutive days after being placed on the list; and

(b) otherwise complies with all aspects of the order entered against the individual or business, including the payment of any administrative fines assessed;

(2) pursuant to R152-1-3B(1)(a), when a sufficient response is provided to an outstanding Division subpoena; or

(3) pursuant to R152-1-3B(1)(b), when a satisfactory response is made to outstanding Division inquiries to which the

individual or business previously failed or refused to respond.

KEY: consumer protection
May 16, 2006 **13-2-5(1)**
Notice of Continuation October 4, 2005 **13-11-8(2)**
13-15-3(1)
13-16-12

R152. Commerce, Consumer Protection.
R152-11. Utah Consumer Sales Practices Act.
R152-11-1. Purposes, Rules of Construction.

A. These substantive rules are adopted by the Director of the Division of Consumer Protection pursuant to Section 8 of Chapter 188 of the Laws of Utah, 1973 (Utah Consumer Sales Practices Act, Utah Code Annotated Section 13-11-1 et seq., as amended). Without limiting the scope of any section of the Utah Consumer Sales Practices Act or any other rule, these rules shall be liberally construed and applied to promote their purposes and policies. The purpose and policies of these rules are to:

(1) define with reasonable specificity acts and practices which violate Section 4 of the Utah Consumer Sales Practices Act.

(2) protect consumers from suppliers who engage in referral sellings, commit deceptive acts or practices, or commit unconscionable acts or practices.

(3) encourage the development of fair consumer sales practices.

(4) supplement and compliment any other rules promulgated by the State of Utah or any agency or subdivision thereof or any other governmental entity.

B. Definitions.

(1) "Advertisement" means any written, visual, or oral communication made to a consumer by means of newspaper, magazine, circular, billboard, direct mailing, sign, radio, television or otherwise, which identifies or represents the terms of any item of goods, service, franchise, distributorship or intangible which may be transferred in a consumer transaction.

(2) "Consumer Commodity" means any subject of a consumer transaction.

(3) "Fixture" or "Fixtures" means goods or products that are not readily removable from a permanent structure or land itself such as shingling, siding and or windows or other like improvements and which, when they thus become so related to particular real estate that an interest in them arises under real estate law.

(4) "Goods" mean all things which are movable at time of identification to the contract for sale other than the money in which the price is to be paid and things in action.

(5) "Service" means performance of labor or any act for the benefit of another.

(6) "Offer" means any attempt to effect, an offer to enter into a consumer transaction.

(7) "Product" means any goods, services, consumer commodity, or other property, both tangible and intangible (except securities and insurance) which is the subject or object of a consumer transaction.

(8) "Service" means performance of labor or any act for the benefit of another.

(9) All other terms used in these regulations shall carry the same meaning and definition as in the Utah Consumer Sales Practices Act unless otherwise specified, consistent with that Act.

R152-11-2. Exclusions and Limitations in Advertisement.

A. It is a deceptive act or practice for a supplier in connection with a consumer transaction, in the sale or offering for sale of a consumer commodity to make any offer in written or printed advertising or promotional literature without stating clearly and conspicuously in close proximity to the words stating the offer of any material exclusions, reservations, limitations, modifications, or conditions. The following are examples of the types of material exclusions, reservations, limitations, modifications, or conditions of offers which must be clearly stated:

(1) An advertisement for any consumer commodity not disclosing the amount of any additional charge for any of the features displayed or listed in the advertisement would be deceptive.

(2) An advertisement for an article of clothing must state that there is an additional charge for sizes above or below a certain size if such is the case.

(3) An advertisement which offers floor covering with an additional charge for room sizes above or below a certain size must disclose the nature and amount of additional charge.

(4) An advertisement for a consumer commodity sold from more than one outlet under the direct control of the supplier causing the advertisement to be made must state:

(a) Which outlets within the area served by the publication in which the advertisement appears either have or do not have certain features mentioned in the advertisement;

(b) Which outlets within the area served by the publication in which the advertisement appears charge rates higher than the rate mentioned in advertisement. For example:

TABLE

"Rug Shampooer - $15.00 a day at West 3rd Street South Office - all other locations are more."

(c) An advertisement for a consumer commodity sold from outlets not under the direct control of the supplier causing the advertisement to be made does not violate Section 2a(4)(a) or 2a(4)(b) of this rule if it states that the consumer commodity is available only at participating independent dealers.

(5) An advertisement for any consumer commodity requiring installation must reflect the exact price of the commodity and if the price includes installation or if installation is additional.

(6) If the advertised price is available only during certain hours of the day or certain days of the week that fact must be stated along with the hours and days the price is available.

(7) If the advertisement involves or pictures more than one consumer commodity (for example: a sofa, cocktail table and two commodes) and the advertised price applies only if the complete set is purchased, that fact must be stated.

(8) If there is a minimum amount (or maximum amount) that must be purchased for the advertised price to apply, that fact must be stated.

(9) If an advertisement specifies a price for a consumer commodity which includes a trade-in, that fact must be stated. For example: a 6 volt battery for $50.00 plus your old battery.

(10) If there are "additional" items that must be purchased for the advertised price to apply that fact must be so stated.

(11) These examples are intended to be illustrative only and do not limit the scope of any section of the Utah Consumer Sales Practices Act or of this or any other rule or regulation.

B. Offers made orally, such as through radio or television advertising, must include a conspicuously clear and oral statement of any material exclusions, reservations, modifications, or conditions.

C. If an error is made in advertising, either by pricing, wording, picture, or description, it shall be the responsibility of the supplier to retract or correct the error. A retraction is necessary when it cannot be shown that the error was due to the fault of the advertising medium. If it can be documented that the responsibility rests with the advertising medium, a retraction by the supplier is not necessary but the supplier may post a correction in close proximity to the merchandise which was advertised incorrectly.

R152-11-3. Bait Advertising/Unavailability of Goods.

A. Definitions: For the purposes of this rule, the following definitions shall apply:

(1) "Raincheck" means a written document evidencing a consumer's entitlement to purchase advertised items at an

advertised price within the time limits set forth in paragraph d. of this rule.

(2) "Salesperson" means the supplier or his agent or employee who interacts personally or directly with a consumer in negotiating or effecting a consumer transaction.

B. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to offer to sell consumer commodities when the offer is not a bona fide effort to sell the advertised consumer commodities. An offer is not bona fide if:

(1) A supplier uses a statement or illustration in any advertisement which would create in the mind of a reasonable consumer a false impression of the grade, quality, quantity, make, value, model, year, size, color, usability, or origin of the consumer commodities offered or which otherwise misrepresents the consumer commodities in such a manner that, on subsequent disclosure or discovery of the true facts, the consumer is diverted from the advertised consumer commodities to other consumer commodities. An offer is not bona fide, even though the true facts are made known to the consumer before he views the advertised consumer commodities, if the first contact or interview is secured by deception.

(2) A supplier discourages the purchase of the advertised consumer commodities in order to sell other consumer commodities. This does not however, prohibit the good faith recommendation concerning a different consumer commodity as it relates to a consumer's particular or unique needs or problems concerning the consumer commodity. The following are examples of acts or practices which raise a presumption that an offer to sell consumer commodities is not bona fide:

(a) Refusal to show, demonstrate, or sell the consumer commodities advertised in accordance with the terms of the advertisement;

(b) Disparagement by the supplier either by acts or words of the advertised consumer commodities or of the guarantee, credit terms, availability of service, repairs, or parts, or any other respects of the consumer commodities;

(c) The failure of a supplier to have available at all outlets under its direct control, or listed in the advertisement, a sufficient quantity of the advertised consumer commodities at the advertised price to meet reasonably anticipated demands, unless the advertisement clearly and adequately disclosed that there is a limited quantity of advertised consumer commodities available and/or that the consumer commodities are available only at the designated outlets;

(d) The failure to give rainchecks to consumers where the advertisement does not disclose that there is a limited quantity or availability of consumer commodities. Suppliers who clearly and consistently post a raincheck policy for public review shall be exempt from this section;

(e) The showing or demonstrating of defective, unusable, or impractical consumer commodities when such defective, unusable, or impractical nature is not fairly and adequately disclosed in the advertisement;

(f) The use of a sales plan or method of compensation for salesperson designed to prevent or discourage them from selling the advertised consumer commodity. This does not, however, prohibit the usual and reasonable use of commissions as a means of compensation;

(g) The demonstration of an advertised consumer commodity in such a manner that makes the commodity appear inferior.

(3) A supplier, in the event of a sale to the consumer of the offered consumer commodities, attempts to persuade a consumer to repudiate the purchase of the offered commodities and purchase other consumer commodities in their stead, by any means, including but not limited to the following:

(a) Accepting a consideration for the offered consumer commodities and then switching the consumer to other commodities;

(b) Delivering offered consumer commodities which are unusable or impractical for the purposes represented or materially different from the offered consumer commodities. The purchase on the part of some consumers of the offered consumer commodities is not in itself prima facie evidence that the offer is bona fide.

(4) A supplier represents in any advertisement, which would create in the mind of the consumer, a false impression that the offer of goods has been occasioned by a financial or natural catastrophe when such is not true.

(5) A supplier misrepresents the former price, savings, quality or ownership of any goods sold.

R152-11-4. Use of the Word "Free" etc.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to use the word "free" or other words of similar import or meaning, except when such representation is, in fact, the case and the cost of the "free" consumer commodity is not passed on to the consumer by raising the regular price of the consumer commodity that must be purchased in connection with the "free" offer.

(1) The meaning of "free".

(a) An offer of "free" consumer commodities is based upon a regular price for the merchandise or services which must be purchased by consumers in order to avail themselves of that which is represented to be "free." Such consumer commodities are not free if the supplier will directly and immediately recover, in whole or in part, the costs of the free consumer commodities by marking up the price of the other consumer commodities which must be purchased, by the substitution of inferior consumer commodities, or otherwise.

(b) For the purpose of this rule, all references to the word "free" shall include within the term all other words of similar import and meaning. Representative of the word or words to which this rule is applicable would be the following: "free"; "buy one, get one free"; "two for one sale"; "50% off the purchase of two"; "gift"; "given without charge"; "bonus" or other words and terms which tend to convey to the consuming public the impression that an item of a consumer commodity is "free".

(2) The meaning of "regular price".

(a) The term "regular price" means the price in the same quantity, quality, and with the same service, at which the seller or advertiser of the consumer commodity has openly and actively sold the consumer commodity in the geographic market or trade area in which he is making a "free" or similar offer in the most recent and regular course of business for a reasonably substantial period of time. For consumer products or services which fluctuate in price, the "regular price" shall be the lowest price at which any substantial sales were made during the aforementioned period of time.

(b) Negotiated sales. If a consumer commodity usually is sold at a price arrived at through bargaining, rather than at a regular price, it is improper to represent that another consumer commodity is being offered "free" with the sale, unless the supplier is able to establish a mean, average price immediately prior to the free offer. The same representation is also improper where there may be a regular price, but where other material factors such as quantity, quality, or size are arrived at through bargaining.

(3) Frequency of offers.

(a) In order to establish a regular price over a reasonably substantial period of time, a single kind of consumer commodity should not be advertised with a "free" offer in a trade area for more than six months in any twelve-month period. At least 30 days should elapse before another such offer is promoted in the same trade area. No more than three such offers should be made in the same area in any twelve-month period.

B. Disclosure of Conditions. A "free" or similar offer is

deceptive unless all the terms, conditions, and obligations upon which receipt and retention of the "free" item are contingent are set forth clearly and conspicuously at the outset of the offer so as to leave no reasonable probability that the terms of the offer might be misunderstood.

C. Combination Offer. This rule does not preclude the use of nondeceptive, "combination" offers in which two or more items of consumer commodities such as, but not limited to, toothpaste and a toothbrush, or soap and deodorant, or clothing and alterations are offered for sale as a single unit at a single state price, and, in which no representation is made that the price is being paid for one item and the other is "free." Similarly, suppliers are not precluded from settling a price for an item of consumer commodities which also includes furnishing the consumer with a second, distinct item of consumer commodities at one inclusive price if no presentation is made that the latter is free.

D. Introductory Offers. No "free" offers should be made in connection with the introduction of a new consumer commodity offered for sale at a specified price unless the offerer expects in good faith to discontinue the offer after a limited time and to commence selling the consumer commodity promoted separately, at the same price at which it was promoted with a "free" offer.

R152-11-5. Repairs and Service.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving repairs, inspections, or other services for a supplier to:

(1) Fail to obtain the consumer's express authorization for repairs, inspections, or other services. The authorization shall be obtained only after the supplier has clearly explained to the consumer the anticipated repairs, inspection or other services to be performed, the estimated charges for those repairs, inspections or other services, and the reasonably expected completion date of such repairs, inspection or other services to be performed, including any charge for re-assembly of any parts disassembled in regards to the providing of such estimate. For repairs, inspections or other services that exceed a value of $25, the consumer's express authorization shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(2) Fail to obtain the consumer's express authorization for additional, unforeseen, but necessary, repairs, inspections, or other services when those repairs, inspections, or other services amount to ten percent (10%) or more (excluding tax) of the original estimate. The consumer's express authorization for such additional repairs, inspections, or other services shall be in a form that is evidenced by written agreement signed by the consumer or by any electronically transferred authorization from the consumer such as a facsimile transmission, e-mail, telephonic, or other electronic means that is stored, recorded, or retained by the supplier evidencing the consumer's express authorization, a transcript or copy of which shall be provided to the consumer on or before the time that the consumer receives the initial billing or invoice for supplier's performance. This rule is in addition to the requirements of any other statute or rule;

(3) Fail to re-assemble any parts disassembled for inspection unless the consumer is so advised, prior to acceptance for inspection by supplier that there will be a charge for re-assembly of the parts or that it is not possible to re-assemble such parts;

(4) Charge for repairs, inspections, or other services which have not been authorized by the consumer;

(5) In the case of an in-home service call where the consumer had initially contacted the supplier, to fail to disclose before the supplier's repairman goes to the consumer's residence that a service or diagnostic charge will be imposed, even though no repairs may be effected;

(6) Represent that repairs, inspections, or other services are necessary when such is not the fact;

(7) Represent that repairs, inspections, or other services must be performed away from the consumer's residence when such is not the fact;

(8) Represent that repairs, inspections or other services have been made when such is not the fact;

(9) Represent that the goods being inspected or diagnosed are in a dangerous condition or that the consumer's continued use of them may be harmful to him when such is not the fact;

(10) Intentionally understate or misstate materially the estimated cost of repairs, inspections, or other services;

(11) Fail to provide the consumer with an itemized list of repairs, inspections, or other services performed and the reason for such repairs, inspections, or other services, including:

(a) A list of parts and a statement of whether they are new, used, rebuilt, or after market, and the cost thereof to the consumer; and

(b) The number of hours of labor charged, apportioned for each part, service or repair, and the name or other reasonable means of identification of the mechanic or repairman performing the service, provided, however, that the requirements of (b) shall be satisfied by the statement of a flat rate price if such repairs are customarily done and billed on a flat rate price basis and such has been previously disclosed to the consumer in writing.

(12) Fail to give reasonable written notice before repairs, inspections, or other services are provided, that replaced or repaired parts may be inspected or fail to allow the consumer to inspect replaced or repaired parts on request, unless:

(a) the parts are to be rebuilt or sold by the supplier and such intended reuse is made known to the consumer by written notice on the original estimate; or

(b) the parts are to be returned to the manufacturer or distributor under a written warranty agreement; or

(c) the parts are impractical to return to the consumer because of size, weight, or other similar factors; or

(d) the consumer waives the return of such parts in writing after repairs are completed and a total cost is presented.

(13) Fail to provide to the consumer a written, itemized receipt for any consumer commodities that are left with, or turned over to, the supplier for repairs, inspections, or other services. Such receipt shall include:

(a) The exact name and business address of the business entity (or person, if the entity is not a corporation or partnership) which will repair or service the consumer commodities.

(b) The name and signature of the person who actually takes the consumer commodities into custody.

(c) The name of any entity to whom such repairs, inspections, or other services are sublet including the address, phone number and a contact person at such entity.

(d) A description including make and model number or such other features as will reasonably identify the consumer commodities to be repaired or serviced.

R152-11-6. Prizes.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to notify in any way a consumer or prospective consumer that he has (1) won a prize or will receive anything of value, or (2) been selected, or is

eligible, to win a prize or receive anything of value, if the receipt of the prize or thing of value is conditioned upon the consumer's listening to or observing a sales promotional effort or entering into a consumer transaction, unless the supplier clearly and explicitly discloses, at the time of notification of the prize, that an attempt will be made to induce the consumer or prospective consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction. If a supplier states or implies a value to the prize or thing of value the true market value of such prize must be accurately stated. A supplier must further state that the prize or thing of value could not benefit the consumer or prospective consumer without the expenditure of the consumer's or prospective consumer's time or transportation expense, or that a salesman will be visiting the consumer's or prospective consumer's residence; if such is the case.

B. A statement to the effect that the consumer or prospective consumer must observe or listen to a "demonstration" or promotional effort in connection with a consumer transaction does not satisfy the requirements of this rule, unless it is reasonably clear from the information supplied to the consumer that the supplier is in the business of making consumer sales or that the intent is to encourage or induce the consumer to undertake a monetary obligation irrespective of whether that obligation constitutes a consumer transaction.

R152-11-7. New for Used.

A. Except as provided in Section 7c and d of this rule, it shall be a deceptive act or practice in connection with a consumer transaction for a supplier to represent, directly or indirectly, that an item of consumer commodity, or that any part of an item of consumer commodity, is new or unused when such is not the fact, or to misrepresent the extent of previous use thereof, or to fail to make clear and conspicuous disclosures, prior to time of offer, to the consumer or prospective consumer that an item of consumer commodity has been used.

B. For the purpose of this rule, "used" shall include rebuilt, re-manufactured, reconditioned consumer commodity or parts, thereof, or used either as a demonstrator or as a consumer commodity by a previous consumer.

C. For the purpose of this rule, a returned consumer commodity which has not been used by a previous purchaser, shall be considered new or unused.

D. The disclosure that an item of consumer commodity has been used or contains used parts as required by Section 7a may be made by use of words such as, but not limited to, "used"; "second hand"; "repaired"; "re-manufactured"; "reconditioned"; "rebuilt"; or "reline"; whichever is applicable to the item of consumer commodity involved.

R152-11-8. Substitution of Consumer Commodities.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to furnish similar consumer commodities of equal or greater value when there was no intention to ship, deliver or install the original consumer commodities ordered. The act of a supplier in furnishing similar merchandise of equal or greater value as a good faith substitute does not violate this rule if such substitution is first approved by the consumer.

B. For the purpose of this rule, consumer commodities may not be considered of "equal or greater value" if they are not substantially similar to the consumer commodity ordered, or are not fit for the purposes intended, or if the supplier normally offers the substituted consumer commodities at a lower price than the "regular price".

C. It will be assumed that a supplier had no intention to deliver, ship, or install the original ordered or substitute goods if the supplier fails to ship, deliver or install the goods within 30 days of the date of the order, purchase or of the notice of delay and fails to notify the purchaser of any delay or further delay; unless the supplier can show that it has made a good faith effort to ship, deliver or install the goods or to notify the purchaser of any delay or further delay within the prescribed period.

R152-11-9. Direct Solicitations.

A. It shall be a deceptive act or practice in connection with a consumer transaction involving any direct solicitation sale for a supplier to do any of the following:

(1) Solicit a sale without clearly, affirmatively, and expressly revealing at the time the seller initially contacts the consumer or prospective consumer, and before making any other statements or asking any questions, except for a greeting: the name of the seller, the name or trade name of the company, corporation or partnership the seller represents, and stating in general terms the nature of the consumer commodities the seller wishes to show or demonstrate.

(2) Represent that the consumer or prospective consumer will receive a discount, rebate, or other benefit for permitting his home or other property, real or personal, to be used as a so-called "model home" or "model property" for demonstration or advertising purposes when such, in fact, is not true;

(3) Represent that the consumer or prospective consumer has been specially selected to receive a bargain, discount, or other advantage when such, in fact, is not true;

(4) Represent that the consumer or prospective consumer is a winner of a contest when such, in fact, is not true;

(5) Represent that the consumer commodities that are being offered for sale cannot be purchased in any place of business, but only through direct solicitation, when such, in fact, is not true;

(6) Represent that the salesman representative, or agent has authority to negotiate the final terms of a consumer transaction when such, in fact, is not true;

(7) Sell, lease, or rent consumer goods or services with a purchase price of $25 or more and fail to furnish the buyer with a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution which is in the same language (e.g. Spanish) as that principally used in the oral sales presentation and which shows the date of the transaction and the name and address of the seller.

(8) Except as otherwise provided in the "Home Solicitations Sales Act", Section 70C-5-102(5) and or the "Telephone Fraud Prevention Act", Section 13-26-5, to fail to provide a notice of the buyer's right to cancel within three (3) business days at the time of purchase if the total of the sale exceeds $25, unless the supplier's cancellation policy is communicated to the buyer and the policy offers greater rights to the buyer than three days, which notice shall be in conspicuous statement written in dark bold at least 12 point type on the front page of the purchase documentation, and shall read as follows: "You, the Buyer, May Cancel This Transaction At Any Time Prior to Midnight of the Third Business Day (or Time Period Reflecting the Supplier's Cancellation Policy But Not Less Than Three Business Days) After the Date of This Transaction or Receipt of The Product, Whichever is Later."

(a) Paragraph (8) shall not apply to "fixture" solicitation sales where the supplier:

(i) automatically provides the buyer a right to cancel within three (3) or more business days from the time of purchase; or

(ii) automatically provides a refund for return of goods within three (3) or more business days from the time of purchase, but prior to installation as a fixture; or

(iii) supplies merchandise to a buyer without prior full payment and allows the buyer three (3) or more business days from the time of receipt of the merchandise, but prior to installation as a fixture to cancel the order and return the merchandise; or

(iv) discloses its refund/return policy in its advertising, catalog and contract, and that policy provides for a return of merchandise within a period of three (3) or more business days from the time of purchase, but prior to installation as a fixture or that policy indicates no return or refund will be offered or made on special merchandise (such as uniquely sized items, custom made or special ordered items); or

(9) Fail or refuse to honor any valid notice of cancellation by a consumer and within 30 calendar days after the receipt of such notice, to: (i) refund all payments made under the contract or sale; (ii) return any goods or property traded in, in substantially as good condition as when received by the supplier; (iii) cancel and return any negotiable instrument executed by the buyer in connection with the contract or sale and take any action necessary or appropriate to terminate promptly any security interest created in the transaction.

B. "Direct Solicitation" means solicitation of a consumer transaction initiated by a supplier, at the residence or place of employment of any consumer, and includes a sale or solicitation of sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer. In the case of a subscription or club membership (e.g., tape, book, or record club) solicitation, "direct solicitation" means solicitation of the initial consumer transaction pursuant to a subscription or club membership agreement, made by the supplier at the residence or place of employment of any consumer, and includes a solicitation of an initial sale made by the supplier by direct mail or telephone or personal contact at the residence or place of employment of any consumer, but excludes all subsequent consumer transactions which are provided for in the subscription or club membership agreement.

C. "Time of Purchase" is defined as the day on which the buyer signs an agreement or accepts an offer to purchase consumer goods or services where the total of the sale is $25 or more.

R152-11-10. Deposits and Refunds.

A. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier to accept a deposit unless the following conditions are met:

(1) The deposit obligates the supplier to refrain for a specified period of time from offering for sale to any other person the consumer commodities in relation to which the deposit has been made by the consumer if such consumer commodities are unique; provided that a supplier may continue to sell or offer to sell consumer commodities on which a deposit has been made if he has available sufficient consumer commodities to satisfy all consumers who have made deposits;

(2) All deposits accepted by a supplier must be evidenced by dated receipts, provided to the consumer at the time of the transaction, stating the following information:

(a) Description of the consumer commodity, (including model, model year, when appropriate, make, and color);

(b) The cash selling price;

(c) Allowance on the consumer commodity to be traded in, if any;

(d) Time during which the option is binding;

(e) Whether the deposit is refundable and under what conditions; and

(f) Any additional cost such as delivery charge.

(3) For the purpose of this rule "deposit" means any payment in cash, or of anything of value or an obligation to pay including, but not limited to, a credit device transaction incurred by a consumer as a deposit, refundable or non-refundable option, or as partial payment for consumer commodities.

B. It shall be a deceptive act or practice in connection with a consumer transaction when the consumer can provide reasonable proof of purchase from a supplier for the supplier to refuse to give refunds for:

(1) Used, damaged or defective products, unless they are clearly marked "as is" or with some other conspicuous disclaimer of any implied or express warranty, and also clearly marked that no refund will be given; or

(2) Non-used, non-damaged or non-defective products unless:

(a) Such non-refund, exchange or credit policy, including any applicable restocking fee, is clearly indicated by:

(i) a sign posted at the point of display, the point of sale, the store entrance;

(ii) adequate verbal or written disclosure if the transaction occurs through the mail, over the telephone, via facsimile machine, via e-mail, or over the Internet; or

(iii) a clear and conspicuous statement on the first or front page of any sales document or contract at the time of the sale.

(b) The consumer commodities are food, perishable items, merchandise which is substantially custom made or custom finished.

(3) For the purpose of this rule "refund" means cash if payment were made in cash provided that if payment were made by check the refund may be delayed until the check has cleared; and further provided that if payment were made by debit to a credit card or other account, then refund may be made by an appropriate credit or refund pursuant to the applicable law.

C. It shall be a deceptive act or practice in connection with a consumer transaction for a supplier who has accepted a deposit and has received from the consumer within a reasonable time a valid request for refund of the deposit to fail to make the refund within 30 calendar days after receipt of such request.

(1) In determining the amount required to be refunded under this rule, the supplier may take into consideration the nature of the commodity returned, the condition of the commodity returned, shipping charges if agreed to and any lawful restocking fee.

(2) For purposes of this rule, "reasonable time" means within 30 days of the date of the deposit unless a longer period is justified due to the nature of the commodity returned or any agreement between the parties.

D. No deposit accepted by a supplier to secure the value of equipment or materials provided to a consumer for the consumer's use in any business opportunity where it is anticipated by either the consumer or the supplier that some remuneration will be paid to the consumer for services or goods supplied to the supplier or to some third party in the behalf of the supplier shall exceed the actual cost of the supplies or equipment paid by the supplier or any person acting on behalf of the supplier.

R152-11-11. Franchises, Distributorships, Referral Sales.

A. Definitions. As used in this chapter, the following words and terms shall have the following meanings, unless some other meaning is plainly indicated:

(1) "Referral Selling" means any consumer transaction where the seller gives or offers a rebate or discount to the buyer as an inducement for a sale in consideration of the buyer's providing the seller with the names of prospective purchasers.

(2) The term "franchise or distributorship" means a contract or agreement requiring substantial capital investment, either expressed or implied, whether oral or written, between two or more persons:

(a) Wherein a commercial relationship of definite duration or continuing indefinite duration is involved;

(b) Wherein the purchaser, is granted the right to offer, sell and distribute consumer commodities manufactured, processed, distributed or, in the case of services, organized and directed by the seller; and the purchaser has not been previously engaged in such business opportunity;

(c) Wherein the franchise or distributorship as an independent business constitutes a component of seller's

distribution system; or

(d) Wherein the operation of the purchaser's business is substantially reliant on sellers for the basic supply of consumer commodities.

B. Franchises and Distributorships. It shall be an unfair or deceptive act or practice for any person in the trade or commerce of establishing a franchise, distributorship to:

(1) Misrepresent the prospects or chances for success of a proposed or existing franchise or distributorship;

(2) Misrepresent by failure to disclose or otherwise, the known required total investment for such franchise or distributorship;

(3) Misrepresent or fail to disclose efforts to sell or establish more franchises or distributorships than is reasonable to expect the market or market area for the particular franchise or distributorship to sustain;

(4) Misrepresent the quantity or quality of the products to be sold or distributed through the franchise or distributorship;

(5) Misrepresent the training and management assistance available to the franchise or distributorship;

(6) Misrepresent the amount of profits, net or gross, the franchisee can expect from the operation of the franchise or distributorship;

(7) Misrepresent the size, choice, potential or demographic feature of a franchise territory or misrepresent the number of present or future franchises or distributorships within the franchise territory;

(8) Misrepresent by failure to disclose or otherwise, the termination, transfer or renewal provision of a franchise or distributorship agreement;

(9) Falsely claim or infer that a primary marketer of trademark products or services sponsors or participates directly or indirectly in the franchise or distributorship operation;

(10) Assign a so-called exclusive territory encompassing the same area to more than one franchise;

(11) Provide vending locations for which written authorizations have not been granted by the property owners or lessees of the premises;

(12) Provide vending machines or displays of a brand or kind different from or inferior to those promised by the seller;

(13) Fail to provide to the purchaser a written contract which includes the following provisions:

(a) The total financial obligation of the purchaser to the seller;

(b) The date of delivery of the purchaser consumer commodity to the purchaser if the seller is responsible for delivery of such consumer commodity;

(c) The description and quantity of consumer commodities to be delivered to the purchaser if the seller is responsible for delivery of such consumer commodities; and

(d) All other disclosures and provisions required in the preceding subsections;

(14) Fail to honor his contract as required in this section with the purchaser.

R152-11-12. Negative Options.

A. Definitions:

1. A "negative option plan" means a contract under which a supplier either:

a. sends or offers to a consumer an announcement, advertisement or notice that:

i. the supplier proposes to send goods or provide services to the consumer (other than periodic supplements to previously acquired merchandise), and

ii. the consumer is required to pay for those goods or services unless the consumer affirmatively communicates that he refuses to accept the goods or services; or

b. sends or offers to a consumer a notice accompanying goods or services provided to the consumer that requires or purports to require that the consumer pay for those goods or services unless the customer affirmatively communicates that he refuses to accept the goods or services.

2. "Contract" includes, but is not limited to, any contract, marketing plan, arrangement or agreement between a supplier and a consumer.

B. Except as provided in paragraph C herein, the following acts or practices constitute a deceptive or unconscionable act or practice:

1. a supplier sends or offers goods or provides services to a consumer pursuant to a negative option plan;

2. a supplier interrupts, terminates, cancels or denies delivery of or provision of goods or services previously contracted for to a consumer solely on the basis that the consumer has not paid for or returned to the supplier goods or services which the consumer has not ordered, requested or authorized from the supplier.

C. Negative option plans do not constitute deceptive or unconscionable acts or practices if:

1. the supplier first receives specific approval, in writing and signed by the consumer, to send goods or services pursuant to a negative option plan.

a. The "specific approval" referred to in subparagraph B.1. of this rule shall be in writing and shall include the signature of the consumer.

b. The supplier shall maintain the original signed written consent of the consumer for a period of at least five (5) years after the date of signing or two (2) years after termination of the contract or agreement, whichever is longer; and

2. The following disclosures, or disclosures substantially similar to the following, are on the face of the contract or document evidencing the negative option plan and provided to the consumer before the consumer approves of the plan:

a. in bolded type which is 10 points or larger, that the transaction includes a "NEGATIVE OPTION PLAN"; and

b. the terms and conditions under which the negative option may be exercised, clearly and understandably stated; and

c. near the signature of the person entering into the consumer transaction, in bold type which is 10 points or larger: "I UNDERSTAND THAT THIS CONSUMER TRANSACTION INVOLVES A NEGATIVE OPTION, AND THAT I MAY BE LIABLE FOR PAYMENT OF FUTURE GOODS AND SERVICES UNDER THE TERMS OF THIS AGREEMENT IF I FAIL TO NOTIFY THE SUPPLIER NOT TO SUPPLY THE GOODS OR SERVICES DESCRIBED."

R152-11-13. Travel Packages.

(1) This rule is authorized by Subsection 13-11-8(2). The purpose of this rule is to define one type of conduct that violates Subsection 13-11-4(1).

(2) It shall be a deceptive act or practice for a supplier to offer, knowingly or intentionally, a reduced rate travel package which:

(a) is tendered to a consumer as an incentive for the performance of some act the consumer has no legal obligation to perform;

(b) is subject to redemption rules the violation of which will result in a default which discharges the supplier's obligation to perform under such rules; and

(c) is structured so that the supplier will only realize a profit if a majority of the consumers who receive reduced rate travel package default.

(3)(a) For a supplier to be held liable under this rule, it is not necessary that he contract directly with a consumer for a reduced rate travel package. It is a sufficient basis for liability for the supplier to offer such a package to any person knowing that a consumer eventually will look to him for performance.

(b) A supplier acts deceptively required by Subsection 13-11-4(2) when he consciously engages in conduct which

constitutes a deceptive act or practice, even if he is unaware that such conduct is unlawful.

(4) The definitions appearing in Section 13-11-3 shall apply to this rule, with the following additional definitions:

(a) "reduced rate" means the payment of funds, whether styled as fees, taxes, a discounted payment, or otherwise, which is less than the fair market value of the travel package offered by a supplier; and

(b) "travel package" means air, land, or sea transportation, with or without lodging, for pleasure or business purpose within the scope of the term "consumer transaction".

KEY: advertising, bait and switch, consumer protection
December 22, 2006 63G-3-201
Notice of Continuation February 1, 2007 13-2-5
13-11

R152. Commerce, Consumer Protection.
R152-15. Business Opportunity Disclosure Act Rules.
R152-15-1. Authority and Purpose.

Pursuant to Section 13-15-3, these rules are intended to assist in the administration of the Business Opportunity Disclosure Act, Chapter 15, Title 13.

R152-15-2. Filing Requirements. Filing Fees.

(1) Information filed with the Division. In addition to the information required to be filed by Section 13-15-4 or 13-15-4.5 Utah Code Annotated (1953, as amended), sellers shall file with the Division, upon request, the following:

(a) the name and address of the registered agent of seller;

(b) any promotional materials used or to be used by either the seller or the purchaser, whether in writing or in any other form; and

(c) the appropriate filing fee as set in accordance with Section 63J-1-303 Utah Code Annotated (1953, as amended), which presently is set as follows:

(i) Section 13-5-4 filing: $200.00 per year; and

(ii) Section 13-15-4.5 filing: $100.00 per year.

(2) Amendment of disclosures. The disclosure document must be current as of the seller's most recent fiscal year, or no later than 90 days after the close of its most recent fiscal year. A seller must amend any information it files or filed with the Division in the event of any material change in the information. Such amendment shall be made by filing with the Division, within a reasonable time after such material change, the new or correct information.

(a) "Material change" means any change in information where there is a reasonable likelihood the decision of a prospective purchaser to purchase or not purchase the assisted marketing plan would be influenced by the change.

(b) Without limitation, example of material changes include:

(i) An increase or decrease in the initial or continuing fees charged by the seller;

(ii) The termination, cancellation, failure to renew or reacquisition of a significant number of purchasers of an assisted marketing plan since the most recent date of filing;

(iii) Any significant change in seller's management;

(iv) Any significant change in the seller's or purchaser's obligations;

(v) Significant decrease in seller's income or net worth or;

(vi) Significant change in claims about past sales or projected sales, income, gross or net profits, cash flows or costs involved in the assisted marketing plan.

KEY: franchises, marketing, consumer protection
August 13, 2002 13-15-3
Notice of Continuation June 22, 2007 13-2-5

R152. Commerce, Consumer Protection.
R152-20. New Motor Vehicle Warranties.
R152-20-1. Authority and Purpose.

These rules are promulgated to prescribe for the administration of Title 13, Chapter 20, the New Motor Vehicle Warranties Act (hereinafter the "Act"), and are under the authority granted the Division under Section 13-2-5.

R152-20-2. Definitions.

A. For purposes of determining whether a nonconformity has been subject to repair the required number of times, an "attempt" to repair, as used in Section 13-20-4 or 13-20-5, means that the vehicle is or has been presented to the manufacturer or its agent for the same non-conformity.

B. "Collateral charges" as used in Section 13-20-4 includes, but is not limited to:

1. Sales taxes
2. Document preparation fees
3. The cost of additional warranties or extended warranties, if included in the purchase price

C. "Comparable new motor vehicle" as used in Section 13-20-4 means:

1. A motor vehicle that is determined by the division to be identical to, or reasonably equivalent to, the nonconforming vehicle had it conformed to all applicable express warranties. A comparable new motor vehicle includes any service contracts, contract options, and factory or dealer installed options that were originally included in the sale of the nonconforming vehicle; or

2. A vehicle with an equivalent retail value including any service contracts, and factory or dealer installed options that were originally included with the nonconforming vehicle, if the consumer consents to a different make or model.

D. "New motor vehicle" as used in Section 13-20-4 means a motor vehicle which has never been titled or registered and has been driven fewer than 7,500 miles.

E. "Nonconforming vehicle" as used in Section 13-20-4 means a motor vehicle that does not meet all express warranties provided in the sales agreement or contract.

F. "Purchase price" as used in Section 13-20-4 means the actual amount paid for the vehicle. "Purchase price" includes taxes, licensing fees, and additional warranty fees, but does not include collateral charges.

G. "Reasonable allowance" as used in Section 13-20-4 for mileage means the dollar value based on the prescribed deduction per mile. The cap on a reasonable allowance shall be calculated as the purchase price divided by 100,000, but shall not in any case be less than ten (10) cents per mile nor more than twenty-one (21) cents per mile. The consumer shall not be liable for mileage on the vehicle at the time of delivery, nor for mileage during the time the vehicle was being repaired.

R152-20-3. Replacement or Refund of Nonconforming Motor Vehicles.

A. When the manufacturer is repurchasing a nonconforming motor vehicle that has been leased to a consumer, the following provisions also apply:

1. The manufacturer shall refund to the lessor all payments made under the lease.

2. The refund or repurchase price shall include trade-in value, inception payment, and security deposit.

3. The manufacturer shall make all payments on behalf of the lessee, to the lessor and/or lienholder of record as necessary to obtain clear title to the motor vehicle. The excess from said payments shall be paid to lessee. Upon the lessor's and/or lienholder's receipt of the payment, the consumer shall be relieved of any future obligation to the lessor and/or lienholder.

B. If a manufacturer is unable to provide a comparable new motor vehicle, it may provide, upon the consent of the consumer, a replacement vehicle of comparable quality. The customer shall not incur additional expense with respect to the replacement vehicle, except as a reasonable allowance for use of the buy-back vehicle.

KEY: automobiles, automobile repair, consumer protection, motor vehicles

March 20, 2007	**63G-3-201**
Notice of Continuation April 26, 2007	**13-2-5**
	13-20-1

R152. Commerce, Consumer Protection.
R152-22. Charitable Solicitations Act.
R152-22-1. Authority.

These rules are promulgated under Section 13-2-5(1) to facilitate the orderly administration of the Charitable Solicitations Act (hereafter, "the Act"), Title 13, Chapter 22.

R152-22-2. Definitions. Clarifications.

(1) The definitions set forth in Section 13-22-2 are incorporated herein.

(2) In addition the following definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Parent foundation" or "Parent organization" means a charitable organization which charters or affiliates local units under terms specified in the parent charitable organization's charter, articles of organization, agreement of association, instrument of trust, constitution or other organizational instrument or bylaws. For purposes of registration under Section 13-22-5 a parent foundation or organization is deemed to be soliciting, requesting, promoting, advertising, or sponsoring solicitation in the state within the meaning of said section and thus requiring registration if any part of the funds raised within the state or from residents and inhabitants of the state by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state inure to the benefit of the parent foundation or organization whether in the form of a percentage division or "split" or affiliation fee or fees paid by the local chapter, branch, area, office or similar affiliate of any other person located within and maintaining a presence in the state.

(1) In addition the following clarification of definition as regards the administration of R152-22 and Chapter 22 of Title 13 is deemed necessary by the division.

(a) "Vending device" as defined by Section 13-22-2(12) and "Vending device decal" as defined by Section 13-22-2(13) as they relate to the necessity of registering as a charitable organization, professional fund raiser, professional fund raising counsel or consultant creates a rebuttable presumption that the party utilizing such a vending device and or vending device decal is acting as such.

R152-22-3. Application for Charitable Organization Permit.

(1) Any application for registration as a charitable organization shall be executed on the form authorized by the Division.

(2) A statement of collections and expenditures shall be executed on the form authorized by the division.

(3) Applicants or registrants shall submit to the division, on request:

(a) an updated copy of a financial statement prepared by an independent certified public accountant;

(b) a copy of any written contracts, agreements or other documents showing to whom the applicant or registrant disbursed the funds or a portion of the funds contributed to it;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) a copy of the applicant's or registrant's IRS Section 501(c)(3) tax exemption letter, if applicable;

(g) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks;

(h) a copy of the applicant's IRS Form 990, 990EZ or 990PF; and

(i) a statement as to whether the charitable organization has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(4) All initial applications and renewals of registration in accordance with Section 13-22-6 shall be processed within twenty (20) business days after their receipt by the division.

R152-22-4. Financial Reports and IRS Form 990s.

(1) Based on the intent of Section 13-22-15(4) an "annual financial report or IRS Form 990" means the most recent or previous fiscal year only will be accepted by the division.

(2) Based on the intent of Section 13-22-15(2) "within 30 days after the end of the year reported" means the end of the registration year just completed.

R152-22-5. Notice of Claim of Exemption.

(1) A charitable organization or individual claiming an exemption from registration under Section 13-22-8 shall file a notice of claim of exemption with the division, prior to conducting any solicitation.

(2) A notice of claim of exemption shall contain:

(a) a detailed description of the claimant and its charitable purposes;

(b) a citation to the exemption within Section 13-22-8 being claimed and a detailed explanation of why the exemption applies;

(c) any documents supporting the notice of claim of exemption;

(d) a notarized statement from the organization's chief executive officer or the individual certifying that the statements made in the notice of claim of exemption are true to the best of his knowledge; and

(e) such other additional information the division deems necessary to support such claim of exemption.

(3) This rule does not relieve any exempt organization or individual of other applicable reporting requirements under the Act.

(4) The division shall charge a reasonable fee to cover the expense of processing the notices of claim of exemption received pursuant to this rule.

R152-22-6. Application for Professional Fund Raiser, Fund Raising Counsel or Consultant Permit.

(1) Any application for a professional fund raiser, fund raising counsel or consultant permit shall be executed on the form provided by the Division.

(2) The application shall include a copy of all contracts, agreements, or other documents showing:

(a) the relationship and terms of employment or engagement between the applicant and the organization on whose behalf the applicant proposes to act as a professional fund raiser, fund raising counsel or consultant;

(b) the terms of any direct or indirect compensation, in whatever form, paid or promised to the applicant, including the method of payment and the basis for calculating the amounts of payment;

(c) a copy of the applicant's or registrant's articles of incorporation or other organizational documentation showing current legal status;

(d) a copy of the applicant's or registrant's current by-laws or other policies and procedures governing day to day operations;

(e) a setting forth of the applicant's or registrant's

registered agent within the State of Utah for purposes of service of process, including his, her or its name, street address, telephone and facsimile numbers;

(f) either the social security number or driver's license number of each of the applicant's or registrant's board of directors and officers, if a corporation, or partners or the individual applicant or registrant, for the purposes of background checks; and

(g) a statement as to whether the professional fund raiser, fund raising counsel or consultant has conducted activities regulated by the Charitable Solicitations Act, Utah Code Title 13, Chapter 22, without being duly registered with the Division.

(3) All initial applications and renewals of registration in accordance with Section 13-22-9 shall be processed within twenty (20) business days after their receipt by the division.

R152-22-7. Incomplete Applications.

(1) Based on Sections 13-22-6(3) and 13-22-9(3) the division may grant a charitable organization, professional fund raiser, professional fund raising counsel or consultant a 10 calendar day "grace" period for an incomplete application prior to assessing a penalty fee.

(2) Based on Section 13-22-6(1)(xiv)(B) and Section 13-22-6(3) if a charitable organization's initial application or renewal application is deemed incomplete due to the organization's professional fund raiser, professional fund raising counsel or consultant not being registered the division may assess a penalty fee accordingly.

(3) Based on Sections 13-22-6(3) and 13-22-9(3) the division may as regards any charitable organization, professional fund raiser, professional fund raising counsel or consultant whose status is that of "incomplete" or "suspended" for more than 12 months permit such to elect to submit the accumulated penalty fee or cease solicitations in the state for a 1 year period prior to making reapplication.

(4) Based on Sections 13-22-6(3) and 13-22-9(3) the division shall impose a penalty fee of $25 for each calendar month or part of a calendar month after the date on which a permit application or renewal was due to be filed or such permit application or renewal remains incomplete.

R152-22-8. Commencement of Solicitation.

(1) After registration and receipt of a current permit prior to commencement of each solicitation campaign thereafter each professional fund raiser, fund raising counsel or consultant or charitable organization shall notify the Division in writing at least ten (10) days in advance of its intent to commence a campaign.

(2) Professional fund raisers, fund raising counsels or consultants shall not commence or conduct or continue solicitations on behalf of a charitable organization that is not currently registered. "Not currently registered" means not being in possession of a current permit during all times during the solicitation campaign. A professional fund raiser, fund raising counsel or consultant act at their own peril if prior to commencement of any individual solicitation campaign its fails or neglects to confirm with the division that the charitable organization is in fact currently registered and will be during the full extent of any proposed solicitation campaign.

R152-22-9. Grounds for Denial, Suspension or Revocation Procedure.

(1) The director may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny an initial or renewal application for registration as per Section 13-22-12(5), and suspend or revoke a registration, permit, or information card at anytime, on the grounds set forth in Section 13-22-12(3); and if the necessity of such denial, suspension or revocation in the director's opinion is based on facts known by the division or presented to the division showing that an immediate and significant danger to the public health, safety or welfare exists, and such threat requires immediate action by the director that such denial, suspension or revocation may issue forthwith as an emergency order, subject to the division's compliance with Section 63G-4-502.

(2) Any hearing convened in accordance with R152-22-11(1), shall be convened within 5 business days of the request for or order of the Division requiring the same. Administrative hearing determinations regarding such Division actions shall receive priority and decisions shall be expedited so as to be issued within no more than 5 business days of such hearings.

KEY: charities, consumer protection, solicitations

April 2, 2007	**13-2-5**
Notice of Continuation June 22, 2007	**13-22-6**
	13-22-8
	13-22-9
	13-22-10

R152. Commerce, Consumer Protection.
R152-23. Utah Health Spa Services.
R152-23-1. Authority.

These Rules are promulgated in accordance with the provisions of Section 63G-3-201 and Section 13-2-5, Utah Code Ann. (1953), as amended, to prescribe for the administration of the Utah Health Spa Act, Section 13-23-1, et seq., Utah Code Ann. (1953), as amended, the "Act".

R152-23-2. Scope and Applicability.

These rules shall apply to the conduct of every Health Spa Business within the State of Utah.

R152-23-3. Definitions.

A. "Advance Sales," shall mean sales of membership contracts on any date prior to the date a health spa facility shall be open and available to provide services to purchasers.

B. "Bond", "Letter of Credit", or "Certificate of Deposit" shall mean an instrument containing a promise from a third party to pay to the Division of Consumer Protection for the benefit of purchasers of membership contracts the dollar value of the unused portion of such purchaser's membership in the event the health spa facility shall be unable to or refuse to provide health services pursuant to such Membership Contract.

C. "Costs" shall mean those costs incurred by the Division in investigating complaints, administering rescission of membership contracts or fulfilling its responsibilities under the Utah Health Spa Act or Rules promulgated thereunder.

D. "Department" shall mean the Department of Commerce of the State of Utah.

E. "Division" shall mean the Division of Consumer Protection of the Department of Commerce of the State of Utah.

F. "Health Spa Business" shall mean the business of buying, operating and selling health spa facilities and shall include all acts related thereto.

G. "Health Spa Facility" shall mean the physical facilities at which the services of a health spa business are provided to its members.

H. "Member" shall mean the purchaser of a Membership contract pursuant to which the member anticipates receipt of health spa services in exchange for consideration given by such purchaser.

I. "Membership Contract" shall mean a legally binding obligation pursuant to which a purchaser agrees to give consideration in exchange for membership privileges which the seller shall be obligated to provide.

J. "Rescission" shall mean the process of canceling a membership contract and refunding to the purchaser thereof the dollar value of the consideration paid for services which have not been provided as of the date of cancellation.

R152-23-4. Registration Requirements and Contracts for Health Spa Services.

A. Prior to selling or attempting to sell a Membership Contract, a health spa facility must file the following documentation with the Division:

1. A completed application on the form prescribed and furnished by the Division which shall include:

a. Name, addresses, and telephone numbers of owner(s) of the Health Spa Facility and the facility address, telephone number, and name of contact person at the facility.

b. A check or money order for a $100 non-refundable application fee.

c. A current pricing structure for membership services.

d. A copy of the contract(s) utilized by the facility containing the language required by the Act.

e. The original or certified copy of the surety bond, letter of credit, or certificate of deposit in the required amount or, if applicable, the information set out in the application as the basis for a claim of exemption from registration.

f. The number of membership contracts that relate to each facility.

2. Notice of intent to sell memberships.

B. Each Membership Contract shall contain a provision, printed in all capital letters which reads substantially as follows: "IN THE EVENT THE HEALTH SPA FACILITY CLOSES AND ANOTHER HEALTH SPA FACILITY OPERATED BY THE SELLER, OR ASSIGNS OF THE SELLER, OF THIS CONTRACT IS NOT AVAILABLE WITHIN FIVE (5) MILES OF THE LOCATION THE MEMBER INTENDS TO PATRONIZE, SELLER WILL REFUND TO MEMBER A PRORATA SHARE OF THE MEMBERSHIP COST, BASED UPON THE UNUSED MEMBERSHIP TIME REMAINING ACCORDING TO THE CONTRACT."

C. All Membership Contracts shall specify what items of equipment or services provided by the health spa facility on the date of the execution of the membership contract are subject to deletion or change at the discretion of the facility.

D. All Membership Contracts sold prior to opening of the health spa facility shall allow the buyer a three (3) day right of rescission in accordance with Section 13-23-4 of the Act, or Section 13-11-4(m) of the Utah Consumer Sales Practices Act.

E. The right of rescission set out in Section 13-23-3(6) shall:

1. be a conspicuous statement written in dark bold with at least 12 point type on the first page of the contract; and

2. read as follows: "YOU, THE CONSUMER, MAY CANCEL THIS CONTRACT AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE ON WHICH THE CONTRACT IS EXECUTED."

F. No fee may be charged if a consumer exercises the consumer's right to rescind the contract pursuant to Section 13-23-3(6).

G. The dollar value of a Membership Contract shall be clearly stated on the face of the contract.

H. In any event, no Membership Contract shall be sold which provides a membership term of longer than thirty-six (36) months.

I. The purchaser of a Health Spa Facility shall replace the Seller as a party to any unexpired Membership Contract and shall honor all Membership Contracts of the purchased facility in effect at the time of purchase, pursuant to Section 13-23-5(2) of the Act. In the event a Health Spa Facility shall be sold under circumstances which will result in its closure and the purchaser shall not operate a Health Spa Facility within 5 miles thereof, purchaser must notify Members of such closure in writing within 10 days of the date of sale. Members may cancel their outstanding Membership Contracts or may choose to continue their Membership Contract in force. Notice of such election shall be in writing mailed to the purchaser within 30 days of the receipt of notice of closure of the acquired Health Spa Facility.

J. The notice required in Section 13-23-5(7) shall be in writing and shall include the following:

1. The date on which the health spa will cease operations or relocate and fail to offer an alternative location within five miles;

2. Information concerning the members of the health spa, including:

a. the total number of members;

b. the name and address of each member;

c. the total cost of each membership; and

d. the effective dates of each membership;

3. Proof of the bond, letter of credit, or certificate of deposit required under Section 13-23-5(2)(a) and proof that the bond, letter of credit, or certificate of deposit will remain in force for one year after the health spa notifies the division that it has ceased all activities regulated by Title 13, Chapter 23 of

the Utah code;

4. A description of what action the health spa plans to take with regard to its members, including:

a. the amount of each member's refund;

b. any reason refunds are not to be made;

c. an explanation of how refunds are to be calculated; and

d. copies of the refund checks that the health spa has issued; and

5. Any complaints that the health spa has received from the members and how the complaints were resolved.

K. A separate registration shall be required for each separate location maintained by a health spa business.

R152-23-5. Rescission.

A. In the event a Health Spa Facility shall, for any reason, close, discontinue normal operations or otherwise cease to do business while having outstanding obligations to provide membership services to members holding valid membership contracts, the Health Spa Facility must offer, in writing, to rescind all such membership contracts and to refund the unused portion of all Member's membership fees. Such written offer of rescission shall establish the procedure and time limit for acceptance of the rescission offer and obtaining the desired refund.

B. An offer of rescission shall be made to each purchaser whose Membership Contract is valid on the last day the Health Spa Facility is open for business. The Health Spa Facility shall provide the Division with a list of Membership Contracts valid on the date of closure 10 business days before such closure.

C. Money to be refunded to members upon closure of a Health Spa Facility under these Rules shall be placed in escrow with a bank or other financial institution previously approved by the Division. Such funds shall come from a Bond, Letter of Credit, or Certificate of Deposit payable to the Division.

D. Refunds shall be made to Members who submit claims within a time period to be prescribed by the Division. Such refunds shall be made under the supervision of the Division and shall, if insufficient funds are available for full refund, be made on a prorata basis based upon the full amount due a claimant. The amount due shall be determined by multiplying the number of months remaining on claimant's membership term as of the date of closure by the monthly cost of such membership to the member at the time of purchase. Periods of less than a full month shall be compensated by determining a daily cost of membership and multiplying such daily cost by the number of unused membership days in such period.

E. Refunds shall be made to claimants within 90 days following the final date for submission of claims in accordance with the procedures specified above.

F. The Division may recover from the funds deposited in escrow pursuant to this Rule, its costs, including investigative costs, processing costs, attorneys fees and other expenses related to administration of rescissions made under these rules.

G. In the event there shall be funds remaining after full refund to all claimants and payment of costs of the Division, such excess shall be returned to Owners of the Health Spa Facility.

R152-23-6. Bond, Letter of Credit, or Certificate of Deposit Required.

A. Except as provided in Section 13-23-6, of the Act, all Health Spa Facilities shall be covered by a performance Bond, Letter of Credit, or Certificate of Deposit payable to the Division in an amount to be determined by the number and cost of membership contracts sold by the Health Spa Facility.

B. Originals or certified copies of such Bonds, Letters of Credit, or Certificates of Deposit shall be provided to the Division not less than 10 days in advance of the first sale or attempt to sell made by any Health Spa Facility. Annual renewals of such Bonds, Letters of Credit, or Certificates of Deposit shall be filed with the Division at least 30 days in advance of expiration of existing Bonds, Letters of Credit, or Certificates of Deposit.

C. The Division shall have the right to approve or reject Bonds, Letters of Credit, or Certificates of Deposit submitted in compliance with this Rule. In the event a Bond, Letter of Credit, or Certificate of Deposit is rejected by the Division, the Health Spa Facility shall submit another within 15 days following notice by the Division. In no event shall a Health Spa Facility conduct business without a Bond, Letter of Credit, or Certificate of Deposit in effect.

D. A Health Spa Facility which allows Bonds, Letters of Credit, or Certificates of Deposit to expire without filing renewal as provided herein, may be allowed, at the discretion of the Division, to register as a new Health Spa Facility pursuant to the provisions of R152-7-4 and R152-7-6, hereof.

R152-23-7. Enforcement.

A. The Division may be entitled to recover costs, including investigative costs, processing costs, attorneys fees and other costs incurred in administration of these rules. Upon election of the parties, payment of such costs shall be made from the proceeds of the Bond, Letter of Credit, or Certificate of Deposit.

B. Any payment made to the Division shall be approved by the Executive Director of the Department of Commerce.

KEY: consumer protection, health spas
January 23, 2007 63G-3-201
Notice of Continuation June 22, 2007 13-2-5
13-23-1

R152. Commerce, Consumer Protection.
R152-34. Postsecondary Proprietary School Act Rules.
R152-34-1. Purpose.

These rules are promulgated under the authority of Section 13-2-5(1) to administer and enforce the Postsecondary Proprietary School Act. These rules provide standards by which institutions and their agents who are subject to the Postsecondary Proprietary School Act are required to operate consistent with public policy.

R152-34-2. References.

The statutory references that are made in these rules are to Title 13, Chapter 34, Utah Code Annotated 1953.

R152-34-3. Definitions in Addition to Those Found in Section 13-34-103.

(1) "Branch" and "extension" mean a freestanding location that is apart from the main campus, where resident instruction is provided on a regular, continuing basis.

(2) "Correspondence institution" means an institution that is conducted predominantly through the means of home study.

(3) "Course" means a unit subject within a program of education that must be successfully mastered before an educational credential can be awarded.

(4) "Division" means the Division of Consumer Protection.

(5) "Probation" means a negative action of the division that specifies a stated period for an institution to correct stipulated deficiencies; but does not imply any impairment of operational authority.

(6) "Program of education" consists of a series of courses that lead to an educational credential when completed.

(7) "Resident institution" means an institution where the courses and programs offered are predominantly conducted in a classroom or a class laboratory, with an instructor.

(8) "Revocation" means a negative action of the division that orders an institution to surrender its certificate and cease operations, including advertising, enrolling students and teaching classes, for whatever reason.

(9) "Suspension" means a negative action of the division that impairs an institution's operational authority for a stated period of time during which the deficiencies must be corrected or the certificate may be revoked.

R152-34-4. Rules Relating to the Responsibilities of Proprietary Schools as Outlined in Section 13-34-104.

(1) In order to be able to award a degree or certificate, a proprietary school must meet the following general criteria:

(a) Its program must meet the following generally accepted minimum number of semester/quarter credit hours required to complete a standard college degree: associate, 60/90; bachelor's, 120/180; master's, 150/225; and doctorate, approximately 200/300.

(b) The areas of study, the methods of instruction, and the level of effort required of the student for a degree or certificate must be commensurate with reasonable standards established by recognized accrediting agencies and associations.

(c) In order for the proprietary school to award a degree or certificate, the faculty must be academically prepared in the area of emphasis at the appropriate level, or as to vocational-technical programs, must have equivalent job expertise based on reasonable standards established by recognized accrediting agencies and associations. This notwithstanding, credit may be awarded toward degree completion based on (1) transfer of credit from other accredited and recognized institutions, (2) recognized proficiency exams (CLEP, AP, etc.), and (3) in-service competencies as evaluated and recommended by recognized national associations such as the American Council on Education. Such credit for personal experiences shall be limited to not more than one year's worth of work (30 semester credit hours/45 quarter credit hours).

(d) In order to offer a program of study, either degree or non-degree, it must be of such a nature and quality as to make reasonable the student's expectation of some advantage in enhancing or pursuing employment, as opposed to a general education or non-vocational program which is excluded from registration under 13-34-105(g).

(i) If the purpose of an offered program of study is to prepare students for entry into fields of employment which require licensure by any licensing agency or to prepare students for entry into fields of employment for which it would be impracticable to have reasonable expectations of employment without accreditation and/or certification by any trade and/or industry association and/or accrediting and/or certifying body, the entity offering, or desiring to offer, the program of study must provide the Division:

(A) information regarding the type of license, accreditation and/or certification that students completing the program of study must obtain in order to have a reasonable expectation of employment;

(B) the name and contact information of the agency, trade and/or industry association and/or accrediting and/or certifying body;

(C) evidence that the curriculum for the offered program of study has been reviewed by the appropriate entity from subsection(B) above; and,

(D) evidence that the instructors teaching students enrolled in the program of study are licensed by the appropriate agency from subsection (B) above, or have earned the accreditation and/or certification from the appropriate entity from subsection (B) above to teach and/or practice in the field for which the students are being prepared.

(2) The faculty member shall assign work, set standards of accomplishment, measure the student's ability to perform the assigned tasks, provide information back to the student as to his or her strengths and deficiencies, and as appropriate, provide counseling, advice, and further assignments to enhance the student's learning experience. This requirement does not preclude the use of computer assisted instruction or programmed learning techniques when appropriately supervised by a qualified faculty member.

(3) As appropriate to the program or course of study to be pursued, the proprietary school shall evaluate the prospective student's experience, background, and ability to succeed in that program through review of educational records and transcripts, tests or examinations, interviews, and counseling. This evaluation shall include a finding that the prospective student (1) is beyond the age of compulsory high school attendance, as prescribed by Utah law; and (2) has received either a high school diploma or a General Education Development certificate, or has satisfactorily completed a national or industry developed competency-based test or an entrance examination that establishes the individual's ability to benefit. Based on this evaluation, before admitting the prospective student to the program, the institution must have a reasonable expectation that the student can successfully complete the program, and that if he or she does so complete, that there is a reasonable expectation that he or she will be qualified and be able to find appropriate employment based on the skills acquired through the program.

(4) Each proprietary school shall prepare for the use of prospective students and other interested persons a catalog or general information bulletin that contains the following information:

(a) The legal name, address, and telephone number of the institution, also any branches and/or extension locations;

(b) The date of issue;

(c) The names, titles, and qualifications of administrators and faculty;

(d) The calendar, including scheduled state and federal holidays, recess periods, and dates for enrollment, registration, start of classes, withdrawal and completion;

(e) The admission and enrollment prerequisites, both institutional and programmatic, as provided in R152-34-8(1);

(f) The policies regarding student conduct, discipline, and probation for deficiencies in academics and behavior;

(g) The policies regarding attendance and absence, and any provision for make-up of assignments;

(h) The policies regarding dismissal and/or interruption of training and of reentry;

(i) The policies explaining or describing the records that are to be maintained by the institution, including transcripts;

(j) The policies explaining any credit granted for previous education and experience;

(k) The policies explaining the grading system, including standards of progress required;

(l) The policies explaining the provision to students of interim grade or performance reports;

(m) The graduation requirements and the credential awarded upon satisfactory completion of a program;

(n) The schedule of tuition, any other fees, books, supplies and tools;

(o) The policies regarding refunds of any unused charges collected as provided in R152-34-8(3);

(p) The student assistance available, including scholarships and loans.

(q) The name, description, and length of each program offered, including a subject outline with course titles and approximate number of credit or clock hours devoted to each course;

(r) The placement services available and any variation by program;

(s) The facilities and equipment available;

(t) An explanation of whether and to what extent that the credit hours earned by the student are transferable to other institutions; and

(u) Such other information as the division may reasonably require from time to time.

R152-34-5. Rules Relating to Institutions Exempt Under Section 13-34-105.

(1) Institutions that provide nonprofessional review courses, such as law enforcement and civil service, are not exempt, unless they are considered as workshops or seminars within the meaning of Section 13-34-105(h).

(2) In order for the church or religious denomination to be "bona fide" such that the institution is exempt from registration, the institution may not be the church or religious denomination's primary purpose, function or asset.

(3) Any institution which claims an accreditation exemption must furnish acceptable documentation to the division upon request.

(4) To be exempt under Section 13-34-105(f):

(a) the training or instruction shall not be the primary activity of the organization, association, society, labor union, or franchise system or;

(b) the organization, association, society, labor union, or franchise system shall meet the following requirements:

(i) the organization, association, society, labor union, or franchise system does not recruit students;

(ii) the organization, association, society, labor union, or franchise system provides courses of instruction only to students who are currently employed;

(iii) the cost of the course of instruction is paid for by the employer of the student, not the student; and

(iv) enrollment in each individual course of instruction is limited to those who are bona fide employees of the employer.

(5) The division shall determine an institution's status in accordance with the categories contained in this section.

(6) An exempt institution shall notify the division within thirty (30) days of a material change in circumstances which may affect its exempt status as provided in this section and shall follow the procedure outlined in Section 13-34-107.

(7) An exempted institution which voluntarily applies for a certificate by filing a registration statement shall comply with all rules as though such institution were nonexempt.

(8) To apply for a certificate of registration, an accredited institution shall submit a completed registration statement application and a copy of such portions of its current accreditation self-evaluation report as are specified by the division.

R152-34-6. Rules Relating to the Registration Statement Required under Section 13-34-106.

(1) The registration statement application shall provide the following information and statements made under oath:

(a) The institution's name, address, and telephone number;

(b) The names of all persons involved in the operation of the institution and a stipulation that the resumes are on file at the institution and available to the students.

(c) The name of the agent authorized to respond to students inquiries if the registrant is a branch institution whose parent is located outside of the state of Utah;

(d) A statement that its articles of incorporation have been registered and accepted by the Utah Department of Commerce, Division of Corporations and Commercial Code and that it has a local business license, if required;

(e) A statement that its facilities, equipment, and materials meet minimum standards for the training and assistance necessary to prepare students for employment;

(f) A statement that it maintains accurate attendance records, progress and grade reports, and information on tuition and fee payments appropriately accessible to students;

(g) A statement that its maintenance and operation is in compliance with all ordinances, laws, and codes relative to the safety and health of all persons upon the premises;

(h) A statement that there is sufficient student interest in Utah for the courses that it provides and that there is reasonable employment potential in those areas of study in which credentials will be awarded;

(i) If the registration statement is filed pursuant to Section 13-34-107(3)(b), a detailed description of any material modifications to be made in the institution's operations, identification of those programs that are offered in whole or in part in Utah and a statement of whether the student can complete his or her program without having to take residence at the parent campus; and

(j) A statement that it maintains adequate insurance continuously in force to protect its assets.

(k) A disclosure as required by R152-34-7(1).

(l) If the registrant is a correspondence institution, whether located within or without the state of Utah, a demonstration that the institution's educational objectives can be achieved through home study; that its programs, instructional material, and methods are sufficiently comprehensive, accurate, and up-to-date to meet the announced institutional course and program objectives; that it provides adequate interaction between the student and instructor, through the submission and correction of lessons, assignments, examinations, and such other methods as are recognized as characteristic of this particular learning technique; and that any degrees and certificates earned through correspondence study meet the requirements and criteria of R152-34-4(1).

(2) The institution shall provide with its registration statement application copies of the following documents:

(a) A sample of the credential(s) awarded upon completion of a program;

(b) A sample of current advertising including radio, television, newspaper and magazine advertisements, and listings in telephone directories;

(c) A copy of the student enrollment agreement; and

(d) A financial statement, as described in R152-34-7(8) and Section 13-34-107(6).

(3) If any information contained in the registration statement application becomes incorrect or incomplete, the registrant shall, within thirty (30) days after the information becomes incorrect or incomplete, correct the application or file the complete information as required by the division.

(4) An institution ceasing its operations shall immediately inform the division and provide the division with student records in accordance with Section 13-34-109.

R152-34-7. Rules Relating to the Operation of Proprietary Schools under Section 13-34-107.

(1) An authorized officer of the institution to be registered under this chapter shall sign a disclosure as to whether the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules as determined in a criminal, civil or administrative proceeding.

(2) The division shall refuse to register an institution when the division:

(a) determines that the institution or an owner, officer, director, administrator, faculty member, staff member, or agent of the institution has violated laws, federal regulations or state rules, as determined in a criminal, civil or administrative proceeding;

(b) determines the violation(s) to be relevant to the appropriate operation of the school; and

(c) has a reasonable doubt that the institution will function in accordance with these laws and rules or provide students with an appropriate learning experience.

(3) A change in the ownership of an institution, as defined in Section 13-34-103(8), occurs when there is a merger or change in the controlling interest of the entity or if there is a transfer of more than 50 percent of the its assets within a three-year period. When this occurs the following information is submitted to the division for its review:

(a) a copy of any new articles of incorporation;

(b) a current financial statement, as outlined in section (8) below;

(c) a listing of all institutional personnel that have changed as a result of the ownership transaction, together with complete resumes and qualifications;

(d) a detailed description of any material modifications to be made in the operation of the institution; and

(e) payment of the appropriate fee.

(i) The division collects the following fees in accordance with U.C.A. Subsection 13-34-107(5):

(A) Initial registration application fees will be based on the expected gross income of the registered program during the first year of operation. The initial application fee shall be computed as one-half of one percent of the gross tuition income of the registered program(s) expected during the first year, but not less than $100 or more than $2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division.

(B) The division also collects annual registration fees computed as one-half of one percent of the gross tuition income of the registered program(s) during the previous year, but not less than $100 or more than $2,000. The institution shall provide documentation to substantiate the amount of the fee, in a form specified by the division. The annual registration fee is due on the anniversary date of the institution's certificate of registration.

(C) All registration fees collected by the division will be used to enhance the administration of the Act and Rules.

(4) The institution shall submit to the division its renewal registration statement application, along with the appropriate fee, no later than thirty (30) days prior to the expiration date of the current certificate of registration.

(5) In addition to the annual registration fee, an institution failing to file a renewal registration application by the due date or filing an incomplete registration application or renewal shall pay an additional fee of $25 for each month or part of a month after the date on which the registration statement application or renewal were due to be filed.

(6) Within thirty (30) days after receipt of an initial or renewal registration statement application and its attachments, the division shall do one of the following:

(a) issue a certificate of registration;

(b) request further information and, if needed, conduct a site visit to the institution as detailed in R152-34-10(1); or

(c) refuse to accept the registration statement based on Sections 13-34-107 and 113.

(7) Although a certificate of registration is valid for two (2) years, the division may periodically request updates of financial statements, surety requirements and the following statistical information:

(a) The number of students enrolled from September 1 through August 31;

(b) The number of students who completed and received a credential;

(c) The number of students who terminated or withdrew;

(d) The number of administrators, faculty, supporting staff, and agents; and

(e) The new catalog, information bulletin, or supplements.

(8) The institution must have, in addition to other criteria contained in this rule, sufficient financial resources to fulfill its commitments to students and staff members, and to meet its other obligations as evidenced by the following financial statements:

(a)(i) A current financial statement prepared in accordance with generally accepted accounting principles including a balance sheet, a profit and loss statement, and a statement of cash flows for the most recent fiscal year with all applicable footnotes; or

(ii) Pro forma financial statements until actual information is available when an institution has not operated long enough to complete a fiscal year; and

(b)(i) A certified fiscal audit of the institution's financial statement performed by a certified or licensed public accountant; or

(ii) A review of the institution's financial statement performed by a certified or licensed public accountant, which shall include at least a statement by the accountant that there are not material modifications that should be made to the financial statement for it to be in conformity with generally accepted accounting principles;

(9)(a) A satisfactory surety in the form of a bond, certificate of deposit, or irrevocable letter of credit must be provided by the institution before a certificate of registration will be issued by the division.

(b) The obligation of the surety will be that the institution, its officers, agents, and employees will:

(i) faithfully perform the terms and conditions of contracts for tuition and other instructional fees entered into between the institution and persons enrolling as students; and

(ii) conform to the provisions of the Utah Postsecondary Proprietary School Act and Rules.

(c) The bond, certificate of deposit, or letter of credit must be in a form approved by the division and issued by a company authorized to do such business in Utah.

(d)(i) The bond, certificate of deposit, or letter of credit must be payable to the division to be used for creating teach-out

opportunities or for refunding tuition, book fees, supply fees, equipment fees, and other instructional fees paid by a student or potential student, enrollee, or his or her parent or guardian.

(ii) In each instance the division may determine:

(A) which of the uses listed in Subsection (9)(d)(i) are appropriate; and

(B) if the division creates teach-out opportunities, the appropriate institution to provide the instruction.

(e) An institution that closes or otherwise discontinues operation shall maintain the institution's surety until:

(i) at least one year has passed since the institution has notified the division in writing that the institution has closed or discontinued operation; and

(ii) the institution has satisfied the requirements of R152-34-9.

(10)(a) The surety company may not be relieved of liability on the surety unless it gives the institution and the division ninety calendar days notice by certified mail of the company's intent to cancel the surety.

(b) The cancellation or discontinuance of surety coverage after such notice does not discharge or otherwise affect any claim filed by a student, enrollee or his/her parent or guardian for damage resulting from any act of the institution alleged to have occurred while the surety was in effect, or for an institution's ceasing operations during the term for which tuition had been paid while the surety was in force.

(c) If at any time the company that issued the surety cancels or discontinues the coverage, the institution's registration is revoked as a matter of law on the effective date of the cancellation or discontinuance of surety coverage unless a replacement surety is obtained and provided to the division.

(11)(a) Before an original registration is issued, and except as otherwise provided in this rule, the institution shall secure and submit to the division a surety in the form of a bond, certificate of deposit or letter of credit in an amount of one hundred and eighty-seven thousand, five- hundred dollars ($187,500) for schools expecting to enroll more than 100 separate individual students (non-duplicated enrollments) during the first year of operation, one hundred and twenty-five thousand dollars ($125,000) for schools expecting to enroll between 50 and 99 separate individual students during the first year, and sixty-two thousand, five- hundred dollars ($62,500) for institutions expecting to enroll less than 50 separate individual students during the first year.

(b) Institutions that submit evidence acceptable to the division that the school's gross tuition income from any source during the first year will be less than twenty-five thousand dollars ($25,000) may provide a surety of twelve thousand, five hundred dollars ($12,500) for the first year of operation.

(12)(a) Except as otherwise provided in this rule, the minimum amount of the required surety to be submitted annually after the first year of operation will be based on twenty-five percent of the annual gross tuition income from registered program(s) for the previous year (rounded to the nearest $1,000), with a minimum surety amount of twelve thousand, five hundred dollars ($12,500) and a maximum surety amount of one hundred and eighty-seven thousand, five-hundred dollars ($187,500).

(b) The surety must be renewed each year by the anniversary date of the school's certificate of registration, and also included as a part of each two-year application for registration renewal.

(c) No additional programs may be offered without appropriate adjustment to the surety amount.

(13)(a) The institution shall provide a statement by a school official regarding the calculation of gross tuition income and written evidence confirming that the amount of the surety meets the requirements of this rule.

(b) The division may require that such statement be verified by an independent certified public accountant if the division determines that the written evidence confirming the amount of the surety is questionable.

(14) An institution with a total cost per program of five hundred dollars or less or a length of each such program of less than one month shall not be required to have a surety.

(15) The division will not register a program at a proprietary school if it determines that the educational credential associated with the program may be interpreted by employers and the public to represent the undertaking or completion of educational achievement that has not been undertaken and earned.

(16) Acceptance of registration statements and the issuing of certificates of registration to operate a school signifies that the legal requirements prescribed by statute and regulations have been satisfied. It does not mean that the division supervises, recommends, nor accredits institutions whose statements are on file and who have been issued certificates of registration to operate.

R152-34-8. Rules Relating to Fair and Ethical Practices Set Forth in Section 13-34-108.

(1) An institution, as part of its assessment for enrollment, shall consider the applicant's basic skills, aptitude, and physical qualifications, as these relate to the choice of program and to anticipated employment and shall not admit a student to a program unless there is a reasonable expectation that the student will succeed, as prescribed by R152-34-4(3).

(2) Financial dealings with students shall reflect standards of ethical practice.

(3) The institution shall adopt a fair and equitable refund policy including:

(a) A three-business-day cooling-off period, commencing with the day an enrollment agreement with the applicant is signed or an initial deposit or payment toward tuition and fees of the institution is made, until midnight of the third business day following such date or from the date that the student first visits the institution, whichever is later, shall be applicable and during this time the contract may be rescinded by the student and all money paid refunded.

(b) A student enrolled in a correspondence institution may withdraw from enrollment following the cooling off period, prior to submission by the student of any lesson materials or prior to receipt of course materials, whichever comes first, and effective upon deposit of a written statement of withdrawal for delivery by mail or other means, and the institution shall be entitled to retain no more than $200 in tuition or fees as registration charges or an alternative amount that the institution can demonstrate to have been expended in preparation for that particular student's enrollment.

(c) A clear and unambiguous written statement of the institution's refund policy for students who desire a refund after the three-business-day cooling-off period or after a student enrolled in a correspondence institution has submitted lesson materials or been in receipt of course materials.

(d) There shall be a written enrollment agreement, to be signed by the student and a representative of the institution, that clearly describes the cooling-off period, nonrefundable registration fee, and refund policy and schedule, including the rights of both the student and the institution, with copies provided to each.

(e) There shall be complete written information on repayment obligations to all applicants for financial assistance before an applicant student assumes such responsibilities.

(f) A pay-as-you-learn payment schedule that limits a student's prospective contractual obligation(s),at any one time, to the institution for tuition and fees to four months of training, plus registration or start-up costs not to exceed $200 or an alternative amount that the institution can demonstrate to have

spent in undertaking a student's instruction. This restriction applies regardless of whether a contractual obligation is paid to the institution by:

(i) the student directly; or

(ii) a lender or any other entity on behalf of the student.

(g) The payment of a refund within 30 calendar days of a request for a refund if the person requesting the refund is entitled to the refund:

(i) under any provision of:

(A) the Utah Postsecondary Proprietary School Act, Utah Code Title 13, Chapter 34;

(B) the Postsecondary Proprietary School Act Rules, R152-34; or

(C) a contract or other agreement between the institution and the person requesting the refund; or

(ii) because of the institution's failure to fulfill its obligations to the person requesting the refund.

(4) Following the satisfactory completion of his or her training and education, a student is provided with appropriate educational credentials that show the program in which he or she was enrolled, together with a transcript of courses completed and grades or other performance evaluations received.

(5) No institution shall use the designation of 'college' nor 'university' in its title nor in conjunction with its operation unless it actually confers a standard college degree as one of its credentials, unless the use of such designation had previously been approved by the Board of Regents prior to July 1, 2002.

(6) The name of the institution shall not contain any reference that could mislead potential students or the general public as to the type or nature of its educational services, affiliations or structure.

(7) Advertising standards consist of the following:

(a) The institution's chief administrative officer assumes all responsibility for the content of public statements made on behalf of the institution and shall instruct all personnel, including agents, as to this rule and other appropriate laws regarding the ethics of advertisement and recruitment;

(b) Advertising shall be clear, factual, supportable, and shall not include any false or misleading statements with respect to the institution, its personnel, its courses and programs, its services, nor the occupational opportunities for its graduates;

(c) The institution shall not advertise in conjunction with any other business or establishment, nor advertise in "help wanted" nor in "employment opportunity" columns of newspapers, magazines or similar publications in such a way as to lead readers to believe that they are applying for employment rather than education and training. It must disclose that it is primarily operated for educational purposes, if this is not apparent from its legal name;

(d) An institution, its employees and agents, shall refrain from other forms of ambiguous or deceptive advertising, such as:

(i) claims as to endorsement by manufacturers or businesses or organizations until and unless written evidence supporting this fact is on file; and

(ii) representations that students completing a course or program may transfer either credits or credentials for acceptance by another institution, state agency, or business, unless written evidence supporting this fact is on file;

(e) An institution shall maintain a file of all promotional information and related materials for a period of three (3) years;

(f) The division may require an institution to submit its advertising prior to its use; and

(g) An institution cannot advertise that its organization or program is endorsed by the state of Utah other than to state that the school is 'Registered under the Utah Postsecondary Proprietary School Act'.

(i) An institution shall include the following registration and disclaimer statements in its catalog, student information bulletin, and enrollment agreements:

(A) REGISTERED UNDER THE UTAH POSTSECONDARY PROPRIETARY SCHOOL ACT (Title 13, Chapter 34, Utah Code).

(B) Registration under the Utah Postsecondary Proprietary School Act does not mean that the State of Utah supervises, recommends, nor accredits the institution. It is the student's responsibility to determine whether credits, degrees, or certificates from the institution will transfer to other institutions or meet employers' training requirements. This may be done by calling the prospective school or employer.

(C) The institution is not accredited by a regional or national accrediting agency recognized by the United States Department of Education.

(8) Recruitment standards include the following:

(a) Recruiting efforts shall be conducted in a professional and ethical manner and free from 'high pressure' techniques; and

(b) An institution shall not use loans, scholarships, discounts, or other such enrollment inducements, where such result in unfair or discriminatory practices.

(9) An agent or sales representative may not be directly or indirectly be portrayed as 'counselor,' 'advisor,' or any other similar title to disguise his or her sales function.

(10) An agent or representative is responsible to have a clear understanding and knowledge of the programs and courses, tuition, enrollment requirements, enrollment agreement, support services, and the general operational procedures thereof.

(11) An institution shall indemnify any student from loss or other injury as a result of any fraud or other form of misrepresentation used by an agent in the recruitment process.

(12) An institution operating in Utah but domiciled outside the state shall designate a Utah resident as its registered agent for purposes of service of legal process.

(13) An institution shall provide a student with all of the student's school records, as described in R152-34-9(2), within five business days after a written or verbal request by a student for the student's school records. The institution may not charge a student more than the actual copying costs for the student's school records.

R152-34-9. Rules Relating to Discontinuance of Operations Pursuant to Section 13-34-109.

(1) Institutional closure procedures consist of the following:

(a) The chief administrative officer of each institution subject to the Postsecondary Proprietary Schools Act shall prepare a written plan for access to and the preservation of permanent records in the event the institution closes for whatever reason; and

(b) In the event an institution closes with students enrolled who have not completed their programs, a list of such, including the amount of tuition paid and the proportion of their program completed, shall be submitted to the division, with all particulars.

(2) School records consist of the following permanent scholastic records for all students who are admitted, even though withdrawn or terminated:

(a) appropriate entrance and admission acceptance information;

(b) attendance and performance information, including transcripts which consist of no less than the program for which he enrolled, each course attempted and the final grade earned;

(c) graduation or termination dates of students;

(d) enrollment agreements, tuition payments, refunds, and any other financial transactions.

(3) The division shall not release a surety required under R152-34-7(11) and/or R152-34-7(12) until one year after the date that the institution has complied with the requirements of (1) and (2) above, or until such time as the institution provides

documentation acceptable to the division to show that the institution has complied with (1) and (2) above and has satisfied all possible claims for refunds that may be made against the institution by students of the institution at the time the institution discontinued operations and by persons who were students of the institution within one year prior to the date that the institution discontinued operations, whichever is shorter.

R152-34-10. Rules Relating to Suspension, Termination or Refusal to Register under Section 13-34-111.

(1) The division may perform on-site evaluations to verify information submitted by an institution or an agent, or to investigate complaints filed with the Division.

(2) The division may, in accordance with Title 63G, Chapter 4, Administrative Procedures Act, issue an order to deny, suspend, or revoke a registration, upon a finding that:

(a) the award of credentials by a nonexempt institution without having first duly registered with the division and having obtained the requisite surety;

(b) a registration statement application that contains material representations which are incomplete, improper, or incorrect;

(c) failure to maintain facilities and equipment in a safe and healthful manner;

(d) failure to perform the services or provide materials as represented by the institution, failure to perform any commitment made in the registration statement or permit application, offering programs or services not contained in the registration statement currently on file, or violations of the conditions of the certificate of registration;

(e) failure to maintain sufficient financial capability, as set forth in section R152-34-7;

(f) to confer, or attempt to confer, a fraudulent credential, as set forth in 13-34-201;

(g) employment of students for commercial gain, if such fact is not contained in the current registration statement;

(h) promulgation to the public of fraudulent or misleading statements relating to a program or service offered;

(g) noncompliance of the Postsecondary Proprietary Schools Act or these rules;

(h) withdrawal of the authority to operate in the home state of an institution whose parent campus or headquarters is not domiciled in this state;

(i) failure to comply with applicable laws in this state or another state where the institution is doing business; and

(j) failure to provide reasonable information to the division as requested from time to time.

R152-34-11. Rules Relating to Fraudulent Educational Credentials under Section 13-34-201.

(1) A person may not represent him or herself in a deceptive or misleading way, such as by using the title "Dr." or "Ph.D." if he or she has not satisfied accepted academic or scholastic requirements.

KEY: education, postsecondary proprietary school, registration
May 22, 2007 13-2-5(1)
Notice of Continuation June 15, 2007

R156. Commerce, Occupational and Professional Licensing.
R156-11a. Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule.
R156-11a-101. Title.

This rule is known as the "Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing Act Rule."

R156-11a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 11a, as used in Title 58, Chapters 1 and 11a or this rule:

(1) "Advanced pedicures", as used in Subsection 58-11a-102(31)(a)(i)(D), means any of the following while caring for the nails, cuticles or calluses of the feet:

(a) utilizing manual instruments, implements, advanced electrical equipment, tools, or microdermabrasion for cleaning, trimming, softening, smoothing, or buffing;

(b) utilizing blades, including corn or callus planer or rasp, for smoothing, shaving or removing dead skin from the feet as defined in Subsection R156-11a-611; or

(c) utilizing topical products and preparations for chemical exfoliation as defined in Subsection R156-11a-610(4).

(2) "Aroma therapy" means the application of essential oils which are applied directly to the skin, undiluted or in a misted dilution with a carrier oil or lotion. for varied applications such as massage, hot packs, cold packs, compress, inhalation, steam or air diffusion, or in hydrotherapy services.

(3) "BCA acid" means bicloroacetic acid.

(4) "Body wraps", as used in Subsection 58-11a-102(31)(a)(i)(A), means body treatments utilizing products or equipment to enhance and maintain the texture, contour, integrity and health of the skin and body.

(5) "Chemical exfoliation", as defined in Subsections 58-11a-102(31)(a)(i)(C) and R156-11a-610(4), means a resurfacing procedure performed with a chemical solution or product for the purpose of removing superficial layers of the epidermis to a point no deeper than the stratum corneum.

(6) "Dermabrasion or open dermabrasion" means the surgical application of a wire or diamond frieze by a physician to abrade the skin to the epidermis and possibly down to the papillary dermis.

(7) "Dermaplane" means the use of a scalpel or bladed instrument by a physician to shave the upper layers of the stratum corneum.

(8) "Equivalent number of credit hours" means:

(a) the following conversion table if on a semester basis:

(i) theory - 1 credit hour - 30 clock hours;

(ii) practice - 1 credit hour - 30 clock hours; and

(iii) clinical experience - 1 credit hour - 45 clock hours; and

(b) the following conversion table if on a quarter basis:

(i) theory - 1 credit hour - 20 clock hours;

(ii) practice - 1 credit hour - 20 clock hours; and

(iii) clinical experience - 1 credit hour - 30 clock hours.

(9) "Exfoliation" means the sloughing off of non-living skin cells by very superficial and non-invasive means.

(10) "Extraction" means the following:

(a) "advanced extraction", as used in Subsections 58-11a-102(31)(a)(i)(F) and R156-11a-611(2)(b), means to perform extraction with a lancet or device that removes impurities from the skin;

(b) "manual extraction", as used in Subsection 58-11a-102(25)(a), means to remove impurities from the skin with protected fingertips, cotton swabs or a loop comedone extractor.

(11) "Galvanic current" means a constant low-voltage direct current.

(12) "Health care practitioner" means a physician/surgeon licensed under Title 58, Chapter 67, Utah Medical Practice Act, or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act, or an advanced practice registered nurse licensed under Title 58, Chapter 31b, Nurse Practice Act.

(13) "Hydrotherapy", as used in Subsection 58-11a-102(27)(a)(i)(B), means the use of water for cosmetic purposes or beautification of the body.

(14) "Indirect supervision" means the supervising instructor is present within the facility in which the person being supervised is providing services, and is available to provide immediate face to face communication with the person being supervised.

(15) "Limited chemical exfoliation" means an extremely gentle chemical exfoliation and is further defined in Subsection R156-11a-610(3).

(16) "Lymphatic massage", as used in Subsections 58-11a-102(31)(a)(G)(i) and 58-11a-302(11)(C), means a method using light pressure applied by manual or other means to the skin in specific maneuvers to promote drainage of the lymphatic fluid through the tissue.

(17) "Manipulating", as used in Subsection 58-11a-102(25)(a), means applying a light pressure by the hands to the skin.

(18) "Microdermabrasion", as used in Subsection 58-11a-102(31)(a)(i)(E), means a gentle, progressive, superficial, mechanical exfoliation of the uppermost layers of the stratum corneum using a closed-loop vacuum system.

(19) "Patch test" or "predisposition test" means applying a small amount of a chemical preparation to the skin of the arm or behind the ear to determine possible allergies of the client to the chemical preparation.

(20) "Pedicure" means any of the following:

(a) cleaning, trimming, softening, or caring for the nails, cuticles, or calluses of the feet;

(b) the use of manual instruments or implements on the nails, cuticles, or calluses of the feet;

(c) callus removal by sanding, buffing, or filing; or

(d) massaging of the feet or lower portion of the leg.

(21) "Supervision by a licensed health care practitioner" means a health care practitioner who, acting within the scope of the licensee's license, authorizes and directs the work of a licensee pursuant to this chapter in the treatment of a patient of the health care practitioner while:

(a) the health care practitioner is physically located on the premises and is immediately available to care for the patient if complications arise; or

(b) the patient is physically located on the premises of the health care practitioner.

(22) "TCA acid" means trichloroacetic acid.

(23) "Unprofessional conduct" is further defined, in accordance with Section 58-1-501, in Section R156-11a-502.

R156-11a-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 11a.

R156-11a-104. Organization - Relationship to Rule R156-1.

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

R156-11a-301. Change of Legal Entity.

In accordance with Section 58-11a-301, a school shall be required to submit a new application for licensure upon any change of legal entity status. The new legal entity may not engage in practice as a licensed school, pursuant to Subsections 58-11a-102(14), (15), (16), and (17), until the application is approved and a license issued.

R156-11a-302a. Qualifications for Licensure - Examination Requirements.

In accordance with Section 58-11a-302, the examination requirements for licensure are established as follows:

(1) Applicants for each classification listed below shall pass the respective examination with a passing score as determined by the examination provider.

(a) Applicants for licensure as a barber shall pass the National Interstate Council of State Boards of Cosmetology (NIC) Barber Theory and Practical Examinations.

(b) Applicants for licensure as a cosmetologist/barber shall pass the NIC Cosmetology/Barber Theory and Practical Examinations.

(c) Applicants for licensure as an electrologist shall pass the NIC Electrologist Theory and Practical Examinations.

(d) Applicants for licensure as a basic esthetician shall pass the NIC Esthetics Theory and Practical Examinations.

(e) Applicants for licensure as a master esthetician shall pass the NIC Master Esthetician Theory and Esthetics Practical Examinations.

(f) Applicants for licensure as a barber instructor, cosmetologist/barber instructor, electrology instructor, esthetician instructor, or nail technology instructor shall pass the NIC Instructor Examination.

(g) Applicants for licensure as a nail technician shall pass the NIC Nail Technician Theory and Practical Examinations.

(2) Any equivalent theory, practical or instructor examination approved by the licensing authority of any other state is acceptable for any of the examinations specified in Subsection R156-11a-302a(1).

(3) Transition Provisions - Prior Examinations.

Equivalent examinations taken and passed under prior versions of this rule are also acceptable for any of the examinations specified in Subsection R156-11a-302a(1).

R156-11a-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licenses and certificates under Title 58, Chapter 11a is established by rule in Section R156-1-308.

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

R156-11a-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to provide direct supervision of an apprentice, a student attending a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or a student instructor;

(2) failing to obtain accreditation as a barber, cosmetology/barber, esthetics, electrology, or nail technology school in accordance with the requirements of Section R156-11a-601;

(3) failing to maintain accreditation as a barber, cosmetology/barber, esthetics, electrology or nail technology school after having been approved for accreditation;

(4) failing to comply with the standards of accreditation applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools;

(5) failing to provide adequate instruction or training as applicable to a student of a barber, cosmetology/barber, esthetics, electrology, or nail technology school, or in an approved cosmetology/barber, esthetics, or nail technology apprenticeship;

(6) failing to comply with Title 26, Utah Health Code;

(7) failing to comply with the apprenticeship requirements applicable to barber, cosmetologist/barber, basic esthetician, master esthetician, or nail technician apprenticeships as set forth in Sections R156-11a-800 through R156-11a-804;

(8) failing to comply with the standards for curriculums applicable to barber, cosmetology/barber, esthetics, electrology, or nail technology schools as set forth in Sections R156-11a-700 through R156-11a-706;

(9) using any device classified by the Food and Drug Administration as a medical device without the supervision of a licensed health care practitioner acting in the scope of the licensee's practice;

(10) performing services within the scope of practice as a basic esthetician, or a master esthetician without having been adequately trained to perform such services;

(11) violating any standard established in Sections R156-11a-601 through R156-11a-612;

(12) performing a procedure while the licensee has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease; and

(13) performing a procedure on a client who has a known contagious disease of a nature that may be transmitted by performing the procedure, unless the licensee takes medically approved measures to prevent transmission of the disease.

R156-11a-503. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501(1)(a) and (c), 58-11a-301(1) and (2), 58-11-502(1), (2) or (4), and 58-11a-503(4), unless otherwise ordered by the presiding officer, the following fine schedule shall apply to citations issued under Title 58, Chapter 11a.

(1) Practicing or engaging in, or attempting to practice or engage in activity for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(1).

First Offense: $200

Second Offense: $300

(2) Knowingly employing any other person to engage in or practice or attempt to engage in or practice any occupation or profession for which a license is required under Title 58, Chapter 11a in violation of Subsection 58-11a-502(2).

First Offense: $400

Second Offense: $800

(3) Using as a nail technician a solution composed of at least 10% methyl methacrylete on a client in violation of Subsection 58-11a-501(4)

First Offense: $500

Second Offense: $1,000

(4) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-11a-503(4)(h).

(5) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(6) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(7) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-11a-601. Standards for Accreditation.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), the accreditation standards for a barber school, a cosmetology/barber school, an electrology school, an esthetics school, and a nail technology school include:

(1) Each school shall be required to become accredited by:

(a) the National Accrediting Commission of Cosmetology Arts and Sciences (NACCAS); or

(b) other accrediting commissions recognized by the Utah

Board of Regents for post secondary schools.

(2) Each school shall maintain and keep the accreditation current.

(3) A new school shall:

(a) submit an application for candidate status for accreditation to an accrediting commission within one month of receiving licensure from the Division as a barber school, a cosmetology/barber school, an electrology school, an esthetics school, or a nail technology school and shall provide evidence of receiving candidate status from the accrediting commission to the Division within 12 months of the date the school was licensed;

(b) file an "Exemption of Registration as a Post-Secondary Proprietary School" form with the Division of Consumer Protection pursuant to Sections 13-34-101 and R152-34-1; and

(c) comply with all applicable accreditation standards during the pendency of its application for accreditation status.

(4) The school shall have 24 months following the date of receiving candidate status to be approved for accreditation.

(5) A licensee who fails to obtain or maintain accreditation status, as required herein, shall immediately surrender to the Division its license as a school. Failure to do so shall constitute a basis for immediate revocation of licensure in accordance with Section 63G-4-502.

R156-11a-602. Standards for the Physical Facility.

In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iii), 58-11a-302(13)(c)(iii) and 58-11a-302(16)(c)(iii), the standards for the physical facility of a barber, cosmetology/barber, electrology, esthetics, or nail technology schools shall include:

(1) the governing standards established by the accreditation commission; and

(2) whether or not addressed in the governing standards, each facility shall have the following available:

(a) enough of each type of training equipment so that each student has an equal opportunity to be properly trained;

(b) laundry facilities to maintain sanitation and sterilization; and

(c) appropriate amounts of clean towels, sheets, linen, sponges, headbands, compresses, robes, drapes and other necessary linens for each student's and client's use.

R156-11a-603. Standards for a Student Kit.

(1) In accordance with Subsection 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall provide a list of all basic kit supplies needed by each student.

(2) The basic kit may be supplied by the school or purchased independently by the student.

R156-11a-604. Standards for Prohibition Against Operation as a Salon.

(1) In accordance with Subsections 58-11a-302(3)(c)(iii), 58-11a-302(6)(c)(iii), 58-11a-302(9)(c)(iv), 58-11-302(13)(c)(iii), and 58-11a-302(16)(c)(iii), when a barbershop or professional salon is under the same ownership or is otherwise associated with a school, the barbershop or salon shall maintain separate operations for the school.

(2) If the barbershop or salon is located in the same building as a school, separate entrances and visitor reception areas are required. The salon or shop shall also use separate public information releases, advertisements and names than that used by the school.

R156-11a-605. Standards for Protection of Students.

In accordance with Subsections 58-11a-302(3)(c)(iii) and (iv), 58-11a-302(6)(c)(iii) and (iv), 58-11a-302(9)(c)(iii) and (iv), 58-11a-302(13)(c)(iii) and (iv), 58-11a-302(16)(c)(iii) and (iv), standards for the protection of students shall include the following:

(1) In the event a school ceases to operate for any reason, the school shall notify the division within 15 days by registered or certified mail and shall name a trustee who will be responsible to maintain the student records. Upon request, the trustee shall provide information such as accumulated student hours and dates of attendance.

(2) Schools shall not use students to perform maintenance, janitorial or remodeling work such as scrubbing floor, walls or toilets, cleaning windows, waxing floors, painting, decorating, or performing any outside work on the grounds or building. Students may be required to clean up after themselves and to perform or participate in daily cleanup of work areas, including the floor space, shampoo bowls, laundering of towels and linen and other general cleanup duties that are related to the performance of client services.

(3) Schools shall not require students to sell products applicable to their industry as a condition to graduate, but may provide instruction in product sales techniques as part of their curriculums.

(4) Schools shall keep a daily written record of student attendance.

(5) Schools shall not be permitted to remove hours earned by a student. If a student is late for class, the school may require the student to retake the class before giving credit for the class.

(6) In accordance with Subsection 58-11a-502(3)(a), schools shall not require students to participate in hair removal training that pertains to the genitals or anus of a client.

R156-11a-606. Standards for Protection of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), standards for the protection of barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall include the following:

(1) Schools shall not be required to release documentation of hours earned to a student until the student has paid the tuition or fees owed to the school as provided in the terms of the contract.

(2) Schools may accept transfer students. Schools shall determine the amount of hours to be accepted toward graduation based upon an evaluation of the student's level of training.

(3) Hours obtained while enrolled in a barber, cosmetology, electrology, esthetics, master esthetics, or nail technology apprenticeship may not be used to satisfy any of the required hours of school instruction.

R156-11a-607. Standards for a Written Contract.

(1) In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), barber, cosmetology/barber, electrology, esthetics, and nail technology schools shall complete a written contract with each student prior to admission.

(2) Each contract shall contain, as a minimum:

(a) the current status of the school's accreditation;

(b) rules of conduct;

(c) attendance requirements;

(d) provisions for make up work;

(e) grounds for probation, suspension or dismissal; and

(f) a detailed fee schedule which shall include the student's financial responsibility upon voluntarily leaving the school or upon being suspended from the school.

(3) The school shall maintain on file a copy of the contract for each student and shall provide a copy of the contract to the

division upon request.

R156-11a-608. Standards for Staff Requirements of Schools.

In accordance with Subsections 58-11a-302(3)(c)(iv), 58-11a-302(6)(c)(iv), 58-11a-302(9)(c)(iv), 58-11a-302(13)(c)(iv), and 58-11a-302(16)(c)(iv), the staff requirement for barber, cosmetology/barber, electrology, esthetics and nail technology school shall include:

(1) Schools shall be required to have, as a minimum, one licensed instructor for every 20 students, or fraction thereof, attending a practical session, and one licensed instructor for any group attending a theory session. Special guest speakers shall not reduce the number of licensed instructors required to be present.

(2) Schools may give credit for special workshops, training seminars, and competitions, or may invite special guest speakers who are not licensed in accordance with Section 58-11a-302, to provide instruction or give practical demonstrations to supplement the curriculum as long as a licensed instructor from the school is present.

(3) Student instructors shall not be counted as part of the instructor staff.

R156-11a-609. Standards for Instructors.

(1) In accordance with Subsections 58-11a-302(2)(e) and (f), 58-11a-302(5)(e) and (f), 58-11a-302(8)(e) and (f), 58-11a-302(12)(e) and (f), and 58-11a-302(15)(e) and (f), barber, cosmetology/barber, electrology, esthetics, and nail technology instructors may only teach in those areas for which they have received training and are qualified to teach.

(2) In accordance with Subsection 58-11a-102(21)(b), an individual licensed as a cosmetology/barbering instructor may teach barbering, basic esthetics or nail technology in a licensed barber, cosmetology/barber school or an approved barber, cosmetology/barber, basic esthetics or nail technology apprenticeship, provided the individual can demonstrate the same experience as required in Subsection R156-11a-609(1).

(3) An instructor may only teach the use of a mechanical or electrical apparatus for which the instructor is trained and qualified.

R156-11a-610. Standards for the Use of Acids.

In accordance with Subsections 58-11a-102(25)(b), 58-11a-102(31)(a)(i)(C) and 58-11a-501(17), the standards for the use of any acid or concentration of acids, shall be:

(1) The use of any acid or acid solution which would exfoliate the skin below the stratum corneum, including those listed in Subsections (3) and (4), is prohibited unless used under the supervision of a licensed health care practitioner.

(2) The following acids are prohibited unless used under the supervision of a licensed health care practitioner:

(a) phenol;

(b) bichloroacetic acid;

(c) resorcinol, except as provided in Subsection (4)(b); and

(d) any acid in any concentration level that requires a prescription.

(3) Limited chemical exfoliation for a basic esthetician does not include the mixing, combining or layering of skin exfoliation products or services, but does include:

(a) alpha hydroxy acids of 30% or less, with a pH of not less than 3.0; and

(b) salicylic acid of 15% or less.

(4) Chemical exfoliation for a master esthetician includes:

(a) acids allowed for a basic esthetician;

(b) modified jessner solution on the face and the tissue immediately adjacent to the jaw line;

(c) alpha hydroxy acids with a pH of not less than 1.0 and at a concentration of 50% must include partially neutralized acids, and any acid above the concentration of 50% is prohibited;

(d) beta hydroxy acids with a concentration of not more than 30%; and

(e) trichloroacetic acid, in accordance with Subsection 58-11a-501(17)(c), may be used in a concentration of not more than 15%, but no manual, mechanical or acid exfoliation can be used prior to treatment; and

(f) vitamin based acids.

(5) A licensee may not apply any exfoliating acid to a client's skin that has undergone microdermabrasion within the previous seven days.

(6)(a) A licensee shall prepare and maintain current documentation of the licensee's cumulative experience in chemical exfoliation, including:

(i) courses of instruction;

(ii) specialized training;

(iii) on-the-job experience; and

(iv) the approximate percentage that chemical exfoliation represents in the licensee's overall business.

(b) A licensee shall provide the documentation required by Subsection (6)(a) to the division upon request.

(7) A licensee may not use an acid or perform a chemical exfoliation for which the licensee is not competent to use or perform through training and experience and as documented in accordance with Subsection (6).

(8) Only commercially available products utilized in accordance with manufacturers' instructions may be used for chemical exfoliation purposes.

(9) A patch test shall be administered to each client prior to beginning any chemical exfoliation series.

R156-11a-611. Standards for Approval of Mechanical or Electrical Apparatus.

In accordance with Subsection 58-11a-102(31)(a)(i)(G)(II), the standards for approval of mechanical or electrical apparatus shall be:

(1) No mechanical or electrical apparatus that is considered a prescription medical device by the FDA may be used by a licensee, unless such use is completed under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(2) Dermaplane procedures, dermabrasion procedures, blades, knives, lancets, and any tools that invade the skin or living cells are prohibited except for:

(a) advanced pedicures; and

(b) advanced extraction of impurities from the skin.

(3) The use of any procedure in which human tissue is cut or altered by laser energy or ionizing radiation is prohibited for all individuals licensed under this chapter unless under the supervision of a licensed health care practitioner acting within the scope of the licensee's license.

(4) To be approved, a microdermabrasion machine must meet the following criteria:

(a) specifically labeled for cosmetic or esthetic purposes;

(b) closed-loop vacuum system that uses a tissue retention device; and

(c) the normal and customary use of the machine does not result in the removal of the epidermis beyond the stratum corneum.

R156-11a-612. Standards for Disclosure.

(1) In accordance with Subsections 58-11a-102(25)(b) and 58-11a-102(31)(i)(C), a licensee acting within the licensee's scope of practice shall inform a client of the following before applying a chemical exfoliant or using a microdermabrasion machine:

(a) the procedure may only be performed for cosmetic and not medical purposes, unless the licensee is working under the supervision of a licensed health care practitioner, who is

working within the scope of the practitioner's license; and
(b) the benefits and risks of the procedure.

R156-11a-700. Curriculum for Barber Schools.
In accordance with Subsection 58-11a-302(3), the curriculum for a barber school shall consist of 1,000 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of barbering,
(b) an overview of the barber curriculum;
(2) personal, client and shop safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures;
(c) health risks to the barber;
(3) business and shop management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations;
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies;
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the hair and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination;
(e) infection control;
(7) implements, tools and equipment for barbering;
(8) first aid;
(9) anatomy;
(10) basic science of barbering;
(11) chemistry for barbering;
(12) analysis of the hair and scalp;
(13) properties of the hair, skin, and scalp;
(14) basic hairstyling and hair cutting including:
(a) draping;
(b) clipper variations;
(c) scissor cutting; and
(d) wet and thermal styling;
(15) shaving and razor cutting;
(16) mustache and beard design;
(17) elective topics; and
(18) the Utah Barber Examination review.

R156-11a-701. Curriculum for Electrology Schools.
In accordance with Subsection 58-11a-302(9)(c)(iv), the curriculum for an electrology school shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) the history of electrology; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the electrologist;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice and liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of hair and skin;
(7) implements, tools, and equipment for electrology;
(8) first aid;
(9) anatomy;
(10) basic science of electrology;
(11) analysis of the skin;
(12) physiology of hair and skin;
(13) medical definitions including:
(a) dermatology;
(b) endrocrinology;
(c) angiology; and
(d) neurology;
(14) evaluating the characteristics of skin;
(15) evaluating the characteristics of hair;
(16) medications affecting hair growth including:
(a) over-the-counter preparations;
(b) anesthetics; and
(c) prescription medications;
(17) contraindications;
(18) disease and blood-borne pathogens control including:
(a) pathogenic bacteria and non-bacterial causes; and
(b) American Electrology Association (AEA) infection control standards;
(19) principles of electricity and equipment including:
(a) types of electrical currents, their measurements and classifications;
(b) Food and Drug Administration (FDA) approved needle type epilation equipment;
(c) FDA approved hair removal devices; and
(d) epilator operation and care;
(20) modalities for need type electrolysis including:
(a) needle/probe types, features, and selection;
(b) insertions, considerations, and accuracy;
(c) galvanic multi needle technique;
(d) thermolysis manual and flash technique;
(e) blend and progressive epilation technique; and
(f) one and two handed techniques;
(21) clinical procedures including:
(a) consultation;
(b) health/medical history;
(c) pre and post treatment skin care;
(d) normal healing skin effects;
(e) tissue injury and complications;
(f) treating ingrown hairs;
(g) face and body treatment;
(h) cosmetic electrology; and
(i) positioning and draping;
(22) elective topics; and
(23) Utah Electrology Examination review.

R156-11a-702. Curriculum for Esthetics School - Basic Esthetician Programs.
In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school basic esthetician program shall consist of 600 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the basic esthetician;
(3) business and salon management including:
(a) developing a clientele;
(b) professional image;

(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising.
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools, and equipment for basic esthetics including;
(a) high frequency or galvanic current; and
(b) heat lamps;
(8) first aid;
(9) anatomy;
(10) science of basic esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) facials, manual and mechanical;
(14) limited chemical exfoliation including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) chemical reactions;
(15) chemistry for basic esthetics;
(16) temporary removal of superfluous hair by waxing;
(17) treatment of the skin;
(18) packs and masks;
(19) Aroma therapy;
(20) application of makeup including:
(a) application of false eyelashes;
(b) arching of the eyebrows; and
(c) tinting of the eyelashes and eyebrows;
(21) medical devices;
(22) cardio pulmonary resuscitation (CPR);
(23) basic facials;
(24) chemistry of cosmetics;
(25) skin treatments, manual and mechanical;
(26) massage of the face and neck;
(27) natural nail manicures and pedicures;
(28) elective topics; and
(29) Utah Esthetic Examination review.

R156-11a-703. Curriculum for Esthetics School -- Master Esthetician Programs.

In accordance with Subsection 58-11a-302(13)(c)(iv), the curriculum for an esthetics school master esthetician program shall consist of 1,200 hours of instruction, 600 of which consist of the curriculum for a basic esthetician program, the remaining 600 of which shall be in the following subject areas:
(1) introduction consisting of:
(a) history of master esthetics; and
(b) an overview of the curriculum;
(2) personal, client, and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and
(c) health risks to the master esthetician;
(3) business and salon management consisting of:
(a) developing clients;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) advertising; and
(f) public relations;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) the human immune system;
(6) diseases and disorders of the skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) contamination; and
(e) infection controls;
(7) implements, tools and equipment for master esthetics;
(8) first aid;
(9) anatomy;
(10) basic science of master esthetics;
(11) analysis of the skin;
(12) physiology of the skin;
(13) advanced facials, manual and mechanical;
(14) chemistry for master esthetics;
(15) advanced chemical exfoliation, including:
(a) pre-exfoliation consultation;
(b) post-exfoliation treatments; and
(c) reactions;
(16) temporary removal of superfluous hair by waxing and advanced waxing;
(17) for schools teaching lymphatic massage, in accordance with Subsections 58-11a-102(31)(a)(ii) and 58-11a-302(11)(d)(i)(C), 200 hours of instruction is required and shall consist of:
(a) 40 hours of training in anatomy and physiology of the lymphatic system;
(b) 70 applications of one hour each in manual lymphatic massage of the full body; and
(c) 90 hours of training in lymphatic massage by other means, including but not limited to energy, mechanical devices, suction assisted massage with or without rollers, compression therapy with equipment, or garment therapy;
(18) advanced pedicures;
(19) advanced Aroma therapy;
(20) the aging process and its damage to the skin;
(21) medical devices;
(22) cardio pulmonary resuscitation (CPR) training;
(23) hydrotherapy;
(24) advanced mechanical and electrical devices including instruction in using:
(a) sanding and microdermabrasion techniques;
(b) galvanic or high-frequency current for treatment of the skin;
(c) devices equipped with a brush to cleanse the skin;
(d) devices that apply a mixture of steam and ozone to the skin;
(e) devices that spray water and other liquids on the skin; and
(f) any other mechanical devices, esthetic preparations or procedures approved by the division in collaboration with the board for the care and treatment of the skin;
(25) elective topics; and
(26) Utah Master Esthetician Examination review.

R156-11a-704. Curriculum for Nail Technology Schools.

In accordance with Subsection 58-11a-302(16)(c)(iv), the curriculum for a nail technology school shall consist of 300 hours of instruction in the following subject areas:
(1) introduction consisting of:
(a) history of nail technology; and
(b) an overview of the curriculum;
(2) personal, client and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures; and

(c) health risks to the nail technician;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of the nails and skin including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools and equipment for nail technology;
(8) first aid;
(9) anatomy;
(10) basic science for nail technology;
(11) theory of basic manicuring including hand and arm massage;
(12) physiology of the skin and nails;
(13) chemistry for nail technology;
(14) artificial nail techniques consisting of:
(a) wraps;
(b) nail tips;
(c) gel nails;
(d) sculptured acrylic nails; and
(e) nail art;
(15) pedicures and massaging the lower leg and foot;
(16) elective topics; and
(17) Utah Nail Technology Examination review.

R156-11a-705. Curriculum for Cosmetology/Barber Schools.

In accordance with Subsection 58-11a-302(6)(c)(iv), the curriculum for a cosmetology/barber school shall consist of 2,000 hours of instruction in all of the following subject areas:
(1) introduction consisting of:
(a) history of cosmetology/barbering, esthetics, nail technology; and
(b) overview of the cosmetology/barber curriculum;
(2) personal, client and salon safety including:
(a) aseptic techniques and sanitary procedures;
(b) sterilization methods and procedures;
(c) health risks to the cosmetologist/barber;
(3) business and salon management including:
(a) developing clientele;
(b) professional image;
(c) professional ethics;
(d) professional associations;
(e) public relations; and
(f) advertising;
(4) legal issues including:
(a) malpractice liability;
(b) regulatory agencies; and
(c) tax laws;
(5) human immune system;
(6) diseases and disorders of skin, nails, hair, and scalp including:
(a) bacteriology;
(b) sanitation;
(c) sterilization;
(d) decontamination; and
(e) infection control;
(7) implements, tools and equipment for cosmetology, barbering, basic esthetics and nail technology;
(8) first aid;
(9) anatomy;
(10) basic science of cosmetology/barbering;
(11) analysis of the skin, hair and scalp;
(12) physiology of the human body;
(13) electricity and light therapy;
(14) limited chemical exfoliation;
(15) chemistry for cosmetology/barbering, basic esthetics and nail technology;
(16) temporary removal of superfluous hair;
(17) properties of the hair, skin and scalp;
(18) basic hairstyling including:
(a) wet and thermal styling;
(b) permanent waving;
(c) hair coloring;
(d) chemical hair relaxing; and
(e) thermal hair straightening;
(19) haircuts including:
(a) draping;
(b) clipper variations;
(c) scissor cutting;
(d) shaving; and
(e) wigs and artificial hair;
(20) razor cutting for men;
(21) mustache and beard design;
(22) elective topics; and
(23) Utah Cosmetology/Barber Examination review.

R156-11a-706. Curriculum for Barber, Cosmetology/Barber, Master Esthetics, Electrology, and Nail Technology Instructors School.

In accordance with Subsections 58-11a-302(2)(e)(i), (5)(e)(i), (8)(e)(i), (12)(e)(i) and (15)(e)(i), the curriculum for an approved barber, cosmetology/barber, basic esthetics, master esthetics, electrology and nail technology instructor school shall consist of the number of hours of instruction required in the subsections identified above in the following subject areas:
(1) motivation and the learning process;
(2) teacher preparation;
(3) teaching methods;
(4) classroom management;
(5) testing;
(6) instructional evaluation;
(7) laws, rules and regulations; and
(8) Utah Cosmetology/Barber, Master Esthetics, Electrology and Nail Technology Instructors Examination review.

R156-11a-800. Approved Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved barber apprenticeship shall include the following:
(1) The instructor shall have only one apprentice at a time.
(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".
(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the Division upon request.
(4) A complete set of barber texts shall be available to the apprentice.
(5) An apprentice may be compensated for services performed.
(6) The instructor shall provide training and technical instruction of 1250 hours using the curriculum defined in

Section R156-11a-700.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-700.

(9) Any hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 1250 hours of apprentice training.

R156-11a-801. Approved Cosmetologist/Barber Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(1), the requirements for an approved cosmetology/barber apprenticeship include:

(1) The instructor shall have only one apprentice at a time.

(2) There shall be a conspicuous sign near the work station of the apprentice stating "Apprentice in Training".

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of cosmetology/barber texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 2,500 hours using the curriculum defined in Section R156-11a-705.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-705.

(9) Hours obtained while enrolled in a cosmetology/barber school shall not be used to satisfy the required 2,500 hours of apprentice training.

R156-11a-802. Approved Basic Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(2), the requirements for an approved basic esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 800 hours using the curriculum defined in Section R156-11a-702.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the hours required in technical training, with at least a portion of that time devoted to each of the subjects specified in Section R156-11a-702.

(9) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 800 hours of apprentice training.

R156-11a-803. Approved Master Esthetician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(3), the requirements for an approved master esthetician apprenticeship include:

(1) The instructor shall have no more than one apprentice at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of esthetics texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 1,500 hours using the curriculum defined in Section R156-11a-703:

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public until the apprentice has received at least 10% of the required hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-703.

(9) Hours obtained while enrolled in an esthetics school shall not be used to satisfy the required 1,500 hours of apprentice training.

R156-11a-804. Approved Nail Technician Apprenticeship Requirements.

In accordance with Subsection 58-11a-102(4), the requirements for an approved nail technician apprenticeship include:

(1) The instructor shall have no more than two apprentices at a time.

(2) There shall be a conspicuous sign near the workstation of the apprentice stating, "Apprentice in Training."

(3) The instructor and apprentice shall keep a daily record, which shall include the hours of theory instruction, the hours of practical instruction, the number and type of client services performed, and other services, which will document the total number of hours of training. The record shall be available to the division upon request.

(4) A complete set of nail technician texts shall be available to the apprentice.

(5) An apprentice may be compensated for services performed.

(6) The instructor shall provide training and technical instruction of 375 hours using the curriculum defined in Section R156-11a-704.

(7) The instructor shall limit the training of the apprentice to not more than 40 hours per week and not more than five days out of every seven consecutive days.

(8) An apprentice may not perform work on the public

until the apprentice has received at least 10% of the hours of technical training, with at least a portion of that time devoted to each of the subjects specified in Subsection R156-11a-704.

(9) Hours obtained while enrolled in a nail technology school shall not be used to satisfy the required 375 hours of apprentice training.

R156-11a-805. Conflicts of Interest.

An apprentice instructor may not be an employee of an apprentice or be involved in any relationship with an apprentice or others that would interfere with the instructor's ability to teach and train the apprentice.

R156-11a-901. On the Job Training Internship.

In accordance with Subsection 58-11a-304(8), students enrolled in a licensed cosmetology/barber school may participate in an on the job training internship if they meet the following requirements:

(1) The on the job training intern must have completed at least 1000 hours of the training contracted with a cosmetology/barber school, of which 400 hours shall be clinical hours.

(2) There shall be a conspicuous sign near the work station of the on the job training intern stating "Intern in Training".

(3) A licensed "on-site" cosmetology/barber shall supervise only one on the job training intern at a time.

(4) An on the job training intern, while working under the direct supervision of an "on-site" licensed cosmetologist/barber, may perform the following procedures:

(a) draping;
(b) shampooing;
(c) roller setting;
(d) blow drying styling;
(e) applying color;
(f) removing color by rinsing and shampooing;
(g) removing permanent chemicals;
(h) removing permanent rods;
(i) removing rollers;
(j) applying temporary rinses, reconditioners, and rebuilders;
(k) acting as receptionists;
(l) doing retail sales;
(m) sanitizing the salon;
(o) doing inventory and ordering supplies; and
(p) handing equipment to the cosmetologist/barber supervisor.

(5) The "on-site" cosmetologist/barber supervisor must have in her possession a letter, which must be updated on a quarterly basis, from the school where the on the job training intern is enrolled stating that the on the job training intern is currently in good standing at the school and is complying with school requirements.

(6) Time earned while performing on the job training as an intern shall not apply towards credits required for graduation.

KEY: cosmetologists/barbers, estheticians, electrologists, nail technicians

April 10, 2008	**58-11a-101**
Notice of Continuation April 12, 2007	**58-1-106(1)(a)**
	58-1-202(1)(a)

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 63J-1-303; 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 63J-1-303; 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.
R156-38a. Residence Lien Restriction and Lien Recovery Fund Rule.
R156-38a-101. Title.

This rule is known as the "Residence Lien Restriction and Lien Recovery Fund Act Rule."

R156-38a-102. Definitions.

In addition to the definitions in Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing, which shall apply to this rule, as used in this rule:

(1) "Applicant" means either a claimant, as defined in Subsection (2), or a homeowner, as defined in Subsection (5), who submits an application for a certificate of compliance.

(2) "Claimant" means a person who submits an application or claim for payment from the fund.

(3) "Construction project", as used in Subsection 38-11-203(4), means all qualified services related to the written contract required by Subsection 38-11-204(4)(a).

(4) "Contracting entity" means an original contractor, a factory built housing retailer, or a real estate developer that contracts with a homeowner.

(5) "Homeowner" means the owner of an owner-occupied residence.

(6) "Licensed or exempt from licensure", as used in Subsection 38-11-204(4) means that, on the date the written contract was entered into, the contractor held a valid, active license issued by the Division pursuant to Title 58, Chapter 55 of the Utah Code in any classification or met any of the exemptions to licensure given in Title 58, Chapters 1 and 55.

(7) "Necessary party" includes the division, on behalf of the fund, and the applicant.

(8) "Owner", as defined in Subsection 38-11-102(17), does not include any person or developer who builds residences that are offered for sale to the public.

(9) "Permissive party" includes:

(a) with respect to claims for payment: the nonpaying party, the homeowner, and any entity who may be required to reimburse the fund if a claimant's claim is paid from the fund;

(b) with respect to an application for a certificate of compliance: the original contractor and any entity who has demanded from the homeowner payment for qualified services.

(10) "Qualified services", as used in Subsection 38-11-102(20) do not include:

(a) services provided by the claimant to cure a breach of the contract between the claimant and the nonpaying party; or

(b) services provided by the claimant under a warranty or similar arrangement.

(11) "Written contract", as used in Subsection 38-11-204(4)(a)(i), means one or more documents for the same construction project which collectively contain all of the following:

(a) an offer or agreement conveyed for qualified services that will be performed in the future;

(b) an acceptance of the offer or agreement conveyed prior to the commencement of any qualified services; and

(c) identification of the residence, the parties to the agreement, the qualified services that are to be performed, and an amount to be paid for the qualified services that will be performed.

R156-38a-103a. Authority - Purpose - Organization.

(1) This rule is adopted by the division under the authority of Section 38-11-103 to enable the division to administer Title 38, Chapter 11, the Residence Lien Restriction and Lien Recovery Fund Act.

(2) The organization of this rule is patterned after the organization of Title 38, Chapter 11.

R156-38a-103b. Duties, Functions, and Responsibilities of the Division.

The duties, functions and responsibilities of the division with respect to the administration of Title 38, Chapter 11, shall, to the extent applicable and not in conflict with the Act or this rule, be in accordance with Section 58-1-106.

R156-38a-104. Board.

Board meetings shall comply with the requirements set forth in Section R156-1-204.

R156-38a-105a. Adjudicative Proceedings.

(1) Except as provided in Subsection 38-1-11(4)(d), the classification of adjudicative proceedings initiated under Title 38, Chapter 11 is set forth at Sections R156-46b-201 and R156-46b-202.

(2) The identity and role of presiding officers for adjudicative proceedings initiated under Title 38, Chapter 11, is set forth in Sections 58-1-109 and R156-1-109.

(3) Issuance of investigative subpoenas under Title 38, Chapter 11 shall be in accordance with Subsection R156-1-110.

(4) Adjudicative proceedings initiated under Title 38, Chapter 11, shall be conducted in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act, and Rules R151-46b and R156-46b, Utah Administrative Procedures Act Rules for the Department of Commerce and the Division of Occupational and Professional Licensing, respectively, except as otherwise provided by Title 38, Chapter 11 or this rule.

(5) Claims for payment and applications for a certificate of compliance shall be filed with the division and served upon all necessary and permissive parties.

(6) Service of claims, applications for a certificate of compliance, or other pleadings by mail to a qualified beneficiary of the fund addressed to the address shown on the division's records with a certificate of service as required by R151-46b-8, shall constitute proper service. It shall be the responsibility of each applicant or registrant to maintain a current address with the division.

(7) A permissive party is required to file a response to a claim or application for certificate of compliance within 30 days of notification by the division of the filing of the claim or application for certificate of compliance, to perfect the party's right to participate in the adjudicative proceeding to adjudicate the claim or application.

(8)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, findings of fact and conclusions of law entered by a civil court or state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication in an adjudicative proceeding to adjudicate the claim.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, a claim or issue resolved by a prior judgment, order, findings of fact, or conclusions of law entered in by a civil court or a state agency submitted in support of or in opposition to a claim against the fund shall not be subject to readjudication with respect to the parties to the judgment, order, findings of fact, or conclusions of law.

(9) A party to the adjudication of a claim against the fund may be granted a stay of the adjudicative proceeding during the pendency of a judicial appeal of a judgment entered by a civil court or the administrative or judicial appeal of an order entered by an administrative agency provided:

(a) the administrative or judicial appeal is directly related to the adjudication of the claim; and

(b) the request for the stay of proceedings is filed with the

presiding officer conducting the adjudicative proceeding and concurrently served upon all parties to the adjudicative proceeding, no later than the deadline for filing the appeal.

(10) Notice pursuant to Subsection 38-1-11(4)(f) shall be accomplished by sending a copy of the division's order by first class, postage paid United States Postal Service mail to each lien claimant listed on the application for certificate of compliance. The address for the lien claimant shall be:

(a) if the lien claimant is a licensee of the division or a registrant of the fund, the notice shall be mailed to the current mailing address shown on the division's records; or

(b) if the lien claimant is not a licensee of the division or a registrant of the fund, the notice shall be mailed to the registered agent address shown on the records of the Division of Corporations and Commercial Code.

R156-38a-105b. Notices of Denial - Notices of Incomplete Application - Conditional Denial of Claims - Extensions of Time to Correct Claims - Prolonged Status.

(1)(a) A written notice of denial of claim shall be provided to an applicant who submits a complete application if the division determines that the application does not meet the requirements of Section 38-11-204.

(b) A written notice of incomplete application shall be provided to an applicant who submits an incomplete application. The notice shall advise the applicant that the application is incomplete and that the application is denied, unless the applicant corrects the deficiencies within the time period specified in the notice and the application otherwise meets all qualifications for approval.

(2) An applicant may receive a single 30 day extension of the time period in Subsection (1)(b). Additional extensions of the time period shall only be granted if the applicant makes the request in writing and demonstrates, with adequate documentation, that the applicant:

(a) has made all reasonable efforts to complete the application;

(b) has been prevented from completing the application because of unusual and extraordinary circumstances entirely beyond its control; and

(c) can be reasonably expected to complete the application if an additional extension is granted.

(3)(a) An applicant may for any reason be granted a single request that its application be prolonged.

(b) An application granted prolonged status shall be inactive for a period of one year or until reactivated by the applicant, whichever comes first.

(c) At the end of the one year period, the applicant shall be required to either complete the application or demonstrate reasonable cause for prolonged status to be renewed for another one year period. The following shall constitute valid causes for renewing prolonged status:

(i) continuing litigation the outcome of which will affect whether the applicant can demonstrate compliance with Section 38-11-204;

(ii) ongoing bankruptcy proceedings involving the nonpaying party or contracting entity that would prevent the applicant from complying with Section 38-11-204;

(iii) continuing compliance by the nonpaying party with a payment agreement between the claimant and the nonpaying party; or

(iv) other reasonable cause as determined by the presiding officer.

(d) Upon expiration of the one year prolonged status of an application, the division shall issue to the applicant an updated notice of incomplete application pursuant to Subsection (1)(b). Included with that notice shall be a form that provides the applicant an opportunity to:

(i) reactivate the application by submitting documentation necessary to complete the application;

(ii) withdraw the application; or

(iii) request prolonged status be renewed pursuant to Subsection (3)(c).

(e) Any request for renewal of prolonged status made under Subsection (3)(c)(iv) shall include evidence sufficient to demonstrate the validity of the reasons given as justification for renewal.

(f) If an applicant's request for renewal of prolonged status is denied, the applicant may request agency review.

(g) An application which has been reactivated from prolonged status may not be again prolonged unless the applicant can establish compliance with the requirements of Subsection (3)(c).

R156-38a-108. Notification of Rights under Title 38, Chapter 11.

A notice in substantially the following form shall prominently appear in an easy-to-read type style and size in every contract between an original contractor and homeowner and in every notice of intent to hold and claim lien filed under Section 38-1-7 against a homeowner or against an owner-occupied residence:

"X. PROTECTION AGAINST LIENS AND CIVIL ACTION. Notice is hereby provided in accordance with Section 38-11-108 of the Utah Code that under Utah law an "owner" may be protected against liens being maintained against an "owner-occupied residence" and from other civil action being maintained to recover monies owed for "qualified services" performed or provided by suppliers and subcontractors as a part of this contract, if and only if the following conditions are satisfied:

(1) the owner entered into a written contract with an original contractor, a factory built housing retailer, or a real estate developer;

(2) the original contractor was properly licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act at the time the contract was executed; and

(3) the owner paid in full the original contractor, factory built housing retailer, or real estate developer or their successors or assigns in accordance with the written contract and any written or oral amendments to the contract."

(4) An owner who has satisfied all of these conditions may perfect his protection from liens by applying for a Certificate of Compliance with the Division of Occupational and Professional Licensing by calling (801) 530-6628 or toll free in Utah only (866) 275-3675 and requesting to speak to the Lien Recovery Fund.

R156-38a-109. Format for Form Affidavit and Motion.

The form affidavit required under Subsection 38-1-11(4) shall be the Homeowner's Application for Certificate of Compliance prepared by the Division.

R156-38a-202a. Initial Assessment Procedures.

The initial assessment shall be a flat or identical assessment levied against all qualified beneficiaries to create the fund.

R156-38a-202b. Special Assessment Procedures.

(1) Special assessments shall take into consideration the claims history against the fund.

(2) The amount of special assessments shall be established by the division and board in accordance with the procedures set forth in Section 38-11-206.

R156-38a-203. Limitation on Payment of Claims.

(1) Claims may be paid prior to the pro-rata adjustment required by Subsection 38-11-203(4)(b) if the division determines that a pro-rata payment will likely not be required.

(2) If any claims have been paid before the division determines a pro-rata payment will likely be required, the division will notify the claimants of the likely adjustment and that the claimants will be required to reimburse the division when the final pro-rata amounts are determined.

(3) The pro-rata payment amount required by Subsection 38-11-203(4)(b) shall be calculated as follows:

(a) determine the total claim amount each claimant would be entitled to without consideration of the limit set in Subsection 38-11-203(4)(b);

(b) sum the amounts each claimant would be entitled to without consideration of the limit to determine the total amount payable to all claimants without consideration of the limit;

(c) divide the limit amount by the total amount payable to all claimants without consideration of the limit to find the claim allocation ratio; and

(d) for each claim, multiply the total claim amount without consideration of the limit by the claim allocation ratio to find the net payment for each claim.

R156-38a-204a. Applications for Certificate of Compliance by Homeowners - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each homeowner application for a certificate of compliance:

(1) a copy of the written contract between the homeowner and the contracting entity;

(2)(a) if the homeowner contracted with an original contractor, documentation issued by the division that the original contractor was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(b) if the homeowner contracted with a real estate developer:

(i) credible evidence that the real estate developer had an ownership interest in the property;

(ii) a copy of the contract between the real estate developer and the licensed contractor with whom the real estate developer contracted for construction of the residence or other credible evidence showing the existence of such a contract and setting forth a description of the services provided to the real estate developer by the contractor;

(iii) credible evidence that the real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the division that the contractor with whom the real estate developer contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(c) if the real estate developer is a licensed contractor under Title 58, Chapter 55, Utah Construction Trades Licensing Act who engages in the construction of a residence that is offered for sale to the public:

(i) credible evidence that the contractor real estate developer has an ownership interest in the property;

(ii) a copy of the contract between the homeowner and the contractor real estate developer;

(iii) credible evidence that the contractor real estate developer offered the residence for sale to the public; and

(iv) documentation issued by the Division showing that the contractor real estate developer with whom the homeowner contracted for construction of the residence was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, on the date the contract was entered into;

(d) if the homeowner contracted with a manufactured housing retailer, a copy of the completed retail purchase contract;

(3) one of the following:

(a) except as provided in Subsection (5), an affidavit from the contracting entity acknowledging that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; or

(b) other credible evidence establishing that the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(4) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined in Subsection 38-11-102(18).

(5) If any of the following apply, the affidavit described in Subsection (3)(a) shall not be accepted as evidence of payment in full unless that affidavit is accompanied by independent, credible evidence substantiating the statements made in the affidavit:

(a) the affiant is the homeowner;

(b) the homeowner is an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(c) the homeowner has a familial relationship with an owner, member, partner, shareholder, employee, or qualifier of the contracting entity;

(d) the homeowner has a familial relationship with the affiant;

(e) an owner, member, partner, shareholder, employee, or qualifier of the contracting entity is also an owner, member, partner, shareholder, employee, or qualifier of the homeowner;

(f) the contracting entity is an owner, member, partner, shareholder, employee, or qualifier of the homeowner; or

(g) the affiant stands to benefit in any way from approval of the claim or application for certificate of compliance.

R156-38a-204b. Claims Against the Fund by Nonlaborers - Supporting Documents and Information.

The following supporting documents shall, at a minimum, accompany each nonlaborer claim for recovery from the fund:

(1) one of the following:

(a) a copy of the certificate of compliance issued by the division for the residence at issue in the claim;

(b) the documents required in Section R156-38a-204a; or

(c) a copy of a civil judgment containing findings of fact that:

(i) the homeowner entered a written contract in compliance with Subsection 38-11-204(4)(a);

(ii) the contracting entity was licensed or exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act;

(iii) the homeowner paid the contracting entity in full in accordance with the written contract and any amendments to the contract; and

(iv) the homeowner is an owner as defined in Subsection 38-11-102(17) and the residence is an owner-occupied residence as defined in Subsection 38-11-102(18);

(2)(a) a copy of the applicant's notice to hold and claim lien recorded against the incident residence pursuant to Section 38-1-7; or

(b) if the applicant did not record notice to hold and claim lien, one of the following as applicable:

(i) a copy of the certificate of occupancy issued by the local government entity having jurisdiction over the incident residence;

(ii) if no occupancy permit was required by the local government entity but a final inspection was required, a copy of the final inspection approval issued by the local government entity; or

(iii) if neither Subsection(2)(b)(i) nor (2)(b)(ii) applies, an affidavit from the homeowner or other credible evidence establishing the date on which the original contractor

substantially completed the written contract;

(3) one of the following as applicable:

(a) a copy of an action date stamped by a court of competent jurisdiction filed by the claimant against the nonpaying party to recover monies owed for qualified services performed on the owner-occupied residence; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from satisfying Subsection (a);

(4) one of the following:

(a) a copy of a civil judgment entered in favor of the claimant against the nonpaying party containing a finding that the nonpaying party failed to pay the claimant pursuant to their contract; or

(b) documentation that a bankruptcy filing by the nonpaying party prevented the claimant from obtaining a civil judgment, including a copy of the proof of claim filed by the claimant with the bankruptcy court, together with credible evidence establishing that the nonpaying party failed to pay the claimant pursuant to their contract;

(5) one or more of the following as applicable:

(a) a copy of a supplemental order issued following the civil judgment entered in favor of the claimant and a copy of the return of service of the supplemental order indicating either that service was accomplished on the nonpaying party or that said nonpaying party could not be located or served;

(b) a writ of execution issued if any assets are identified through the supplemental order or other process, which have sufficient value to reasonably justify the expenditure of costs and legal fees which would be incurred in preparing, issuing, and serving execution papers and in holding an execution sale; or

(c) documentation that a bankruptcy filing or other action by the nonpaying party prevented the claimant from satisfying Subparagraphs (a) and (b);

(6) certification that the claimant is not entitled to reimbursement from any other person at the time the claim is filed and that the claimant will immediately notify the presiding officer if the claimant becomes entitled to reimbursement from any other person after the date the claim is filed; and

(7) one or more of the following:

(a) a copy of invoices setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed;

(b) a copy of a civil judgment containing a finding setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed; or

(c) credible evidence setting forth a description of, the location of, the performance dates of, and the value of the qualified services claimed.

(8) If the claimant is requesting payment of costs and attorney fees other than those specifically enumerated in the judgment against the nonpaying party, the claim shall include documentation of those costs and fees adequate for the division to apply the requirements set forth in Section R156-38a-204d.

(9) In claims in which the presiding officer determines that the claimant has made a reasonable but unsuccessful effort to produce all documentation specified under this rule to satisfy any requirement to recover from the fund, the presiding officer may elect to accept the evidence submitted by the claimant if the requirements to recover from the fund can be established by that evidence.

(10) A separate claim must be filed for each residence and a separate filing fee must be paid for each claim.

R156-38a-204c. Claims Against the Fund by Laborers - Supporting Documents.

(1) The following supporting documents shall, at a minimum, accompany each laborer claim for recovery from the fund:

(a) one of the following:

(i) a copy of a wage claim assignment filed with the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah for the amount of the claim, together with all supporting documents submitted in conjunction therewith; or

(ii) a copy of an action filed by claimant against claimant's employer to recover wages owed;

(b) one of the following:

(i) a copy of a final administrative order for payment issued by the Employment Standards Bureau of the Antidiscrimination and Labor Division of the Labor Commission of Utah containing a finding that the claimant is an employee and that the claimant has not been paid wages due for work performed at the site of construction on an owner-occupied residence;

(ii) a copy of a civil judgment entered in favor of claimant against the employer containing a finding that the employer failed to pay the claimant wages due for work performed at the site of construction on an owner-occupied residence; or

(iii) a copy of a bankruptcy filing by the employer which prevented the entry of an order or a judgment against the employer;

(c) one of the following:

(i) a copy of the certificate of compliance issued by the division for the residence at issue in the claim;

(ii) an affidavit from the homeowner establishing that he is an owner as defined in Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18);

(iii) a copy of a civil judgment containing a finding that the homeowner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18); or

(iv) other credible evidence establishing that the owner is an owner as defined by Subsection 38-11-102(17) and that the residence is an owner-occupied residence as defined by Subsection 38-11-102(18).

(2) When a laborer makes claim on multiple residences as a result of a single incident of nonpayment by the same employer, the division must require payment of at least one application fee required under Section 38-11-204(1)(b) and at least one registration fee required under Subsection 38-11-204(7), but may waive additional application and registration fees for claims for the additional residences, where no legitimate purpose would be served by requiring separate filings.

R156-38a-204d. Calculation of Costs, Attorney Fees and Interest for Payable Claims.

(1) Payment for qualified services, costs, attorney fees, and interest shall be made as specified in Section 38-11-203.

(2) When a claimant provides qualified service on multiple properties, irrespective of whether those properties are owner-occupied residences, and files claim for payment on some or all of those properties and the claims are supported by a single judgment or other common documentation and the judgment or documentation does not differentiate costs and attorney fees by property, the amount of costs and attorney fees shall be allocated among the related properties using the following formula: (Qualified services attributable to the owner-occupied residence at issue in the claim divided by Total qualified services awarded as judgment principal or total documented qualified services) x Total costs or total attorney fees.

(3)(a) For claims wherein the claimant has had judgment entered against the nonpaying party, post-judgment costs shall be limited to those costs allowable by a district court, such as costs of service, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other

costs related to the preparation and filing of the claim application.

(b) For claims wherein the nonpaying party's bankruptcy filing precluded the claimant from having judgment entered against the nonpaying party, total costs shall be limited to those costs that would have been allowable by the district court had judgment been entered, such as, but not limited to, costs of services, garnishments, or executions, and shall not include postage, copy expenses, telephone expenses, or other costs related to the preparation and filing of the claim application.

(4) The interest rate or rates applicable to a claim shall be the rate for the year or years in which payment for the qualified services was due.

(5) If the evidence submitted in fulfillment of Subsection R156-38a-204b(7) does not specify the date or dates upon which payment was due, the division shall assume payment was due 30 calendar days after the date on which the claimant billed the nonpaying party for the qualified services.

(6) If the qualified services at issue in a claim were billed in two or more installments and payment was due on two or more dates, the claimant shall provide documentation sufficient for the division to determine each payment due date and the attendant portion of qualified services for which payment was due on that date. If the claimant does not provide sufficient documentation, the division shall assume the nonpaying party's debt accrued evenly throughout the period so an equal portion of the qualified services balance shall be applied to each billing installment.

(7) If a claimant receives partial payment for qualified services between the time judgment is entered and the claim is filed, the division shall calculate payment amounts by accruing costs, attorney fees and interest to the date of the payment then reducing the individual balances of first interest, then costs, then attorney fees, and finally qualified services to a zero balance until the entire payment is applied. The division shall then make payment of the remaining balances plus additional accrued interest on the remaining qualified services balance.

R156-38a-204e. Application of Requirement that Nonpaying Party be Licensed.

The provisions of Subsection 38-11-204(4)(f) shall apply only to qualified services provided by the claimant on or after May 3, 2004.

R156-38a-301a. Contractor Registration as a Qualified Beneficiary - All License Classifications Required to Register Unless Specifically Exempted - Exempted Classifications.

(1) All license classifications of contractors are determined to be regularly engaged in providing qualified services for purposes of automatic registration as a qualified beneficiary, as set forth in Subsections 38-11-301(1) and (2), with the exception of the following license classifications:

TABLE II

Primary Classification Number	Subclassification Number	Classification
E100		General Engineering Contractor
	S211	Boiler Installation Contractor
	S213	Industrial Piping Contractor
	S262	Granite and Pressure Grouting Contractor
S320		Steel Erection Contractor
	S321	Steel Reinforcing Contractor
	S322	Metal Building Erection Contractor
	S323	Structural Stud Erection Contractor
S340		Sheet Metal Contractor
S360		Refrigeration Contractor
S440		Sign Installation Contractor
	S441	Non Electrical Outdoor Advertising Sign Contractor
S450		Mechanical Insulation Contractor
S470		Petroleum System Contractor
S480		Piers and Foundations Contractor
I101		General Engineering Trades Instructor
I102		General Building Trades Instructor
I103		General Electrical Trades Instructor
I104		General Plumbing Trades Instructor
I105		General Mechanical Trades Instructor

(2) Any person holding a license requiring registration in the fund that is on inactive status on the assessment date of any special assessment of the fund, may defer payment of that special assessment and any assessment made during the time the license remains on inactive status and the licensee does not engage in the licensed occupation or profession.

(3) Before a licensee can be reinstated to an active status, the licensee must pay:

(a) the initial assessment of $195 assessed July 1, 1995, if that assessment has never been paid by that licensee; and

(b) all unpaid special assessments.

R156-38a-301b. Event Necessitating Registration - Name Change by Qualified Beneficiary - Reorganization of Registrant's Business Type - Transferability of Registration.

(1) Any change in entity status by a registrant requires registration with the Fund by the new or surviving entity before that entity is a qualified beneficiary.

(2) The following constitute a change of entity status for purposes of Subsection (1):

(a) creation of a new legal entity as a successor or related-party entity of the registrant;

(b) change from one form of legal entity to another by the registrant; or

(c) merger or other similar transaction wherein the existing registrant is acquired by or assumed into another entity and no longer conducts business as its own legal entity.

(3) A qualified beneficiary registrant shall notify the division in writing of a name change within 30 days of the change becoming effective. The notice shall provide the following:

(a) the registrant's prior name;

(b) the registrant's new name;

(c) the registrant's registration number; and

(d) proof of registration with the Division of Corporations and Commercial Code as required by state law.

(4) A registration shall not be transferred, lent, borrowed, sold, exchanged for consideration, assigned, or made available for use by any entity other than the registrant for any reason.

(5) A claimant shall not be considered a qualified beneficiary registrant merely by virtue of owning or being owned by an entity that is a qualified beneficiary.

R156-38a-302. Renewal and Reinstatement Procedures.

(1) Renewal notices required in connection with a special assessment shall be mailed to each registrant at least 30 days prior to the expiration date for the existing registration established in the renewal notice. Unless the registrant pays the special assessment by the expiration date shown on the renewal notice, the registrant's registration in the fund automatically expires on the expiration date.

(2) Renewal notices shall be sent by letter deposited in the post office with postage prepaid, addressed to the last address shown on the division's records. Such mailing shall constitute legal notice. It shall be the duty and responsibility of each registrant to maintain a current address with the division.

(3) Renewal notices shall specify the amount of the special assessment, the application requirement, and other renewal

requirements, if any; shall require that each registrant document or certify that the registrant meets the renewal requirements; and shall advise the registrant of the consequences of failing to renew a registration.

(4) Renewal applications must be received by the division in its ordinary course of business on or before the renewal application due date in order to be processed as a renewal application. Late applications will be processed as reinstatement applications.

(5) A registrant whose registration has expired may have the registration reinstated by complying with the requirements and procedures specified in Subsection 38-11-302(5).

R156-38a-401. Requirements for a Letter of Credit and/or Evidence of a Cash Deposit as Alternate Security for Mechanics' Lien.

To qualify as alternate security under Section 38-1-28 "evidence of a cash deposit" must be an account at a federally insured depository institution that is pledged to the protected party and is payable to the protected party upon the occurrence of specified conditions in a written agreement.

KEY: licensing, contractors, liens
January 7, 2008 38-11-101
Notice of Continuation March 15, 2005 58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-38b. State Construction Registry Rules.
R156-38b-101. Title.

These rules are known as the "State Construction Registry Rules".

R156-38b-102. Definitions.

In addition to the definitions in Section 38-1-27, State Construction Registry -- Form and contents of notice of commencement, preliminary notice, and notice of completion; Title 58, Chapter 1, Division of Occupational and Professional Licensing Act; and Rule R156-1, General Rules of the Division of Occupational and Professional Licensing; which shall apply to these rules, as used in the referenced statutes or these rules:

(1) "Alternate method or process" means transmission by telefax, by U.S. mail, or by private commercial courier.

(2) "Electronic" or "Electronically" means transmission by Internet or by electronic mail and does not mean a transmission by alternate methods or process.

(3) "J2EE" means SUN Microsystem's Java 2 Platform, Enterprise Edition, for multi-tier server-oriented enterprise applications.

(4) "Merge" means to link two or more filings together under a unique project number as required by Subsection 38-1-31(1)(d).

(5) "SCR" means the State Construction Registry established in Sections 38-1-27 and 38-1-30 through 38-1-37.

R156-38b-103. Authority - Purpose.

These rules are adopted by the Division under the authority of Sections 38-1-27 and 38-1-30 through 38-1-37 to administer the SCR.

R156-38b-201. Duties, Functions, and Responsibilities of the Division.

In accordance with Section 38-1-30(3)(a), the duties, functions, and responsibilities of the Division are oversight and enforcement of the Act, and include:

(1) establishing rules to implement the SCR;

(2) providing oversight of the design, operation, and maintenance of the SCR; and

(3) auditing the functionality and integrity of the SCR.

R156-38b-301. Duties, Functions, and Responsibilities of the Designated Agent.

In accordance with Subsection 38-1-30(3)(b), the duties, functions, and responsibilities of the designated agent include:

(1) designing, developing, hosting, operating, and maintaining the SCR;

(2) providing training, marketing, and technical support for the SCR;

(3) performing other duties, functions, and responsibilities provided by statute, rule, or contract; and

(4) obtaining and maintaining insurance coverage as follows:

(a) general liability insurance as required by Subsection 38-1-35(2)(b), which at a minimum shall be the amount established for the designated agent's master contract with the State of Utah; and

(b) errors and omissions insurance as required by Subsection 38-1-30(5), may be satisfied by the designated agent's current policy that insures its parent company and all subsidiaries in the amount of $5 Million.

R156-38b-401. Reliability, Availability and Security Standards.

The designated agent shall provide a reliable hosting environment which shall contain the following elements:

(1) Operating Standard. The SCR shall initially adhere to the J2EE standard and such standard in the future as the Division shall designate in cooperation with the designated agent.

(2) System Upgrades. The designated agent shall notify the Division when the SCR requires an update that may cause significant service interruption. Functional or structural changes that impact the system requirements shall require prior approval from the Division.

(3) Security. The designated agent shall take commercially reasonable steps to provide that the information contained in the SCR is secure and protected from unauthorized entry.

(4) System Backup. The designated agent shall provide adequate backup of the system and its data, including the following:

(a) Redundant Servers. There shall be multiple servers running the SCR and Internet environments, but no more than two sets of servers.

(b) Data Backup Environment. There shall be facilities to continuously back up data contained in the SCR. This backed-up data must be easily retrieved and either viewed or placed back into the SCR if required.

(c) Redundant Power Supply. Provide a single reliable redundant power supply for entire environment.

(5) System Recovery. In the event of a system failure, the designated agent shall provide system recovery and re-deployment to meet a standard that will result in restoration into full production within a maximum of three business days. In the event of destruction of the designated agent's primary hosting facility, the designated agent shall meet a standard whereby complete service restoration could be implemented within two weeks provided the telecommunications and data center vendor can meet this schedule.

(6) Software Licensing. The designated agent shall maintain legitimate software licenses for all purchased software used for the SCR.

(7) System Monitoring. Provide continuous monitoring of SCR environment.

(8) System Support. Provide appropriate personnel to continuously maintain the SCR environment.

(9) Continuity of Operations. In the event that, for whatever reason, operation and maintenance of the SCR is transferred to the state or another designated agent, continuity of the SCR shall be maintained in accordance with the governing contractual provisions with the designated agent.

(10) In the event that the Division elects to provide some of the services listed in (1) through (8) above, the designated agent will be relieved of the responsibilities for the services so assumed. Such election by the Division shall be in writing.

R156-38b-402. User Identification and Password.

(1) All users are required to register with the SCR and be assigned a unique user ID and password to gain access to the SCR. The information gathered in the registration process shall be maintained in the SCR as the user profile. The registration process shall include the following information and any other information established by the Division in collaboration with the designated agent:

(a) first and last name of the individual registering;

(b) entity name if the individual represents an entity, and any DBA name(s);

(c) individual's position or title if the individual represents an entity;

(d) mailing address;

(e) phone number;

(f) email address, if any;

(g) preferred method of submitting payment to the SCR, as defined in a pre-populated pick list.

(2) The SCR shall provide the ability for a user to view

and modify the user's profile.

(3) The SCR shall provide an industry accepted secure method for a user to recover a forgotten user ID or password.

(4) The SCR shall pre-populate filings with any information available in the user's profile.

(5) The account will not be effective until the fee, established by the Division in collaboration with the designated agent, is received.

R156-38b-403. Transaction Log.

The designated agent shall maintain a transaction log of the SCR that includes a transaction trail of completed transactions by registered user.

R156-38b-501. Notices of Commencement.

(1) Content Requirements. The content of notices of commencement shall be in accordance with Subsection 38-1-31(2).

(2) Persons Who Must File Notices. In accordance with Subsections 38-1-31(1)(a) and (b), the following are required to file a notice of commencement:

(a) For a construction project where a building permit is issued, within 15 days after the issuance of the building permit, the local government entity issuing that building permit shall input the data and transmit the building permit information to the database electronically or by alternate method and such building permit information shall form the basis of a notice of commencement. The local government entity may not transfer this responsibility to the person who is issued or is to be issued the building permit.

(b) For a construction project where a building permit is not issued, within 15 days after commencement of physical construction work at the project site, the original contractor shall file a notice of commencement with the SCR.

(3) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-31(1)(c), an owner of a construction project or original contractor may but is not required to file a notice of commencement with the designated agent within the prescribed time set forth in Subsection 38-1-31(1)(a) or (b).

(b) The parties identified in R156-38b-501(3)(a) may authorize a third party to file a notice of commencement on its behalf, as established in Subsection 38-1-27(9).

(4) Methodology.

(a) Electronic notice of commencement filings shall be input into the SCR by the person making the filing and shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of commencement.

(b) Alternate method notice of commencement filings shall be in accordance with this Section and Section R156-38-505.

(c) Checking for Existing Notices. In order to prevent duplicate filings of notices of commencement, a search of the SCR shall be performed for any existing notices of commencement and existing filed amendments before creating a new notice of commencement for a project.

(i) If an existing notice of commencement is identified the following procedures apply:

(A) For an electronic filing by the person attempting to file the new notice of commencement, the SCR shall indicate that a notice of commencement may have already been filed for the project and display the possible notice or notices of commencement that may match the existing project filing. The SCR shall allow the user to review the content of any existing notices to determine whether a notice has already been filed for the project before allowing a new notice to be filed.

(I) If a notice of commencement already exists for the project but the person attempting to file the notice of commencement believes the content of the filing is not accurate, the person shall be given the option of submitting amendments to the content of the notice. The SCR shall reflect the submission date of the amendments, but the filing date of the notice shall remain unchanged. If the person attempting to file the new notice of commencement believes the existing notice is accurate, the system shall permit the proposed new filing to be terminated.

(B) For an alternate method filing, input by the designated agent for the person filing the notice of commencement, the designated agent shall notify the person by electronic or alternate method as specified by the filer, that a notice of commencement has already been filed for the particular project and include a copy of the existing notice of commencement. In addition, the user will be notified that the notice of commencement will be added to the construction project as an amendment to the original filing in the SCR and the appropriate fee will be charged.

(ii) As part of the process described in Subsection R156-38b-501(4)(c)(i), the SCR search for an existing notice of commencement shall display, for review by the person who submitted the search parameters, all notice of commencement filings that fit the search parameters indicated by the submission that prompted the search. The purpose of this requirement is to enable the person to properly identify any existing notice of commencement before a new notice of commencement is created, to avoid duplicate notice of commencement filings.

(iii) If no existing notice of commencement is identified for the particular project, the SCR shall allow the person who submitted the filing to file a new notice of commencement.

(d) Creation of New Notices.

(i) A new notice of commencement shall not be accepted into the SCR until the SCR system has checked for an existing notice in accordance with the procedures outlined in Subsection R156-38b-501(4).

(ii) In accordance with Subsection 38-1-31(1)(d), when a new notice of commencement filing is accepted into the SCR, the SCR shall assign the project a unique project number that identifies the project and can be associated with all future notices of commencement, preliminary notices, notices of completion, and requests for notification applicable to the project.

(e) Merging of Duplicate Filings. Duplicate filings shall be avoided to the extent possible in accordance with the procedure outlined in this Subsection. The SCR shall include functionality to allow a person who has successfully filed, amended or corrected a notice of commencement which duplicates another notice of commencement already in the SCR to merge the notice of commencement with the existing notice of commencement filing.

(i) The SCR shall reflect the effective date of the merger.

(ii) The SCR shall provide notification of the merger to all persons who are associated with either notice of commencement filing, including those who have filed preliminary notices.

(iii) The effective date of a merger reflects the date the unique merger number was cross-referenced to duplicate notice of commencement filings. A merger does not dissolve or affect the filing dates, or the consequences of the filing dates, of the notices being combined.

(f) Resolving Multiple or Inconsistent Property Descriptions.

(i) The person making a notice of commencement filing shall be responsible for correctly identifying a project, and for the consequences of failing to correctly identify a project.

(ii) Neither the division nor the designated agent shall be responsible for the consequences of a person making a notice of commencement filing that identifies a project in such a way that the SCR is unable to identify an existing notice of commencement for the project, according to the search criteria established by the Division in collaboration with the designated agent, nor for the SCR allowing the person to make a successful

duplicate notice of commencement filing with a different description of the project.

R156-38b-502. Preliminary Notices.

(1) A person who wishes to file a preliminary notice may authorize a third party to file the notice on the person's behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Preliminary Notice shall be in accordance with Subsection 38-1-32(1)(d).

(3) Methodology.

(a) Electronic preliminary notice filings shall be input into the SCR entry screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a preliminary notice. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for the accuracy, suitability or coherence of the data.

(b) Alternate method preliminary notice filings shall be in accordance with Section R156-38b-505.

(c) Preliminary notice filing submitted before notice of commencement filing.

(i) A preliminary notice for a project may not be filed until the project has an existing notice of commencement. A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed may either:

(A) file the notice of commencement as an interested party to enable the filing of the preliminary notice; or

(B) wait for the notice of commencement to be filed by someone else to enable the filing of his or her preliminary notice.

(i) A person who attempts to submit a preliminary notice filing before a notice of commencement has been filed and who can identify the project, using the building permit number or other identifier adopted by the Division in collaboration with the designated agent, may request notification of the filing of a notice of commencement for the project.

(ii) A preliminary notice filing that is not accepted by the SCR because it is submitted before a notice of commencement has been filed shall be in accordance with Section R156-38b-507.

R156-38b-503. Notices of Completion.

(1) Persons Who May File Notices.

(a) In accordance with Subsection 38-1-33(1)(a)(i), the owner, original contractor, lender, title company or surety associated with the construction project may file a notice of completion.

(b) The parties identified in R156-38b-503(1)(a)(i) may authorize a third party to file the notice on its behalf, as established in Subsection 38-1-27(9).

(2) Content Requirements. The content of a Notice of Completion shall be in accordance with Section 38-1-33(1)(d).

(3) Methodology.

(a) Electronic notice of completion filings shall be input into the SCR input screen by the person making the filing but shall not be accepted by the SCR unless the person complies with the content requirements for filing a notice of completion. The SCR is responsible for requiring that some data be submitted for each of the content requirements, but it is not responsible for validating the accuracy, suitability or coherence of the data.

(b) Alternate method notice of completion filings shall be in accordance with Section R156-38b-505.

R156-38b-504. Required Notifications and Requests for Notifications.

(1) Required Notifications. The designated agent or the SCR shall send the following required notifications:

(a) notification of the filing of a notice of commencement to a person who has filed a notice of commencement for the project, as required by Subsection 38-1-31(4)(a);

(b) notification of the filing of a preliminary notice to the person who filed the preliminary notice, as required by Subsection 38-1-32(2)(a)(i);

(c) notification of the filing of a preliminary notice to each person who filed a notice of commencement for the project, as required by Subsection 38-1-32(2)(a)(ii);

(d) notification of the filing of a notice of completion to each person who filed a notice of commencement for the project, as required by Subsection 38-1-33(1)(d)(i)(A); and

(e) notification of the filing of a notice of completion to each person who filed a preliminary notice for the project, as required by Subsection 38-1-33(d)(d)(i)(B).

(2) Permissible Requests for Notifications. The following requests for notifications may be submitted to the SCR:

(a) requests by any interested person who requests notification of the filing of a notice of commencement for a project, as permitted by Subsection 38-1-31(4)(b);

(b) requests by any interested person who requests notification of the filing of a preliminary notice, as permitted by Subsection 38-1-32(2)(a)(iii); and

(c) requests by any interested person who requests notification of the filing of a notice of completion, as permitted by Subsection 38-1-33(1)(d)(i)(C).

(3) Content Requirements for Requests for Notification. The content of a request for notification shall include:

(i) identification of the project by a method designated by the Division in collaboration with the designated agent;

(ii) name of the requestor;

(iii) the filing for which notification is requested; and

(iv) an electronic or alternate method address or telefax number for a response.

(4) Methodology.

(a) Automatic Response System. The SCR shall, to the extent practicable, be designed to require or generate the necessary information to support an automatic response system and documentation of automatic response system in order to handle requests for and required sending of notifications.

(b) Necessary Information. The information to be required from filers or generated to enable an automatic response system and documentation of response system shall include:

(i) the date requests for notification were accepted;

(ii) the method by which requests for notification are to be sent;

(iii) unique identification of the construction project;

(iv) the date a notification is sent in response to a requests for notification; and

(v) the mailing address, electronic mail address, or telefax number used to respond to a request for notification.

(c) Electronic Requests. Electronic requests shall be responded to electronically unless directed otherwise by the person filing the request.

(d) Alternate Method or Process Requests. Alternate method requests shall be responded to in the method requested by the requestor.

R156-38b-505. Alternate Filings.

(1) Alternate Methods of Filing. The alternate methods of filing are those established by Subsections 38-1-27(2)(e)(ii), i.e., U.S. Mail and telefax. Private commercial courier is established as an additional alternate method of receipt by the designated agent, but not dispatch from the designated agent.

(2) Content Requirements. The content requirements for alternate method filings shall be the same as for electronic filings as set forth for Notices of Commencement, Preliminary Notices, and Notices of Completion in Sections 38-1-31, 38-1-32, and 38-1-33, respectively, or these rules.

(3) Format Requirements. Alternate method filings shall

be submitted in a standard format adopted by the Division in collaboration with the designated agent. Filings not submitted in the standard format, in the sole judgment of the designated agent, shall be rejected and dispatched to the submitter. The filing fee shall be retained by the designated agent as a processing fee for rejecting and dispatching the filing. An additional filing fee shall be due upon resubmission.

(4) Methodology.

(a) U.S. Mail. An alternate method filing by U.S. Mail shall be submitted to the designated agent's mailing address by any method of U.S. Mail.

(b) Express Mail. An alternate method filing by commercial private courier shall be submitted to the designated agent's mailing address by any commercially available method of express mail.

(c) Telefax. An alternate method filing by telefax shall be submitted to the designated agent's toll-free unique SCR fax number.

(5) Processing Requirements.

(a) Transaction Receipt. The designated agent shall confirm a successful alternate method filing and fee payment receipt by sending a transaction receipt as specified in Section R156-38b-602.

(b) Creation of Electronic Image. The designated agent shall create and maintain an electronic image of alternate method filings that are accepted into the SCR. Once an electronic image has been created and the accepted alternate method filing has been entered into the SCR, the original version of the accepted alternate method filing may be destroyed. The electronic image shall remain accessible for audit purposes.

(6) Data Entry Standards.

(a) The designated agent shall meet or exceed the following data entry standards for alternate filings:

(i) a primary operator shall manually input information required by Subsection 38-1-31(2)(a);

(ii) a secondary operator shall independently input the construction project permit number and original contractor name;

(iii) the designated agent shall automatically compare all entries from the primary and secondary operators for consistency;

(iv) following the above procedures, the designated agent shall visually inspect at least 5% of all notices created by alternate filing; and

(v) these standards are to be met prior to Internet publication.

R156-38b-506. Dates of Filings.

The official filing date of a particular filing shall be determined as follows:

(1) In the case of an electronic filing, it shall be the date the SCR accepts a filing input by the person making the filing and makes available a payment receipt to the person making the filing.

(2) In the case of an alternate method filing, it shall be the date upon which the designated agent received a filing that was ultimately accepted into the SCR including content requirements and payment.

R156-38b-507. Status of and Process for Filings Not Accepted by the SCR.

(1) A filing that is not accepted by the SCR shall not be considered to be filed.

(2) The SCR shall electronically indicate to a person whose electronic filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The SCR shall allow the person making the electronic filing attempt to correct the defect or defects, if possible.

(3) The designated agent shall notify a person whose alternate method filing is not accepted that the filing is not accepted and the reason or reasons why it is not accepted. The designated agent shall allow the person making the alternate filing to correct the defect or defects.

(4) A fee payment received with a filing submitted by alternate process that is not accepted shall be retained by the designated agent as the processing fee for handling the incomplete filing.

(5) For auditing purposes, the SCR shall maintain a record of all processing fees received with filings submitted by alternate process that are not accepted.

R156-38b-508. Correction of Filings.

(1) A person who submits a filing may submit a correction of the filing electronically or by alternate filing.

(2) A correction of filing shall not require a new fee payment unless submitted by alternate process or by a method of electronic process that requires manual input by the designated agent.

(3) A correction of filing shall not affect the date of filing for the filing being corrected. The date of filing for the correction of filing shall be as specified in Section R156-38b-506.

(4) Notification of the correction of filing shall be provided to the same persons as required for the filing being corrected.

R156-38b-509. Cancellation of Filings.

(1) In accordance with Subsections 38-1-32(3) and 38-1-33(2), the SCR shall, upon request of a person who filed an accepted preliminary notice or notice of completion, allow:

(i) a person who completed a filing who electronically requests cancellation of the filing to designate the filing as canceled; and

(ii) a person who completed a filing who by alternate process requests cancellation of the filing to have the filing placed in a canceled by the designated agent.

(2) Notification of the cancellation of a filing shall be provided to the same persons as required for the original successful filing.

(3) A canceled filing shall indicate that the filing is no longer given effect.

(4) A canceled filing may not be restored, but must be filed as a new filing in accordance with Sections 38-1-32 or 38-1-33.

R156-38b-510. Data Contained in the SCR.

The SCR is intended as a public repository of the information contained in the filings required or permitted by law. The SCR has the responsibility to post but not validate the accuracy, suitability or coherence of the information received in filings included within the SCR.

R156-38b-601. Fee Payment Methods.

(1) Pay-as-you-go Account. Payments may be made online by a credit card transaction in the amount established by the Division in collaboration with the designated agent. For alternate method filings, users will have the option of sending in a check or credit card information with their filing.

(2) Monthly Accounts. Payments may be made by a monthly account as specified by the Division in collaboration with the designated agent, as follows:

(i) an account in which the designated agent charges monthly fees to a credit card or bank account designated and authorized by the registered user; or

(ii) an account, guaranteed by a credit card, in which the designated agent sends a monthly invoice to be paid by the registered user within 30 days.

R156-38b-602. Transaction Receipts.

(1) In accordance with Subsection 38-1-27(2)(g), the SCR shall make available a transaction receipt upon acceptance of a filing into the SCR. The receipt shall indicate:

(a) the amount of any fee payment being processed;

(b) that the filing is accepted by the SCR;

(c) the date and time of the filing's acceptance; and

(d) the content of the accepted filing.

(2) It shall be the responsibility of the person making an electronic filing to print out a transaction receipt, if the person wishes a hard copy of the receipt.

(3) The designated agent shall send a transaction receipt to a person who submits a filing by alternate method that is accepted.

R156-38b-603. Fee Payment Accounting.

The designated agent shall be responsible for keeping accurate records to account for all fee payments, including filing fee payments and registration payments for access to SCR data. The designated agent shall make its accounting records available to the Division upon notification for auditing purposes.

R156-38b-604. Fee Payment Collection.

The designated agent shall be responsible for conducting or contracting for all fee payment collection activities and shall document or require to be documented such activities. The designated agent shall make its collection activity records available to the Division upon notification, for auditing purposes.

R156-38b-701. Indexing of State Construction Registry.

The SCR shall be indexed in accordance with Subsection 38-1-27(3)(b).

R156-38b-702. Archiving Requirements.

(1) In accordance with Subsection 38-1-30(4)(a), the designated agent shall archive the SCR computer data files semi-annually for auditing purposes.

(2) In accordance with Subsection 38-1-30(4)(c), filings shall be archived as follows:

(a) one year after the day on which a notice of completion is accepted into the SCR;

(b) if no notice of completion is filed, two years after the last filing activity for a project; or

(c) one year after the day on which a filing is canceled under Subsection 38-1-32(3)(c) or 38-1-33(2)(c).

(3) For purposes of this section, "archive" means to preserve an original or a copy of computer data files and filings separate from the active SCR.

(4) The designated agent shall maintain a transaction log of archived filings and make it available to the Division upon request for auditing purposes.

R156-38b-703. SCR Record Classification.

With the exception of any data that is subclassified as a private record, the SCR shall be classified by the Division under Title 63G, Chapter 2, Government Records Access and Management Act (GRAMA), as a public record series.

R156-38b-704. Registered User Access to SCR Data.

In accordance with Subsections 38-1-27(2) and (3), and 38-1-30(3), construction projects in the SCR shall be accessible to an interested person who has registered with the SCR and has been assigned a unique user ID and password to gain access to the SCR.

R156-38b-705. Public Access to SCR Data.

Requests for public access to SCR data shall be handled in accordance with Subsection 38-1-27(5).

KEY: electronic preliminary lien filing, notice of commencement, preliminary notice, notice of completion
August 22, 2006 38-1-30(3)

R156. Commerce, Occupational and Professional Licensing.
R156-40. Recreational Therapy Practice Act Rules.
R156-40-101. Title.

These rules are known as the "Recreational Therapy Practice Act Rules".

R156-40-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or these rules:

(1) "Approved graduate degree in recreation therapy or a graduate degree with an approved emphasis in recreation therapy", as used in Subsection 58-40-5(1)(a)(i), means an earned graduate degree which includes a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in recreation therapy.

(2) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the National Council for Therapeutic Recreation Certification.

(3) "Full-time, on-site", as used in Subsections 58-40-5(3)(c), 58-40-6(3)(a)(i) and (3)(b)(i), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

(4) "Maintain the on-going documentation", as used in Subsection 58-40-6(3)(b), means:

(a) collecting data for the assessment process;

(b) documenting the on-going treatment or intervention provided to clients according to the treatment plan; and

(c) providing periodic review of client status according to agency regulations.

(5) "MTRS" means a person licensed as a master therapeutic recreation specialist.

(6) "NCTRC" means the National Council for Therapeutic Recreation Certification.

(7) "Supervision", as used in Subsections 58-40-5(3)(c), 58-40-6(1)(a), (2)(b), (3)(a)(i) and (3)(b)(i), means full-time, on-site oversight by a MTRS or TRS of the recreation therapy services offered.

(8) "Supervision of a temporary TRS", as used in Subsection R156-40-302e(d), means that the MTRS or TRS supervisor is responsible for the recreation therapy activities performed by the temporary TRS and will review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the MTRS or TRS in the treatment plan.

(9) "TRS" means a person licensed as a therapeutic recreation specialist.

(10) "TRT" means a person licensed as a therapeutic recreation technician.

(11) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

R156-40-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 40.

R156-40-104. 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.

R156-40-302a. Qualifications for Licensure - Education Requirements.

In accordance with Section 58-40-5, the educational requirements for licensure include:

(1) A MTRS applicant shall:

(a) have a current NCTRC certification as a CTRS or a current license as a TRS; and

(b) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.

(2) A TRS applicant shall:

(a) have a current NCTRC certification as a CTRS; and

(b) document completion of the education and practicum requirements for licensure as a TRS.

(3) A TRT applicant shall:

(a) have an approved educational course in therapeutic recreation taught by a MTRS, as required by Subsection 58-40-5(3)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

(i) theories and concepts of recreation therapy;

(ii) the therapeutic recreation process;

(iii) characteristics of illness and disability and their effects on leisure;

(iv) medical and psychiatric terminology including psychiatric, pharmacology and abbreviations;

(v) ethics;

(vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and

(vii) health and safety.

R156-40-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Section 58-40-5, the experience requirements for licensure include:

(1) A MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-5(1)(a)(ii), which means an individual must work as a TRS in Utah in a paid position practicing recreation therapy and/or work outside of Utah as a CTRS in a paid position practicing recreation therapy as defined in Subsection 58-40-2(4)(a) and (b) for 4000 hours.

(2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-5(2)(b), which means a practicum verified on the degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-5(3)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed MTRS or TRS supervisor, that includes:

(a) a minimum of ten hours of face to face supervision by the MTRS or TRS supervisor;

(b) training in the therapeutic recreation process as defined in Subsections 58-40-2(4)(a) and (b);

(c) interdisciplinary contact;

(d) administration contact; and

(e) community relations.

R156-40-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-40-5(1)(e), 58-40-5(2)(f) and 58-40-5(3)(g), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as a MTRS or TRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as a CTRS.

(2) Applicants for licensure as a TRT shall pass the Utah Recreation Therapy Theory Examination for TRT with a minimum passing score of 70%.

R156-40-302d. Qualifications for Supervision.

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-6(3)(a)(i) and (3)(b)(i), means that the MTRS or TRS supervisor is responsible for:

(1) providing on-site training, observation, direction and evaluation, as defined in Subsection 58-40-2(4)(b), to include:

(a) reviewing the recreation therapy intervention

performed by the TRT as defined by the treatment plan;

(b) demonstrating periodic review and evaluation of ongoing documentation;

(c) reviewing the recreation therapy program according to administrative and governing regulations; and

(d) reviewing and evaluating adherence to the standards of the profession.

R156-40-302e. Qualifications for Temporary License as a TRS - Supervision Required.

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay a fee determined by the department under Section 63J-1-303;

(c) meet all the requirements for licensure, except passing the NCTRC examination; and

(d) practice recreation therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102(8).

(2) The temporary license will not be issued for a period greater than ten months.

(3) The temporary license will not be renewed or extended for any purpose.

R156-40-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 40 is established by rule in Section R156-1-308.

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

KEY: licensing, recreational therapy, recreation therapy
September 14, 2006 58-40-1
Notice of Continuation September 19, 2006 58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-46b. Division Utah Administrative Procedures Act Rules.
R156-46b-101. Title.

These rules are known as the "Division Utah Administrative Procedures Act Rules."

R156-46b-103. Authority - Purpose.

These rules are adopted by the division under the authority of Title 63G, Chapter 46b, Subsection 58-1-108(1), and Subsection 58-1-106(1)(a). The purposes of these rules include:

(a) classifying division adjudicative proceedings;

(b) clarifying the identity of presiding officers at division adjudicative proceedings; and

(c) defining procedures for division adjudicative proceedings which are consistent with the requirements of Titles 58 and 63G and Rule R151-46b.

R156-46b-201. Formal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as formal adjudicative proceedings:

(a) denial of application for renewal of licensure;

(b) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(5);

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(b);

(d) special appeals board held in accordance with Section 58-1-402;

(e) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;

(f) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (e);

(g) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as a formal adjudicative proceeding; and

(h) board of appeal held in accordance with Subsection 58-56-8(3).

(2) The following adjudicative proceedings initiated by a Notice of Agency Action are classified as formal adjudicative proceedings:

(a) disciplinary proceedings which result in the following sanctions:

(i) revocation of licensure;

(ii) suspension of licensure;

(iii) restricted licensure;

(iv) probationary licensure;

(v) issuance of a cease and desist order except when imposed by citation or by an order in a contested citation hearing;

(vi) administrative fine except when imposed by citation or by an order in a contested citation hearing; and

(vii) issuance of a public reprimand; and

(b) unilateral modification of a disciplinary order.

R156-46b-202. Informal Adjudicative Proceedings.

(1) The following adjudicative proceedings initiated by a request for agency action are classified as informal adjudicative proceedings:

(a) approval of application for initial licensure, renewal or reinstatement of licensure, or relicensure;

(b) denial of application for initial licensure or relicensure;

(c) denial of application for reinstatement of licensure submitted pursuant to Subsection 58-1-308(6)(a);

(d) denial of application for reinstatement of restricted, suspended, or probationary licensure during the term of the restriction, suspension, or probation;

(e) approval or denial of application for inactive or emeritus licensure status;

(f) board of appeal under Subsection 58-56-8(3);

(g) approval or denial of claims against the Residence Lien Recovery Fund created under Title 38, Chapter 11, except those in which the claimant is precluded from obtaining the required civil judgment or administrative order against the nonpaying party involved in the claim because the nonpaying party filed bankruptcy;

(h) payment of approved claims against the Residence Lien Recovery Fund described in Subparagraph (g);

(i) approval or denial of request to surrender licensure;

(j) approval or denial of request for entry into diversion program under Section 58-1-404;

(k) matters relating to diversion program;

(l) contested citation hearing held in accordance with Subsection 58-55-503(4)(b);

(m) approval or denial of request for modification of disciplinary order;

(n) declaratory order determining the applicability of statute, rule or order to specified circumstances, when determined by the director to be conducted as an informal adjudicative proceeding;

(o) approval or denial of request for correction of procedural or clerical mistakes;

(p) approval or denial of request for correction of other than procedural or clerical mistakes; and

(q) all other requests for agency action permitted by statute or rule governing the Division not specifically classified as formal adjudicative proceedings in Subsection R156-46b-201(1).

(2) The following adjudicative proceedings initiated by a notice of agency action or request for agency action are classified as informal adjudicative proceedings:

(a) disciplinary proceeding seeking exclusively the issuance of a private reprimand;

(b) nondisciplinary proceeding which results in cancellation of licensure;

(c) disciplinary sanctions imposed in a memorandum of understanding with an applicant for licensure; and

(d) termination of diversion agreements.

R156-46b-301. Designation.

The presiding officers for division adjudicative proceedings are as defined at Subsection 63G-4-103(1)(h) and as specifically established by Section 58-1-109 and by Section R156-1-109.

R156-46b-401. In General.

(1) The procedures for formal division adjudicative proceedings are set forth in Sections 63G-4-204 through 63G-4-208, Rule R151-46b-1, and this rule.

(2) The procedures for informal division adjudicative proceedings are set forth in Section 63G-4-203, Rule R151-46b-1, and this rule.

R156-46b-403. Evidentiary Hearings in Informal Adjudicative Proceedings.

(1) Evidentiary hearings are not required for informal division adjudicative proceedings unless required by statute or rule, or permitted by rule and requested by a party within the time prescribed by rule.

(2) Unless otherwise provided, a request for an evidentiary hearing permitted by rule must be submitted in writing no later than 20 days following the issuance of the notice of agency action if the proceeding was initiated by the division, or together with the request for agency action if the proceeding was not

initiated by the division.

(3) Evidentiary hearings are required for the following informal proceedings:

(a) R156-46b-202(1)(l), contested citation hearing held in accordance with Subsection 58-55-503(4)(b); and

(b) R156-46b-202(1)(f), board of appeal held in accordance with Subsection 58-56-8(3).

(4) Evidentiary hearings are permitted for the following informal proceedings:

(a) R156-46b-202(1)(k), matters relating to a diversion program; and

(b) R156-46b-202(2)(a), issuance of a private reprimand.

(5) Unless otherwise agreed by the parties, no evidentiary hearing shall be held in an informal adjudicative proceeding unless timely notice of the hearing has been served upon the parties as required by Subsection 63G-4-203(1)(d). Timely notice means service of a Notice of Hearing upon all parties not later than ten days prior to any scheduled evidentiary hearing.

(6) Parties shall be permitted to testify, present evidence, and comment on the issues at an evidentiary hearing in a division informal adjudicative proceeding.

R156-46b-404. Orders in Informal Adjudicative Proceedings.

(1) Orders issued in division informal adjudicative proceedings shall comply with Subsection 63G-4-203(1)(i).

(2) Issuance of a license or approval of related requests in response to a request for agency action is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i).

(3) Issuance of a letter denying a license or related requests is sufficient to satisfy the requirements of Subsection 63G-4-203(1)(i). The letter must explain the reasons for the denial and the rights of the parties to seek agency review, including the time limits for requesting review.

(4) Unless otherwise specified by the director, the fact finder who serves as the presiding officer at an evidentiary hearing convened in division informal adjudicative proceedings shall issue a final order.

(5) Orders issued in division informal adjudicative proceedings in which an evidentiary hearing is convened shall comply with the requirements of Subsection 63G-4-208(1).

R156-46b-405. Informal Agency Advice.

(1) The division may issue an informal guidance letter in response to a request for advice unless the request specifically seeks a declaratory order.

(2) A notice shall appear in the informal guidance letter notifying the subject of the letter that the letter is an informal guidance letter only and is not intended as a formal declaratory order. The notice shall also provide the citation where the requirements which govern declaratory orders are found.

KEY: administrative procedures, government hearings, occupational licensing
November 2, 2004 63G-4-102(6)
Notice of Continuation April 25, 2006 58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-49. Dietitian Certification Act Rule.
R156-49-101. Title.

This rule is known as the "Dietitian Certification Act Rule".

R156-49-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 49, as used in Title 58, Chapters 1 and 49 or this rule:

(1) "CDR" means the Commission on Dietetic Registration which is the credentialing agency for the American Dietetic Association.

(2) "Competency examination", as used in Subsection 58-49-4(4), means the Registration Examination for Dietitians established by the CDR.

(3) "Internship or pre-planned professional baccalaureate or post-baccalaureate experience", as used in Subsection 58-49-4(3), means completion of the supervised practice requirements established by the CDR.

(4) "Under the supervision of a certified dietitian", as used in Subsection R156-49-304(1)(d), means that the supervising certified dietitian is responsible for the dietetic activities performed by the temporary certificate holder.

R156-49-103. 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 49.

R156-49-104. 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.

R156-49-302. Qualification for Licensure - CDR Registered Dietitian.

In accordance with Section 58-49-4, CDR registration as a Registered Dietitian is documentation that an individual has completed the requirements of Subsection 58-49-4(2), (3) and (4).

R156-49-303. 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 49 is established by rule in Section R156-1-308.

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

R156-49-304. Temporary Dietitian Certificate - Supervision Required.

(1) In accordance with Section 58-1-303, an applicant for temporary dietitian certification shall:

(a) submit an application for temporary dietitian certification in the form prescribed by the division;

(b) pay a fee determined by the department under Section 63J-1-303;

(c) meet all the requirements for certification, except passing the CDR Registration Examination; and

(d) practice dietetics only under the supervision of a certified dietitian.

(2) The temporary certificate will not be issued for a period greater than 10 months.

(3) The temporary certificate will not be renewed or extended for any purpose.

KEY: licensing, dietitians

October 19, 1998	**58-49-1**
Notice of Continuation March 24, 2008	**58-1-106(1)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-55d. Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules.
R156-55d-101. Title.

These rules are known as the "Utah Construction Trades Licensing Act Burglar Alarm Licensing Rules".

R156-55d-102. Definitions.

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

(1) "Individual employed" as used in Subsection 58-55-102(2), means an individual who has an agreement with an alarm business or company to perform alarm systems business activities under the direct supervision or control of the alarm business or company and for whose alarm system business activities the alarm company is legally liable and who has or could have access to knowledge of specific applications.

(2) "Knowledge of specific applications" as used in Subsection R156-55d-102(1), means obtaining specific information about any premises which is protected or is to be protected by an alarm system. This knowledge is gained through access to records, on-site visits or otherwise gathered through working for an alarm business or company.

(3) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 55, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-55-502.

R156-55d-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the Division to administer Title 58, Chapter 55.

R156-55d-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.

R156-55d-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as an alarm company shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing:

(i) the fingerprints of the applicant's qualifying agent;

(ii) the fingerprints of each of the applicant's officers, directors, shareholders owning more than 5% of the stock of the company, partners, and proprietors; and

(iii) the fingerprints of each of the applicant's management personnel who will have responsibility for any of the company's operations as an alarm company within the state;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, for each individual for whom fingerprints are required under Subsection (1)(b); and

(d) a copy of the driver license or Utah identification card for each individual for whom fingerprints are required under Subsection (1)(b).

(2) An application for license as an alarm company agent shall include:

(a) a record of criminal history or certification of no record of criminal history with respect to the applicant, issued by the Bureau of Criminal Identification, Utah Department of Public Safety;

(b) two fingerprint cards containing the fingerprints of the applicant;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and the Bureau of Criminal Identification, Utah Department of Public Safety, regarding the applicant; and

(d) a copy of the driver license or Utah identification card for the applicant.

R156-55d-302c. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3) the experience requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(h)(i) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) have not less than 6,000 hours of experience in the alarm company business of which not less than 2,000 hours shall have been in a management, supervisory, or administration position; or

(2) have not less than 6,000 hours of experience in the alarm company business combined with not less than 2,000 hours of management, supervisory, or administrative experience in a lawfully and competently operated construction company.

R156-55d-302d. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for an alarm company applicant's qualifying agent in Subsection 58-55-302(3)(h)(i)(C) are defined, clarified, or established in that an individual to be approved as a qualifying agent of an alarm company shall:

(1) pass the Utah Burglar Alarm Law and Rules Examination with a score of not less than 75%; and

(2) pass the Burglar Alarm Qualifier Examination with a score of not less than 75%.

R156-55d-302e. Qualifications for Licensure - Insurance Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as an alarm company in Section 58-55-302(3)(h)(ix)(A)are defined, clarified, or established as follows:

(1) an applicant for an alarm company license shall file with the Division a "certificate of insurance" issued by an insurance company or agent licensed in the state demonstrating the applicant is covered by comprehensive public liability coverage in an amount of not less than $300,000 for each incident, and not less than $1,000,000 in total;

(2) the terms and conditions of the policy of insurance coverage shall provide that the Division shall be notified if the insurance coverage terminates for any reason; and

(3) all licensed alarm companies shall have available on file and shall present to the Division upon demand, evidence of insurance coverage meeting the requirements of this section for all periods of time in which the alarm company is licensed in this state as an alarm company.

R156-55d-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-55-302(3)(h)(vi) and (3)(i), the following is a list of criminal convictions which may disqualify a person from obtaining or holding a burglar alarm company or a burglar alarm company agent's license:

(a) crimes against a person as defined in Title 76, Chapter 5, Parts 1 and 2;

(b) theft/larceny, including retail theft, as defined in Title 76, Chapter 6;

(c) sex offenses as defined in Title 76, Chapter 5, Part 4;

(d) any offense involving controlled substances;
(e) fraud;
(f) forgery;
(g) perjury, obstructing justice and tampering with evidence;
(h) conspiracy to commit any of the offenses listed herein;
(i) burglary
(j) escape from jail, prison or custody;
(k) false or bogus checks;
(l) pornography;
(m) any attempt to commit any of the above offenses; or
(n) two or more convictions for driving under the influence of alcohol within the last three years.

(2) Applications for licensure or renewal of licensure shall be considered on a case by case basis taking into consideration the following:
(a) the conduct involved;
(b) the potential or actual injury caused by the applicant's conduct; and
(c) the existence of aggravating or mitigating factors.

R156-55d-303. Renewal Cycle - Procedure.

(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 R156-1-308.

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

R156-55d-304. Renewal Requirement - Demonstration of Clear Criminal History.

(1) In accordance with Subsections 58-1-203(7), 58-1-308(3)(b), and 58-55-302(4), there is created as a requirement for renewal or reinstatement of any license of an alarm company or alarm company agent a demonstration of clear criminal history for each alarm company qualifying agent and for each alarm company agent.

(2) Each application for renewal or reinstatement of a license of an alarm company shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company's qualifying agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the Division.

(3) Each application for renewal or reinstatement of a license of an alarm company agent shall be accompanied by a record of criminal history or certification of no record of criminal history with respect to the alarm company agent, issued by the Bureau of Criminal Identification, Utah Department of Public Safety within 120 days prior to submission of the application for renewal or reinstatement to the Division.

R156-55d-306. Change of Qualifying Agent.

In accordance with Subsection 58-55-304(6), an alarm company whose qualifier has ceased association or employment shall file with the Division an application for change of qualifier on forms provided by the Division accompanied by a record of criminal history or certification of no record of criminal history, fee, fingerprint cards, and copy of an identification as required under Subsection R156-55d-302a(1).

R156-55d-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing as an alarm company to notify the Division of the cessation of performance of its qualifying agent or failing to replace its qualifying agent as required under Section R156-55d-306;

(2) failing as an alarm company agent to carry or display a copy of the licensee's license as required under Section R156-55d-601;

(3) failing as an alarm agent to carry or display a copy of his National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training as required under Section R156-55d-603;

(4) employing as an alarm company a qualifying agent or alarm company agent knowing that individual has engaged in conduct inconsistent with the duties and responsibilities of an alarm company agent.

(5) failing to comply with operating standards established by rule;

(6) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or a settlement or agreement whereby an individual has entered into participation as a first offender, or an action of deferred adjudication, or other program or arrangement where judgment or conviction is withheld;

(7) making false, misleading, deceptive, fraudulent, or exaggerated claims with respect to the need for an alarm system, the benefits of the alarm system, the installation of the alarm system or the response to the alarm system by law enforcement agencies; and

(8) an alarm business or company having a residential or commercial false alarm rate 100% above the average of the residential or commercial false alarm rate of the municipality or county jurisdiction in which the alarm business or company's alarm systems are located.

R156-55d-503. Administrative Penalties.

The administrative penalties defined in Section R156-55a-503 of the Utah Construction Trades Licensing Act Rules are hereby adopted and incorporated by reference.

R156-55d-601. Display of License.

An alarm company agent shall carry on his person at all times while acting as an alarm company agent a copy of his license and shall display that license upon the request of any person to whom the agent is representing himself as an alarm company agent, and upon the request of any law enforcement officer or representative of the Division.

R156-55d-602. Operating Standards - Alarm Equipment.

In accordance with Subsection 58-55-308(1), the following standards shall apply with respect to equipment and devices assembled as an alarm system:

(1) An alarm system installed in a business or public building shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for alarm system equipment.

(2) An alarm system installed in a residence shall utilize equipment equivalent to or exceeding minimum Underwriters Laboratories, or the National Electrical Code standards for residence alarm systems.

R156-55d-603. Operating Standards - Alarm Installer.

In accordance with Subsection 58-55-308(1), the operating standards for the installer of an alarm system include the following:

(1) An alarm agent must be fully trained in the installation of an alarm system in accordance with the National Burglar and Fire Alarm Association (NBFAA) level one certification or equivalent training requirements prior to the alarm agent installing any alarm system in any residence, business, or public building within the state.

(2) An alarm agent upon receiving initial licensure may

work under the direct supervision of an alarm agent who has level one certification for a period of six months from the time of initial licensure without being required to hold a level one certificate.

(3) An alarm agent shall carry evidence of the NBFAA level one certification or equivalent training with him at all times.

(4) An alarm agent holding licensure under Title 58, Chapter 55 shall have until June 30, 2001 to comply with the NBFAA level one certification or equivalent training requirement.

R156-55d-604. Operating Standards - Alarm System User Training.

In accordance with Subsection 58-55-308(1), the operating standards for the installation of an alarm system including the following:

(1) Upon completion of the installation of an alarm system by an alarm business or company, the installing alarm agent shall review with the alarm user, or in the case of a company, its employees, the operation of the alarm system to ensure that the user understands the function of the alarm system.

(2) The alarm business or company shall maintain training records, including installer and user false alarm prevention checklists, the dates of the training and the location of the training on each alarm system installed. These records shall be maintained in the files of the alarm business or company for at least three years from the date of the training.

KEY: licensing, alarm company, burglar alarms

October 18, 2005	**58-55-101**
Notice of Continuation June 28, 2005	**58-1-106(1)(a)**
	58-1-202(1)(a)
	58-55-302(3)(h)
	58-55-302(3)(i)
	58-55-302(4)
	58-55-308

R156. Commerce, Occupational and Professional Licensing.
R156-61. Psychologist Licensing Act Rule.
R156-61-101. Title.

This rule is known as the "Psychologist Licensing Act Rule."

R156-61-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 61, as used in Title 58, Chapters 1 and 61 or this rule:

(1) "Approved diagnostic and statistical manual for mental disorders" means the "Diagnostic and Statistical Manual of Mental Disorders", 4th edition Text Revision (DSM-IV-TR), published by the American Psychiatric Association, or the ICD-10-CM published by Medicode or the American Psychiatric Association.

(2) "CoA" means Committee on Accreditation of the American Psychological Association.

(3)(a) "Predoctoral internship" refers to a formal training program that meets the minimum requirements of the Association of Psychology Postdoctoral and Internship Centers (APPIC) offered to culminate a doctoral degree in clinical, counseling, or school psychology.

(b) A training program may be a full-time one year program or a half-time two year program.

(4)(a) "Program accredited by the CoA", as used in Subsections R156-61-302a(1), means a psychology department program that is accredited at the time of completion of a doctoral psychology degree.

(b) No other accredited educational program at a degree granting institution is considered to meet the requirement in Subsections R156-61-302a(1), and in no case are departments or institutions of higher education considered accredited.

(5)(a) "Program of respecialization", as used in Subsection R156-61-302a(3), is a formal program designed to prepare someone with a doctoral degree in psychology with the necessary skills to practice psychology.

(b) The respecialization activities must include substantial requirements that are formally offered as an organized sequence of course work and supervised practicum leading to a certificate (or similar recognition) by an educational body that offers a doctoral degree qualifying for licensure in the same area of practice as that of the certificate.

(6) "Qualified faculty", as used in Subsection 58-1-307(b), means a university faculty member who provides pre-doctoral supervision of clinical or counseling experience in a university setting who:

(i) is licensed in Utah as a psychologist; and

(ii) is training students in the context of a doctoral program leading to licensure.

(7) "Residency program", as used in Subsection 58-61-301(1)(b), means a program of post-doctoral supervised clinical training necessary to meet licensing requirements as a psychologist.

(8)(a) "Psychology training", as used in Subsection 58-61-304(1)(e), means practical training experience providing direct services in the practice of mental health therapy and psychology under supervision. All activities in full-time internships and full-time post-doctoral positions devoted solely to mental health delivery meet this definition.

(b) Activities not directly related to the practice of psychology, even if commonly performed by psychologists, do not meet the definition of psychology training under Subsection 58-61 -304(1)(e). Examples of ineligible activities include psychology coursework, analog clinical activities (e.g. role plays), activities required for business purposes (e.g. billing), supervision of others engaged in activities other than practice of psychology (e.g. supervising adolescents in wilderness settings), and activities commonly performed by non-psychologists (e.g. teaching of psychology on topics not of a professional nature).

R156-61-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1) to enable the division to administer Title 58, Chapter 61.

R156-61-104. 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.

R156-61-201. Advisory Peer Committee Created - Membership - Duties.

(1) There is hereby enabled in accordance with Subsection 58-1-203(1)(f), the Ethics Committee as an advisory peer committee to the Psychology Licensing Board on either a permanent or ad hoc basis consisting of members licensed in good standing as psychologists qualified to engage in the practice of mental health therapy, in number and area of expertise necessary to fulfill the duties and responsibilities of the committee as set forth in Subsection (3).

(2) The committee shall be appointed and serve in accordance with Section R156-1-205.

(3) The duties and responsibilities of the committee shall include assisting the division in its duties, functions, and responsibilities defined in Section 58-1-202 as follows:

(a) upon the request of the division, review reported violations of Utah law or the standards and ethics of the profession by a person licensed as a psychologist and advise the division if allegations against or information known about the person presents a reasonable basis to initiate or continue an investigation with respect to the person;

(b) upon the request of the division provide expert advice to the division with respect to conduct of an investigation; and

(c) when appropriate serve as an expert witness in matters before the division.

R156-61-302a. Qualifications for Licensure - Education Requirements.

(1) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology degree that qualifies an applicant for licensure as a psychologist shall be accredited by the CoA.

(a) An applicant must graduate from the actual program that is accredited by CoA. No other program within the department or institution qualifies unless separately accredited.

(b) If a transcript does not uniquely identify the qualifying CoA accredited degree program, it is the responsibility of the applicant to provide signed, written documentation from the program director or department chair that the applicant did indeed graduate from the qualifying accredited degree program.

(2) In accordance with Subsection 58-61-304(1)(d), an institution or program of higher education awarding a psychology doctoral degree that is not accredited by CoA must meet the following criteria in order to qualify an applicant for licensure as a psychologist:

(a) if located in the United States or Canada, be accredited by a professional accrediting body approved by the Council for Higher Education of the American Council on Education, at the time the applicant received the required earned degree;

(b) if located outside of the United States or Canada, be equivalent to an accredited program under Subsection (a), and the burden to demonstrate equivalency shall be upon the applicant;

(c) result from successful completion of a program conducted or based on a college or university campus;

(d) result from a program which includes at least one year of residence at the educational institution;

(e) if located in the United States or Canada, be an institution having a doctoral psychology program meeting "Designation" criteria, as recognized by the Association of State

and Provincial Psychology Boards/National Register Joint Designation Committee, at the time the applicant received the earned degree, or if located outside of the United States or Canada, meet the same criteria by which a program is recognized by the Association of State and Provincial Psychology Boards at the time the applicant received the earned degree;

(f) have an organized and clearly identified sequence of study to provide an integrated educational experience appropriate to preparation for the professional practice of psychology and licensure, and shall clearly identify those persons responsible for the program with clear authority and responsibility for the core and specialty areas regardless of whether or not the program cuts across administrative lines in the educational institution;

(g) clearly identify in catalogues or other publications the psychology faculty, demonstrate that the faculty is sufficient in number and experience to fulfill its responsibility to adequately educate and train professional psychologists, and demonstrate that the program is under the direction of a professionally trained psychologist;

(h) grant earned degrees resulting from a program encompassing a minimum of three academic years of full time graduate study with an identifiable body of students who are matriculated in the program for the purpose of obtaining a doctoral degree;

(i) include supervised practicum, internship, and field or laboratory training appropriate to the practice of psychology;

(j) require successful completion of a minimum of two semester/three quarter hour graduate level core courses including:

(i) scientific and professional ethics and standards;

(ii) research design and methodology;

(iii) statistics; and

(iv) psychometrics including test construction and measurement;

(k) require successful completion of a minimum of two graduate level semester hours/three graduate level quarter hours in each of the following knowledge areas. Course work must have a theoretical focus as opposed to an applied, clinical focus:

(i) biological bases of behavior such as physiological psychology, comparative psychology, neuropsychology, psychopharmacology, perception and sensation;

(ii) cognitive-affective bases of behavior such as learning, thinking, cognition, motivation and emotion;

(iii) social and cultural bases of behavior such as social psychology, organizational psychology, general systems theory, and group dynamics; and

(iv) individual differences such as human development, personality theory and abnormal psychology; and

(l) require successful completion of specialty course work and professional education courses necessary to prepare the applicant adequately for the practice of psychology.

(3) An applicant whose psychology doctoral degree training is not designed to lead to clinical practice or who wishes to practice in a substantially different area than the training of the doctoral degree shall complete a program of respecialization as defined in Subsection R156-61-102(5), and shall meet requirements of Subsections R156-61-302a(2).

(4) In accordance with Subsection 58-61-304(1)(d), an applicant who has received a doctoral degree in psychology by completing the requirements of Subsections R156-61-302a(1)(a) through (2)(i), without completing the core courses required under Subsection R156-61-302a(2)(j), or the specialty course work required in Subsection (2)(l) may be allowed to complete the required course work post-doctorally. The supplemental course work shall consist of formal graduate level work meeting the requirements of Subsections (2)(j) and (2)(l) in regularly offered and scheduled classes. University based directed reading courses may be approved at the discretion of the board.

(5) The date of completion of the doctoral degree shall be the graduation date listed on the official transcript.

R156-61-302b. Qualifications for Licensure - Experience Requirements.

(1) Psychology training of a minimum of 4,000 hours qualifying an applicant for licensure as a psychologist under Subsection 58-61-304(1)(e), and mental health therapy training under Subsection 58-61-304(1)(f), to be approved by the division in collaboration with the board, shall:

(a) be completed in not less than two years;

(b) be completed in not more than four years following the awarding of the doctoral degree;

(c) be completed while the applicant is enrolled in an approved doctoral program or licensed as a certified psychology resident;

(d) be completed while the applicant is under the supervision of a qualified psychologist meeting the requirements under Section R156-61-302d;

(e) supervision by a qualified faculty member who is not an approved psychology training supervisor in accordance with Subsection R156-61-302d, may not be credited toward the 4000 hours of psychology doctoral clinical training;

(f) be completed as part of a supervised psychology training program as defined in Subsection R156-61-102(4) that does not exceed:

(i) 40 hours per week for full-time internships and full-time post doctoral positions; or

(ii) 20 hours of part-time internships and part-time post doctoral positions; and

(g) be completed while the applicant is under supervision of a minimum of one hour of supervision for every 20 hours of pre-doctoral training and experience and one hour for every 40 hours of post-doctoral training and experience.

(2) In accordance with Subsection 58-61-301(1)(b), an individual engaged in a post-doctoral residency program of supervised clinical training shall be certified as a psychology resident.

(3) An applicant for licensure may accrue any portion of the 4000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program.

(4) An applicant who applies for licensure as a psychologist who completes the 4000 hours of psychology doctoral degree training and experience required in Subsection 58-61-304(1)(e) in a pre-doctoral program or post-doctoral residency, and meets qualifications for licensure, may be approved to sit for the examinations, and upon passing the examinations will be issued a psychologist license.

(5) An applicant for licensure as a psychologist who has commenced and completed all or part of the psychology or mental health therapy training requirements under Subsection R156-61-302b(1) outside the state, may receive credit for that training completed outside of the state if it is demonstrated by the applicant that the training is equivalent to the requirements for training under Subsections 58-61-304(1)(e) and (f), and Subsection R156-61-302b(1).

R156-61-302c. Qualifications for Licensure - Examination Requirements.

(1) The examination requirements which must be met by an applicant for licensure as a psychologist under Subsection 58-61-304(1)(g) are:

(a) passing the Examination for the Professional Practice of Psychology (EPPP) developed by the American Association of State Psychology Board (ASPPB) with a passing score as recommended by the ASPPB; and

(b) passing the Utah Psychology Law Examination with a

score of not less than 75%.

(2) A person may be admitted to the EPPP and Utah Law and Rule examinations in Utah only after meeting the requirements under 58-61-305, and after receiving written approval from the division.

(3) If an applicant is admitted to an EPPP examination based upon substantive information that is incorrect and furnished knowingly by the applicant, the applicant shall automatically be given a failing score and shall not be permitted to retake the examination until the applicant submits fees and a correct application demonstrating the applicant is qualified for the examination and adequately explains why the applicant knowingly furnished incorrect information. If an applicant is inappropriately admitted to an EPPP examination because of a division or board error and the applicant receives a passing score, the results of the examination may not be used for licensure until the deficiency which would have barred the applicant for admission to the examination is corrected.

(4) An applicant who fails the EPPP examination three times will only be allowed subsequent admission to the examination after the applicant has appeared before the board, developed with the board a plan of study in appropriate subject matter, and thereafter completed the planned course of study to the satisfaction of the board.

(5) An applicant who is found to be cheating on the EPPP examination or in any way invalidating the integrity of the examination shall automatically be given a failing score and shall not be permitted to retake the examination for a period of at least three years or as determined by the division in collaboration with the board.

(6) In accordance with Section 58-1-203 and Subsection 58-61-304(1)(g), an applicant for the EPPP or the Utah Law and Rule examination must pass the examinations within one year from the date of the psychologist application for licensure. If the applicant does not pass the examinations within one year, the pending psychologist application will be denied. The applicant may continue to register to take the EPPP examination under the procedures outlined in Subsection R156-61-302c(4).

(7) In accordance with Section 58-1-203 and Subsection 58-61-304(2)(d), an applicant for psychologist licensure by endorsement must pass the Utah Law and Rule examination within six months from the date of the psychologist application for licensure. If the applicant does not pass the examination in six months, the pending psychologist application will be denied.

R156-61-302d. Qualifications for Designation as an Approved Psychology Training Supervisor.

In accordance with Subsections 58-61-304(1)(e) and (f), to be approved by the division in collaboration with the board as a supervisor of psychology or mental health therapy training, an individual shall:

(1) be currently licensed in good standing as a psychologist in the jurisdiction in which the supervised training is being performed; and

(2) have practiced as a licensed psychologist for not less than 4,000 hours in a period of not less than two years.

R156-61-302e. Duties and Responsibilities of a Supervisor of Psychology Training and Mental Health Therapist Training.

The duties and responsibilities of a psychologist supervisor are further defined, clarified or established as follows. The psychologist supervisor shall:

(1) be professionally responsible for the acts and practices of the supervisee which are a part of the required supervised training, including supervision of all activities requiring a mental health therapy license;

(2) engage in a relationship with the supervisee in which the supervisor is independent from control by the supervisee, and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised;

(3) supervise not more than three full-time equivalent supervisees unless otherwise approved by the Division in collaboration with the Board;

(4) make themselves available for advice, consultation, and direction consistent with the standards and ethics of the profession and the requirements suggested by the total circumstances including the supervisee's level of training, ability to diagnose patients, and other factors determined by the supervisor;

(5) comply with the confidentiality requirements of Section 58-61-602;

(6) provide timely and periodic review of the client records assigned to the supervisee;

(7) monitor the performance of the supervisee for compliance with laws, standards, and ethics applicable to the practice of psychology;

(8) submit appropriate documentation to the division with respect to work completed by the supervisee evidencing the performance of the supervisee during the period of supervised psychology training and mental health therapist training, including the supervisor's evaluation of the supervisee's competence in the practice of psychology and mental health therapy;

(9) ensure that the supervisee is certified by the Division as a psychology resident, or is enrolled in a psychology doctoral program and engaged in a training experience authorized by the educational program;

(10) ensure the psychologist supervisor is legally able to personally provide the services which the psychologist supervisor is supervising; and

(11) ensure the psychologist supervisor meets all other requirements for supervision as described in this section.

R156-61-302f. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 61, is established by rule in Section R156-1-308.

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

R156-61-302g. License Reinstatement - Requirements.

An applicant for reinstatement of his license after two years following expiration of that license shall be required to:

(1) upon request meet with the board for the purpose of evaluating the applicant's current ability to safely and competently engage in practice as a psychologist and to make a determination of education, experience or examination requirements which will be required before reinstatement;

(2) upon the recommendation of the board, establish a plan of supervision under an approved supervisor which may include up to 4000 hours of psychology and/or mental health therapy training;

(3) take or retake, and pass the Utah Psychology Law Examination; or the EPPP Examination, or both, if it is determined by the board it is necessary to demonstrate the applicant's ability to engage safely and competently in practice as a psychologist; and

(4) complete a minimum of 48 hours of professional education in subjects determined necessary by the board to ensure the applicant's ability to engage safely and competently in practice as a psychologist.

R156-61-302h. Continuing Education.

(1) There is hereby established a continuing professional education requirement for all individuals licensed or certified under Title 58, Chapter 61.

(2) During each two year period commencing on October

1 of each even numbered year:

(a) a licensed psychologist shall be required to complete not less than 48 hours of qualified professional education directly related to the licensee's professional practice;

(b) a certified psychology resident shall be required to complete not less than 24 hours of qualified professional education directly related to professional practice.

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

(4) Qualified 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 psychologist;

(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.

(5) Credit for 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 ten hours per two year period may be recognized for teaching in a college or university, teaching qualified continuing education professional education courses in the field of psychology, or supervision of an individual completing his experience requirement for licensure as a psychologist.

(c) A minimum of six hours per two year period shall be completed in ethics/law.

(d) A maximum of six hours per two year period may be recognized for clinical readings directly related to practice as a psychologist.

(e) A maximum of 18 hours per two year period may be recognized for Internet or distance learning courses that includes an examination, a completion certificate and recognized by the American Psychological Association or a state or province psychological association.

(f) A maximum of six hours per two year period may be recognized for regular peer consultation, review and meetings if properly documented that the peer consultation, review and meetings meet the following requirements:

(i) have an identifiable clear statement of purpose and defined objective for the educational consultation/meeting directly related to the practice of a psychologist;

(ii) are relevant to the licensee's professional practice;

(iii) are presented in a competent, well organized manner consistent with the stated purpose and objective of the consultation/meeting;

(iv) are prepared and presented by individuals who are qualified by education, training and experience; and

(v) have associated with it a competent method of registration of individuals who attended.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of four years after the 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 professional education to demonstrate it meets the requirements under this section.

R156-61-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violation of any provision of the "Ethical Principles of Psychologists and Code of Conduct" of the American Psychological Association (APA) as adopted by the APA, August 2002 edition, which is adopted and incorporated by reference;

(2) violation of any provision of the "ASPPB Code of Conduct" of the Association of State and Provincial Psychology Boards (ASPPB) as adopted by the ASPPB, 2005 edition, which is adopted and incorporated by reference;

(3) acting as a supervisor or accepting supervision of a supervisor without complying with or ensuring the compliance with the requirements of Sections R156-61-302d and R156-61-302e;

(4) engaging in and aiding or abetting conduct or practices which are dishonest, deceptive or fraudulent;

(5) engaging in or aiding or abetting deceptive or fraudulent billing practices;

(6) failing to establish and maintain appropriate professional boundaries with a client or former client;

(7) engaging in dual or multiple relationships with a client or former client in which there is a risk of exploitation or potential harm to the client;

(8) engaging in sexual activities or sexual contact with a client with or without client consent;

(9) engaging in sexual activities or sexual contact with a former client within two years of documented termination of services;

(10) engaging in sexual activities or sexual contact at any time with a former client who is especially vulnerable or susceptible to being disadvantaged because of the client's personal history, current mental status, or any condition which could reasonably be expected to place the client at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and the client;

(11) engaging in sexual activities or sexual contact with client's relatives or other individuals with whom the client maintains a relationship when that individual is especially vulnerable or susceptible to being disadvantaged because of his personal history, current mental status, or any condition which could reasonably be expected to place that individual at a disadvantage recognizing the power imbalance which exists or may exist between the psychologist and that individual;

(12) physical contact with a client when there is a risk of exploitation or potential harm to the client resulting from the contact;

(13) engaging in or aiding or abetting sexual harassment or any conduct which is exploitive or abusive with respect to a student, trainee, employee, or colleague with whom the licensee has supervisory or management responsibility;

(14) failing to render impartial, objective, and informed services, recommendations or opinions with respect to custodial or parental rights, divorce, domestic relationships, adoptions, sanity, competency, mental health or any other determination concerning an individual's civil or legal rights;

(15) exploiting a client for personal gain;

(16) using a professional client relationship to exploit a client or other person for personal gain;

(17) failing to maintain appropriate client records for a period of not less than ten years from the documented termination of services to the client;

(18) failing to obtain informed consent from the client or legal guardian before taping, recording or permitting third party observations of client care or records;

(19) failure to cooperate with the Division during an

investigation

(20) participating in a residency program or other post degree experience without being certified as a psychology resident for post-doctoral training and experience; and

(21) supervising a residency program of an individual who is not certified as a psychology resident.

KEY: licensing, psychologists
May 8, 2008 **58-1-106(1)(a)**
Notice of Continuation June 10, 2004 **58-1-202(1)(a)**
58-61-101

R156. Commerce, Occupational and Professional Licensing.
R156-63. Security Personnel Licensing Act Rule.
R156-63-101. Title.

This rule is known as the "Security Personnel Licensing Act Rule."

R156-63-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 63, as used in Title 58, Chapters 1 and 63 or this rule:

(1) "Approved basic education and training programs" as used in this rule means basic education and training that meets the standards set forth in Sections R156-63-602 and R156-63-603 and that is approved by the division.

(2) "Approved basic firearms education and training program", as used in this rule means basic firearms education and training that meets the standards set forth in Section R156-63-604 and that is approved by the Division.

(3) "Authorized emergency vehicle" is as defined in Subsection 41-6a-102(3).

(4) "Contract security company" includes:

(a) a peace officer who engages in providing security or guard services when acting in a capacity other than as an employee of the law enforcement agency by whom he is employed, or for other than the regular salary, whether at regular pay or overtime pay, from the law enforcement agency by whom he is employed; but does not include:

(b) a company which hires as employees, individuals to provide security or guard services for the purpose of protecting tangible personal property, real property, or the life and well being of personnel employed by, or animals owned by or under the responsibility of the that company, as long as the security or guard services provided by the company do not benefit any person other than the employing company.

(5) "Employee" means an individual providing services in the security guard industry for compensation when the amount of compensation is based directly upon the security guard services provided and upon which the employer is required under law to withhold federal and state taxes, and for whom the employer is required under law to provide worker's compensation insurance coverage and pay unemployment insurance.

(6) "Immediate supervision" means the supervisor is available for immediate voice communication and can be available for in-person consultation within a reasonable period of time with an on-the-job trainee.

(7) "Officer" as used in Subsections 58-63-201(1)(a) and R156-63-302a(1)(b) means a manager, director, or administrator of a contract security company.

(8) "Practical experience" means experience as an unarmed or armed private security officer obtained under the immediate supervision of a supervisor who has been assigned to train and develop the unarmed or armed private security officer.

(9) "Qualified continuing education" as used in this rule means continuing education that meets the standards set forth in Subsection R156-63-304.

(10) "Qualifying agent" means an individual who is an officer, director, partner, proprietor or manager of a contract security company who exercises material authority in the conduct of the contract security company's business by making substantive technical and administrative decisions relating to the work performed for which a license is required under this chapter and who is not involved in any other employment or activity which conflicts with his duties and responsibilities to ensure the licensee's performance of work regulated under this chapter does not jeopardize the public health, safety, and welfare.

(11) "Soft uniform" means a business suit or a polo-type shirt with appropriate slacks. The coat or shirt has an embroidered badge or contract security company logo that clips on to or is placed over the front pocket.

(12) "Supervised on-the-job training" means training of an armed or unarmed private security officer under the immediate supervision of a licensed private security officer who has been assigned to train and develop the on-the-job trainee.

(13) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 63, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-63-502.

R156-63-103. 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 63.

R156-63-104. 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.

R156-63-302a. Qualifications for Licensure - Application Requirements.

(1) An application for licensure as a contract security company shall be accompanied by:

(a) a certification of criminal record history for the applicant's qualifying agent issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant's qualifying agent, and all of the applicant's officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of the Federal Bureau of Investigation, and Bureau of Criminal Identification, Utah Department of Public Safety, for each of the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel; and

(d) a copy of the driver license or Utah identification card issued to the applicant's qualifying agent, officers, directors, shareholders owning more than 5% of the stock, partners, proprietors, and responsible management personnel.

(2) An application for licensure as an armed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(3) An application for licensure as an unarmed private security officer shall be accompanied by:

(a) a certification of criminal record history for the applicant issued by the Bureau of Criminal Identification, Utah Department of Public Safety, in accordance with the provisions of Subsection 53-10-108(1)(f)(ii);

(b) two fingerprint cards for the applicant;

(c) a fee established in accordance with Section 63J-1-303 equal to the cost of conducting a check of records of:

(i) the Federal Bureau of Investigation for the applicant; and

(ii) the Bureau of Criminal Identification of the Utah Department of Public Safety; and

(d) a copy of the driver license or Utah identification card issued to the applicant.

(4) An applicant for licensure as an armed private security officer, unarmed private security officer, or as a qualifying agent for a contract security company by a person currently licensed under Title 58, Chapter 63, shall submit an application for change in license classification and shall be required to only document compliance with those requirements for licensure which have not been previously met in obtaining the currently held license.

R156-63-302b. Qualifications for Licensure - Basic Education and Training Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the basic education and training requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) each applicant for licensure as an armed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603 and R156-63-604; and

(2) each applicant for licensure as an unarmed private security officer shall successfully complete a basic education and training program approved by the division, the content of which is set forth in Section R156-63-603.

R156-63-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the examination requirements for licensure in Section 58-63-302 are defined, clarified, or established as follows:

(1) the qualifying agent for each applicant who is a contract security company shall obtain a passing score of at least 75% on the Utah Security Personnel Qualifying Agent's Examination; and

(2) each applicant for licensure as an armed private security officer or an unarmed private security officer shall obtain a score of at least 75% on the basic education and training final examination approved by the division and offered by each provider of basic education and training as a part of the program.

R156-63-302d. Qualification for Licensure - Liability Insurance for a Contract Security Company.

In accordance with Subsections 58-1-203(2) and 58-1-301(3), the insurance requirements for licensure as a contract security company in Subsection 58-63-302(1)(j)(i) are defined, clarified, or established as follows.

(1) An applicant shall file with the division a "Certificate of Insurance" providing liability insurance for the following exposures:

(a) general liability;
(b) assault and battery;
(c) personal injury;
(d) false arrest;
(e) libel and slander;
(f) invasion of privacy;
(g) broad form property damage;
(h) damage to property in the care, custody or control of the contract security company; and
(i) errors and omissions.

(2) Said insurance shall provide liability limits in amounts not less than $300,000 for each incident and not less than $1,000,000 total aggregate for each annual term.

(3) The insurance carrier must be an insurer which has a certificate of authority to do business in Utah, or is an authorized surplus lines insurer in Utah, or is authorized to do business under the laws of the state in which the corporate offices of foreign corporations are located.

(4) All contract security companies shall have a current insurance certificate of coverage as defined in Subsection (1) on file at all times and available for immediate inspection by the division during normal working hours.

(5) All contract security companies shall notify the division immediately upon cancellation of the insurance policy, whether such cancellation was initiated by the insurance company or the insured agency.

R156-63-302e. Qualifications for Licensure - Age Requirement for Armed Private Security Officer.

An armed private security officer must be 18 years of age or older at the time of submitting an application for licensure in accordance with Subsection 76-10-509(1).

R156-63-302f. Qualifications for Licensure - Good Moral Character - Disqualifying Convictions.

(1) In addition to those criminal convictions prohibiting licensure as set forth in Subsections 58-63-302(1)(h), (2)(c) and (3)(c), the following is a list of criminal convictions which may disqualify a person from obtaining or holding an unarmed private security officer license, an armed private security officer license, or a contract security company license:

(a) crimes against a person as defined in Title 76, Chapter 5, Part 1;
(b) theft, including retail theft, as defined in Title 76;
(c) larceny;
(d) sex offenses as defined in Title 76, Part 4;
(e) any offense involving controlled dangerous substances;
(f) fraud;
(g) extortion;
(h) treason;
(i) forgery;
(j) arson;
(k) kidnapping;
(l) perjury;
(m) conspiracy to commit any of the offenses listed herein;
(n) hijacking;
(o) burglary;
(p) escape from jail, prison, or custody;
(q) false or bogus checks;
(r) terrorist activities;
(s) desertion;
(t) pornography; and
(u) any attempt to commit any of the above offenses.

(2) Applications for licensure or renewal of licensure in which the applicant, or in the case of a contract security company, the officers, directors, and shareholders with 5% or more of the stock of the company, has a criminal background shall be considered on a case by case basis, including a consideration of the following:

(a) the duties violated;
(b) the potential or actual injury caused by the applicant's unprofessional conduct; and
(c) the existence of aggravating or mitigating factors.

R156-63-303. 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 63 is established by rule in Section R156-1-308.

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

R156-63-304. Continuing Education for Armed and Unarmed Private Security Officers as a Condition of Renewal.

(1) In accordance with Subsections 58-1-203(1)(g) and

58-1-308(3)(b), there is created a continuing education requirement as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer and unarmed private security officer.

(2) Armed and unarmed private security officers shall complete 16 hours of continuing education every two years consisting of formal classroom education.

(3) In addition to the required 16 hours of continuing education, armed private security officers shall complete not less than 16 additional hours of continuing firearms education and training every two years. The continuing firearms education and training shall be completed in four-hour blocks every six months and shall not include any hours for the continuing education requirement in Subsection R156-63-304(2). The continuing firearms education and training shall include as a minimum:

(a) live classroom instruction concerning the restrictions in the use of deadly force and firearms safety on duty, at home and on the range; and

(b) a recognized practical pistol recertification course on which the licensee achieves a minimum score of 80% using regular or low light conditions.

(4) Firearms education and training shall comply with the provisions of Public Law 103-54, the Armored Car Industry Reciprocity Act of 1993.

(5) An individual holding a current armed private security officer license in Utah who fails to complete the required four hours of continuing firearms education within the appropriate six month period will be required to complete one and one half times the number of continuing firearms education hours the licensee was deficient for the reporting period (this requirement is hereafter referred to as penalty hours). The penalty hours shall not be considered to satisfy in whole or in part any of the continuing firearms education hours required for subsequent renewal of the license.

(6) If a renewal period is shortened or lengthened to effect a change of renewal cycle, the continuing education hours required for that renewal period shall be increased or decreased accordingly as a pro rata amount of the requirements of a two-year period.

(7) Continuing education to qualify under the provisions of Subsection (2) shall include:

(a) company operational procedures manual;

(b) applicable state laws and rules;

(c) legal powers and limitations of private security officers;

(d) observation and reporting techniques;

(e) ethics; and

(f) emergency techniques.

R156-63-305. Demonstration of Clear Criminal History for Licensees as Renewal Requirement.

(1) In accordance with Subsections 58-1-203(1)(g) and 58-1-308(3)(b), there is created a demonstration of a clear criminal history as a condition of renewal or reinstatement of licenses issued under Title 58, Chapter 63 in the classifications of armed private security officer, unarmed private security officer, and for the qualifying agent for a contract security company.

(2) Each application for renewal or reinstatement of the license of a contract security company shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety, for the licensee's qualifying agent.

(3) Each application for renewal or reinstatement of the license of an armed private security officer, or unarmed private security officer shall be conditioned upon the licensee having obtained within 120 days prior to submission of the application for renewal or reinstatement, a clear criminal history certification from the Bureau of Criminal Identification, Utah Department of Public Safety.

R156-63-306. Change of Qualifying Agent.

Within 30 days after a qualifying agent for a licensed contract security company ceases employment with the licensee, or for any other reason is not qualified to be the licensee's qualifier, the contract security company shall file with the division an application for change of qualifier on forms provided by the division, accompanied by a fee established in accordance with Section 63J-1-303.

R156-63-307. Exemptions from Licensure.

(1) In accordance with Subsection 58-1-307(1)(c), an applicant who has applied for licensure as an unarmed or armed private security officer is exempt from licensure and may engage in practice as an unarmed or armed private security officer in a supervised on-the-job training capacity, for a period of time not to exceed the earlier of 30 days or action by the division upon the application.

(2) Upon receipt of an application for licensure as an unarmed private security officer or as an armed private security officer, an on-the-job training letter may be issued to the applicant, if the applicant meets the following criteria:

(a) the applicant has not been licensed as an unarmed or as an armed private security officer in the state of Utah at least two years prior to applying for licensure;

(b) the applicant submits with his application an official criminal history re port from the Bureau of Criminal Identification showing "No Criminal Record Found";

(c) the applicant has not answered "yes" to any question on the qualifying questionnaire section of the application;

(d) the applicant has not had a license to practice an occupation or profession denied, revoked, suspended, restricted or placed on probation; and

(e) the applicant has submitted all information required with the exception of the 16 hours of classroom or on-the-job education and training in accordance with Subsection R156-63-603(2).

R156-63-502. Unprofessional Conduct.

"Unprofessional conduct" includes the following:

(1) making any statement that would reasonably cause another person to believe that a private security officer functions as a law enforcement officer or other official of this state or any of its political subdivisions or any agency of the federal government;

(2) employment of an unarmed or armed private security office by a contract security company, as an on-the-job trainee pursuant to Section R156-63-307, who has been convicted of a felony or a misdemeanor crime of moral turpitude;

(3) employment of an unarmed or armed private security officer by a contract security company who fails to meet the requirements of Section R156-63-307; and

(4) a judgment on, or a judicial or prosecutorial agreement concerning a felony, or a misdemeanor involving moral turpitude, entered against an individual by a federal, state or local court, regardless of whether the court has made a finding of guilt, accepted a plea of guilty or nolo contendere by an individual, or an individual has entered into participation in a first offender, deferred adjudication or other program or arrangement where judgment of conviction is withheld.

(5) utilizing a vehicle whose markings, lighting, and/or signal devices imply or suggest that the vehicle is an authorized emergency vehicle as defined in Subsection 41-6a-102(3) and Section 41-6a-310 and in Title R722, Chapter 340;

(6) utilizing a vehicle with an emergency lighting system which violates the requirements of Section 41-6a-1616 of the Utah Motor Vehicle Code;

(7) wearing a uniform, insignia, or badge that would lead a reasonable person to believe that the unarmed or armed private security officer is connected with a federal, state, or municipal law enforcement agency;

(8) incompetence or negligence by an unarmed private security officer, an armed private security officer or by a contract security company that results in injury to a person or that creates an unreasonable risk that a person may be harmed;

(9) failure by the contract security company or its officers, directors, partners, proprietors or responsible management personnel to adequately supervise employees to the extent that the public health and safety are at risk;

(10) failing to immediately notify the division of the cancellation of the contract security company's insurance policy

(11) failure of the contract security company or an armed or unarmed private security officer to report a criminal offense pursuant to Section R156-63-613.

R156-63-503. Administrative Penalties.

(1) In accordance with Subsection 58-63-503, the following citation fine schedule shall apply to citations issued under Title 58, Chapter 63:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	Contract Security Company	Armed or Unarmed Security Officer
58-63-501(1)	$ 800.00	N/A
58-63-501(3)	$ 800.00	$ 500.00

SECOND OFFENSE

58-63-501(1)	$1,600.00	$1,000.00
58-63-501(3)	$1,600.00	$1,000.00

(2) 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 58-63-503(3)(h)(iii).

(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.

R156-63-601. Operating Standards - Firearms.

(1) An armed private security officer shall carry only that firearm with which he has passed a firearms qualification course as defined in Section R156-63-603.

(2) Shotguns and rifles, owned and issued by the contract security company, may be used in situations where they would constitute an appropriate defense for the armed private security officer and where the officer has completed an appropriate qualification course in their use.

(3) An armed private security officer shall not carry a firearm except when acting on official duty as an employee of a contract security company, unless the licensee is otherwise qualified under the laws of the state to carry a firearm.

R156-63-602. Operating Standards - Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

To be designated by the division as an approved basic education and training program for armed private security officers and unarmed private security officers, the following standards shall be met.

(1) There shall be a written education and training manual which includes performance objectives.

(2) The program for armed private security officers shall provide content as established in Sections R156-63-603 and R156-63-604 of this rule.

(3) The program for unarmed private security officers shall provide content as established in Section R156-63-603 of this rule.

(4) An instructor is a person who directly facilitates learning through means of live in-class lecture, group participation, practical exercise, or other means, where there is a direct student-teacher relationship. All instructors providing the basic classroom instruction shall have at least three years of training and experience reasonably related to providing of security guard services.

(5) All instructors providing firearms training shall have the following qualifications:

(a) current Peace Officers Standards and Training firearms instructors certification; or

(b) current certification as a firearms instructor by the National Rifle Association, a Utah law enforcement agency, a Federal law enforcement agency, a branch of the United States military, or other qualification or certification found by the director to be equivalent.

(6) All approved basic education and training programs shall maintain training records on each individual trained including the dates of attendance at training, a copy of the instruction given, and the location of the training. These records shall be maintained in the files of the education and training program for at least three years.

(7) In the event an approved provider of basic education and training ceases to engage in business, the provider shall establish a method approved by the division by which the records of the education and training shall continue to be available for a period of at least three years after the education and training is provided.

(8) Instructors, who present continuing education hours and are licensed armed or unarmed private security officers, shall receive credit for actual preparation time for up to two times the number of hours to which participants would be entitled. For example, for learning activities in which participants receive four continuing education hours, instructors may receive up to eight continuing education hours (four hours for preparation plus four hours for presentation).

R156-63-603. Operating Standards - Content of Approved Basic Education and Training Program for Armed and Unarmed Private Security Officers.

An approved basic education and training program for armed and unarmed private security officers shall have the following components:

(1) at least eight hours of basic classroom instruction to include the following:

(a) the nature and role of private security, including the limits of, scope of authority and the civil liability of a private security officer and the private security officer's role in today's society;

(b) state laws and rules applicable to private security;

(c) legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(d) situational response evaluations, including protecting and securing crime or accident scenes, notification of intern and external agencies, and controlling information;

(e) ethics;

(f) use of force, emphasizing the de-escalation of force and alternatives to using force;

(g) report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(h) patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, and monitoring potential safety hazards;

(i) police and community relations, including fundamental duties and personal appearance of security officers;

(j) sexual harassment in the work place; and

(k) a final examination which competently examines the student on the subjects included in the eight hours of basic classroom instruction in the approved program of education and training and which the student passes with a minimum score of 80%.

(2) an additional 16 hours of basic education and training in the classroom, on-the-job or a combination thereof to include the following:

(a) for unarmed and armed private security officers:

(i) two hours concerning the legal responsibilities of private security, including constitutional law, search and seizure and other such topics;

(ii) two hours of situational response evaluations, including protecting and securing crime or accident scenes, notification of internal and external agencies, and controlling information;

(iii) three hours covering the use of force, emphasizing the de-escalation of force and alternatives to using force;

(iv) two hours of report writing, including taking witness statements, log maintenance, the control of information, taking field notes, report preparation and basic writing skills;

(v) four hours of patrol techniques, including mobile vs. fixed post, accident prevention, responding to calls and alarms, security breeches, homeland security and monitoring potential safety hazards;

(vi) two hours of police and community relations, including fundamental duties and personal appearance of security officers; and

(vii) one hour regarding sexual harassment in the work place; or

(b) for unarmed and armed private security officers who work in the armored car service:

(i) eight hours of driving policies and procedures, driver training and vehicle orientation;

(ii) four hours of emergency situation response including terminal security, traffic accidents, robbery situations, homeland security and reducing risk potential through street procedures and tactics, securing robbery scenes, dealing with the media, etc.;

(iii) three hours of armored operations, including proper paperwork, street control procedures, vehicle transfers, vault procedures, and other proper branch procedures; and

(iv) one hour regarding sexual harassment in the work place; and

(c) a final examination approved by the Division, which competently examines the applicant on the subjects included in the additional 16 hour program of basic education and training and which the student passes with a minimum score of 80%.

R156-63-604. Operating Standards - Content of Approved Basic Firearms Training Program for Armed Private Security Officers.

An approved basic firearms training program for armed private security officers shall have the following components:

(1) at least six hours of classroom firearms instruction to include the following:

(a) the firearm and its ammunition;

(b) the care and cleaning of the weapon;

(c) no alterations of firing mechanism;

(d) firearm inspection review procedures;

(e) firearm safety on duty;

(f) firearm safety at home;

(g) firearm safety on range;

(h) legal and ethical restraints on firearms use;

(i) explanation and discussion of target environment;

(j) stop failure drills;

(k) explanation and discussion of stance, draw stroke, cover and concealment and other firearm fundamentals;

(l) armed patrol techniques;

(m) use of deadly force under Utah law and the provisions of Title 76, Chapter 2, Part 4 and a discussion of 18 CFR 44 Section 922;

(n) the instruction that armed private security officers shall not fire their weapon unless there is an eminent threat to life and at no time will the weapon be drawn as a threat or means to force compliance with any verbal directive not involving eminent threat to life; and

(2) at least six hours of firearms range instruction to include the following:

(a) basic firearms fundamentals and marksmanship;

(b) demonstration and explanation of the difference between sight picture, sight alignment and trigger control; and

(c) a recognized practical pistol course on which the applicant achieves a minimum score of 80% using regular and low light conditions.

R156-63-605. Operating Standards - Uniform Requirements.

(1) All unarmed and armed private security officers while on duty shall wear the uniform of their contract security company employer unless assigned to work undercover.

(2) Each armed and unarmed private security officer wearing a soft uniform unless assigned to an undercover status shall at a minimum display on the outermost garment of the uniform the name of the contract security company under whom the armed and unarmed private security officer is employed, and the word "Security", "Contract Security", or "Security Officer".

(3) The name of the contract security company and the word "Security" shall be of a size, style, shape, design and type which is clearly visible by a reasonable person under normal conditions.

(4) Each armed and unarmed private security officer wearing a regular uniform shall display on the outermost garment of the uniform in a style, shape, design and type which is clearly visible by a reasonable person under normal conditions identification which contains:

(a) the name or logo of the contract security company under whom the armed or unarmed private security officer is employed; and

(b) the word "Security", "Contract Security", or "Security Officer".

(5) Contract security companies shall have until July 1, 2005 to ensure that all uniforms comply with the requirements of this section. Thereafter, all uniforms, soft and regular, must meet all requirements established in this section.

R156-63-606. Operating Standards - Badges.

Badges may be worn under the following conditions:

(1) they do not carry the seal of the state of Utah nor have the words "State of Utah";

(2) they shall contain the word "Security" and may contain the name of the company; and

(3) the use of a star badge with any number of points on a uniform, in writing, advertising, letterhead, or other written communication is prohibited.

R156-63-607. Operating Standards - Criminal Status of Officer, Qualifying Agent, Director, Partner, Proprietor, Private Security Officer or Manager of Contract Security

Companies.

In the event an officer, qualifying agent, director, partner, proprietor, private security officer, or any management personnel having direct responsibility for managing operations of the contract security company is found guilty of a felony, or of a misdemeanor which impacts upon that individual's ability to function within the security industry, said company shall within ten days reorganize and exclude said individual from participating at any level or capacity in the management, operations, sales, ownership, or employment of that company.

R156-63-608. Operating Standards - Implying an Association with Public Law Enforcement Prohibited.

(1) No contract security company shall use any name which implies intentionally or otherwise that they are connected or associated with any public law enforcement agency.

(2) No contract security company shall permit the use of the words "special police", "special officer", "cop", or any other words of a similar nature whether used orally or appearing in writing or on any uniform, badge, or cap.

(3) No person licensed under this chapter shall use words or designations which would cause a reasonable person to believe he is associated with a public law enforcement agency.

R156-63-609. Operating Standards - Proper Identification of Private Security Officers.

All armed and unarmed private security officers shall carry a valid security license together with a Utah identification card issued by the Division of Driver License or a current Utah driver license whenever he is performing the duties of an armed or unarmed private security officer and shall exhibit said license and identification upon request.

R156-63-610. Operating Standards - Vehicles.

(1) No contract security company or its personnel shall utilize a vehicle whose markings, lighting, or signal devices imply that the vehicle is an authorized emergency vehicle pursuant to Subsection 41-6a-102(3).

(2) The word "Security", either alone or in conjunction with the company name, shall appear on each side and the rear of the company vehicle in letters no less than 4 inches in height and in a color contrasting with the color of the contract security company vehicle.

(3) Contract security companies shall have six months from the effective date of this rule to ensure that all vehicles comply with the requirements of this section.

(4) Subsection R156-63-610(2) does not apply to armored cars as defined in the Armored Car Industry Reciprocity Act of 1993.

R156-63-611. Operating Standards - Operational Procedures Manual.

(1) Each contract security company shall develop and maintain an operational procedures manual which includes the following topics:

(a) detaining or arresting;
(b) restraining, detaining, and search and seizure;
(c) felony and misdemeanor definitions;
(d) observing and reporting;
(e) ingress and egress control;
(f) natural disaster preparation;
(g) alarm systems, locks, and keys;
(h) radio and telephone communications;
(i) crowd control;
(j) public relations;
(k) personal appearance and demeanor;
(l) bomb threats;
(m) fire prevention;
(n) mental illness;
(o) supervision;
(p) criminal justice system;
(q) code of ethics for private security officers; and
(r) sexual harassment in the workplace.

(2) The operations and procedures manual shall be immediately available to the division upon request.

R156-63-612. Operating Standards - Display of License.

The license issued to a contract security company shall be prominently displayed in the company's principal place of business and a copy of the license shall be displayed prominently in all branch offices.

R156-63-613. Operating Standards - Standards of Conduct.

All armed and unarmed private security officers licensed pursuant to Title 58, Chapter 63 if arrested, charged, or indicted for a criminal offense above the level of a Class C misdemeanor, shall within 72 hours notify the contract security company they are employed with of the criminal offense. The contract security company shall notify the Division of the criminal offense within 72 hours of notification by the licensee, in writing, including name, name of the arresting agency, the agency case number and the nature of the criminal offense.

KEY: licensing, security guards, private security officers

July 19, 2007	**58-1-106(1)(a)**
Notice of Continuation September 1, 2005	**58-1-202(1)(a)**
	58-63-101

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 63G, Chapter 4, 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(1)(e), 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)(a) 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)(a)**
	58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-68. Utah Osteopathic Medical Practice Act Rules.
R156-68-101. Title.

These rules shall be known as the "Utah Osteopathic Medical Practice Act Rules."

R156-68-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 68, as used in Title 58, Chapters 1 and 68 or these rules:

(1) "AAPS" means American Association of Physician Specialists.

(2) "ABMS" means American Board of Medical Specialties.

(3) "ACCME" means Accreditation Council for Continuing Medical Education.

(4) "Alternate medical practices" as used in Section R156-68-603, means treatment or therapy which is determined in an adjudicative proceeding conducted in accordance with Title 63G, Chapter 4, 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.

(5) "AMA" means the American Medical Association.

(6) "AOA" means American Osteopathic Association.

(7) "COMLEX" means the Comprehensive Osteopathic Medical Licensing Examination.

(8) "FLEX" means the Federation of State Medical Boards Licensure Examination.

(9) "FMGEMS" means the Foreign Medical Graduate Examination in Medical Science.

(10) "FSMB" means the Federation of State Medical Boards.

(11) "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.

(12) "LMCC" means the Licentiate of the Medical Council of Canada.

(13) "NBME" means the National Board of Medical Examiners.

(14) "NBOME" means the National Board of Osteopathic Medical Examiners.

(15) "NPDB" means the National Practitioner Data Bank.

(16) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 68, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-68-502.

(17) "USMLE" means the United States Medical Licensing Examination.

R156-68-103. Authority - Purpose.

These rules are adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 68.

R156-68-104. 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.

R156-68-302a. Qualifications for Licensure - Application Requirements.

In accordance with Subsections 58-68-301(1)(a)(i), submissions by the applicant of information maintained by practitioner data banks shall include the following:

(1) American Osteopathic Association Profile or American Medical Association Profile;

(2) Federation of State Medical Boards Disciplinary Inquiry form; and

(3) National Practitioner Data Bank Report of Action.

R156-68-302b. Qualifications for Licensure - Examination Requirements.

(1) In accordance with Subsection 58-68-302(1)(g), the required licensing examination sequence is the following:

(a) the NBOME parts I, II and III; or

(b) the NBOME parts I, II and the NBOME COMPLEX Level III; or

(c) the NBOME part I and the NBOME COMLEX Level II and III; or

(d) the NBOME COMLEX Level I, II and III; or

(e) the FLEX components I and II on which the applicant shall achieve a score of not less than 75 on each component; or

(f) the NBME examination parts I, II and III on which the applicant shall achieve a score of not less than 75 on each part; or

(g) the USMLE, steps 1, 2 and 3 on which the applicant shall achieve a score of not less than 75 on each step; or

(h) the LMCC examination, Parts 1 and 2; or

(i) 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

(j) the FLEX component 1 and the USMLE step 3; or

(k) the NBME part I or the USMLE step 1 and the NBME part II or the USMLE step 2 and the FLEX component 2.

(2) In accordance with Subsection 58-68-302(2)(c), the passing score on the SPEX examination is at least a score of 75.

(3) In accordance with Subsection 58-68-302(2)(c), the medical specialty certification shall be current certification in an AOA, ABMS, or AAPS member specialty board.

R156-68-302c. Qualifications for Licensure - Requirements for Admission to the Examinations.

(1) Admission to the NBOME examination shall be in accordance with policies and procedures of the NBOME. The division and the board have no responsibility for or ability to facilitate an individual's admission to the NBOME examination.

(2) Admission to the USMLE steps 1 and 2 shall be in accordance with policies and procedures of the FSMB and the NBME. The division and the board have no responsibility for or ability to facilitate an individual's admission to steps 1 and 2 of the USMLE.

(3) Requirements for admission to the USMLE step 3 are:

(a) completion of the education requirements as set forth in Subsection 58-68-302(1)(d) and (e);

(b) passing scores on USMLE steps 1 and 2, or the FLEX component I, or the NBME parts I and II;

(c) have passed the first USMLE step taken, either 1 or 2, within seven years; and

(d) have not failed a combination of USMLE step 3, FLEX component II and NBME part III, three times.

(4) Candidates who fail a combination of USMLE step 3, FLEX component II and NBME part III three times must successfully complete additional education as required by the board before being allowed to retake the USMLE step 3.

R156-68-303. 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 68, is established by rule in Section R156-1-308.

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

R156-68-304. Qualified Continuing Professional Education.

(1) The qualified continuing professional education set forth in Subsection 58-68-304(1) shall consist of 40 hours in category 1 offerings as established by the AOA or 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 AOA or ACCME to approve continuing medical education.

(3) 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 AOA or 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.

R156-68-306. Exemptions From Licensure.

In accordance with Subsection 58-1-307(1), exemptions from licensure as an osteopathic physician 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 AOA or 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 osteopathic 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 osteopathic 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 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 officials not having emergency medical technician (EMT) certification who are designated by appropriate county officials as first responders may be issued and allowed to carry the Mark I automatic antidote injector kits and may administer the antidote to himself or his designated first response "buddy". Prior to being issued the kits, the certified first responders would successfully complete the Army/FEMA course on the "Use of Auto-Injectors by Civilian Emergency Medical Personnel". The kits would be issued to the responder only by his employing government agency and procured through the Utah Division of Comprehensive Emergency Management. No other individuals, whether licensed or not, shall prescribe or issue these antidote kits.

R156-68-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) the 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(14) 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 osteopathic physicians licensed under the Utah Osteopathic 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 or osteopathic physician 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 Osteopathic Board of Radiology or the American Board of Radiology. However, nothing in this subsection shall be interpreted to prevent a licensed physician 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 qualified under this subsection and a timely written report is prepared by the interpreting physician in accordance with the standards and ethics of the profession;

(10) failing of a licensee under Title 58, Chapter 68, 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 an osteopathic physician;

(11) failing of a licensee under Title 58, Chapter 68, without just cause to comply with the terms of any written agreement in which the licensee's education or training as an osteopathic physician 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; and

(13) engaging in alternative medical practice except as provided in Section R156-68-603.

R156-68-602. Medical Records.

In accordance with Subsection 58-68-803(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, 1996 edition, which is hereby incorporated by reference.

R156-68-603. Alternate Medical Practice.

(1) A licensed osteopathic physician may engage in alternate medical practices as defined in Subsection R156-68-102(4) 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 osteopathic physician:

(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: osteopaths, licensing, osteopathic physician

April 15, 2004	**58-1-106(1)(a)**
Notice of Continuation March 27, 2008	**58-1-202(1)(a)**
	58-68-101

R195. Community and Culture, Home Energy Assistance Target (HEAT).
R195-1. Energy Assistance: General Provisions.
R195-1-1. Purpose.

The Home Energy Assistance Target (HEAT) program serves to provide assistance in meeting home energy costs for certain low-income families and individuals.

R195-1-2. Authority.

The department shall require compliance with Title 9, Chapter 12.

R195-1-3. Definitions.

1. The following definitions apply to R195-1 through R195-8:

a. "Applicant" means any person requesting assistance under the program discussed.

b. "Assistance" means payments made to individuals under the program discussed.

c. "Assistance unit" or "household" means any individual or group of individuals who are living together as one economic unit and for whom residential heating is customarily purchased in common or who make payments for heat in the form of rent.

d. "Department" means the Department of Community and Culture.

e. "Recipient" or "client" means any individual receiving assistance under the program discussed.

f. "Confidential information" means information that has limited access as provided in Section 63G-2.

g. "HEAT" means Home Energy Assistance Target program.

h. "IRS" means Internal Revenue Service.

i. "Moratorium" means a period of time in which involuntary termination for nonpayment by residential customers of essential utility bills is prohibited.

j. "Vulnerability" means having to pay a home heating cost.

R195-1-4. Client Rights and Responsibilities.

1. Any client may apply or reapply at any time for the HEAT program by completing and signing an application and turning it in at the correct office.

2. If the client needs help to apply, help will be given by the local HEAT office staff.

3. HEAT workers will identify themselves.

4. The client will be treated with courtesy, dignity and respect.

5. Verification and information will be requested clearly and courteously.

6. If the client must be visited after working hours, an appointment will be made.

7. The client's home will not be entered without permission.

8. Clients may have an agency conference to talk about their case.

9. Clients may look at information concerning their case except confidential information.

10. Anyone may look at a copy of the program manuals located at any local HEAT office.

11. The client must give complete and correct information and verification.

12. The client must immediately report any address change while under the protection of the moratorium.

13. The client is responsible for repaying any overpayments of assistance.

R195-1-5. Information.

The department shall require compliance with 63G-2.

1. Client may review and copy anything in their case record unless it is confidential.

a. The Client requests for release of information shall be in writing and include:

i. the date;

ii. the name of the person receiving the information;

iii. the time period covered by the information.

b. Information classified as confidential shall not be used in a hearing.

c. Information classified as confidential shall not be used to close, deny or reduce benefits.

d. Clients may copy information from their file. Up to ten pages are free. If the client wants more than ten copies, the client must pay the cost of making the extra copies.

e. The client cannot take the case record from the office.

2. Releasing information to sources other than the client.

a. Information will not be released when it is to be used for a commercial or political purpose.

b. The client's permission will be obtained before sharing any information regarding their case record.

i. Information may be released without the client's permission if the outside source making the request has comparable rules for safeguarding information.

ii. Information may be released in an emergency. The director or designee will decide what constitutes an emergency.

3. Information released without the client's permission.

a. Information, with the exception of confidential information, may be released without the clients permission when that information is to be used in:

i. The administration of any federal or state means-tested program.

ii. Any audit or review of expenditures in connection with the HEAT or Moratorium program.

iii. Any investigation, prosecution, criminal or civil proceeding connected with the administration of the HEAT or Moratorium programs.

4. If a case file is subpoenaed by an outside source, legal counsel for the department will ask the court to disallow the confidential information from the case record.

R195-1-6. Complaints and Conciliation.

1. Complaints

a. The client may make a complaint in person, by phone, or in writing to the local HEAT office.

b. Complaints shall be resolved as quickly as possible.

c. Responses to complaints shall be made in person, by phone or in writing.

2. Conciliation

a. The agency conference will be the conciliation mechanism.

b. Some or all of the following steps may be involved in the agency conference:

i. Contacting the client to identify the issue and barriers which may be preventing client progress.

ii. Reviewing and explaining rules which apply to the issues. These include rules about client rights and responsibilities.

iii. Exploring any alternative actions which may resolve the issues.

c. If the client fails to respond, or chooses not to cooperate in this process, documentation in the case file of attempts made to follow these steps will be considered as compliance with the requirement to attempt conciliation.

R195-1-7. Hearings.

The department shall require compliance with Title 63G-4.

1. Current Departmental Practices:

a. The department conducts hearings informally.

b. Hearings are held before a state agency.

c. Hearings may be conducted by telephone when the

applicant or recipient agrees to the procedure.

d. Requests for a hearing must be in writing. Only a clear expression by the claimant to the effect that they want an opportunity to present their case is required.

e. The applicant or recipient has the option of appealing a hearing decision to either the director of the Department or to the District Court.

f. Final administrative action shall be taken within 90 days from the request for the hearing unless the client asks for a postponement of a scheduled hearing. The period of postponement can be added to the 90 days.

KEY: client rights, hearings, confidentiality of information
1987 9-12-10
Notice of Continuation October 31, 2006

R251. Corrections, Administration.
R251-304. Contract Procedures.
R251-304-1. Authority and Purpose.

(1) This rule is authorized by Section 64-13-25.

(2) The purpose of this rule is to establish minimum standards for the organization and operation of correctional contracting, to promote accountability, and to ensure a safe and professional operation of correctional programs.

R251-304-2. Definitions.

(1) "Contract" means any state agreement for the procurement or disposal of supplies, services, or construction.

(2) "Contractor" means any person or organization contracting with the Department to provide goods or services.

(3) "Department" means the Utah State Department of Corrections (UDC).

(4) "Executive Director" means the executive director of the Department of Corrections/designee.

R251-304-3. Policy.

It is the policy of the Department that:

(1) contractors shall provide all services due under a contract as an independent contractor;

(2) contractors shall have no actual or implied authority to bind the State of Utah, any of its political subdivisions, or the Department of Corrections to any agreement, settlement, or understanding whatsoever;

(3) no provision of a contract shall be construed to bring contractors or their officers, agents, employees, volunteers, or subcontractors (if any) within the coverage of the Utah Governmental Immunity Act, Title 63, Section 30;

(4) all contractors' officers, employees, subcontractors, agents, or volunteers providing services shall be appropriately licensed and as may be necessary by the type of services provided, successfully complete a training session offered by UDC prior to contract implementation;

(5) contractors shall allow authorized UDC personnel full access to contract-related records with or without notice during contractors' regular business hours;

(6) contractors shall indemnify, hold harmless, and release the State of Utah and its officers, agents, and employees from and against all losses, damages, injuries, lawsuits and other proceedings arising out of the breach of, or performance under, the contract by contractors and their officers, agents, employees, subcontractors, and volunteers;

(7) all contracts shall be monitored throughout the contract period and reviewed at least annually;

(8) contracts may be terminated by the Department or the contractor with or without cause;

(9) contractors shall comply with all state and local regulatory requirements, including the following:

(a) zoning ordinances,
(b) building codes,
(c) applicable health codes,
(d) life and safety codes,
(e) professional licenses,
(f) business licenses, or
(g) other applicable federal, state, and local laws;

(10) UDC shall have the right to deny contractors, their agents, employees, and volunteers, or the agents, employees, and volunteers of their subcontractors, if any, access to premises controlled, held, leased, or occupied by UDC, if, in the sole judgment of UDC, such personnel pose a threat to UDC's legitimate security interests;

(11) prior to signing the contract, contractors shall disclose to UDC the names and state job titles of any of their agents, officers, partners, volunteers, or employees who are also employees of the State of Utah;

(12) UDC reserves the right to reject contractors' use of any person who, in the opinion of the Department, represents a threat to legitimate departmental interests;

(13) at the time the contract is awarded, contractors shall provide UDC names and birth dates of employees for a criminal records check, and other information requested, including social security numbers of all contractors' officers, employees, agents, and volunteers who will be providing services under contracts; and, during the contract period, contractors shall provide the same information to UDC on their new officers, employees, agents, and volunteers;

(14) contractors and UDC shall allow members of the general public to inspect Department contracts during regular business hours;

(15) public inquiries to contractors regarding specific offenders shall be referred to UDC; and

(16) decisions to terminate contracts may be appealed by contractors to the Executive Director of the Department of Corrections; the Director of Purchasing; or the District Court of the State of Utah.

KEY: corrections, contracts
May 20, 2008 64-13-25
Notice of Continuation February 5, 2008

R270. Crime Victim Reparations, Administration.
R270-1. Award and Reparation Standards.
R270-1-1. Authorization and Purpose.

As provided in Section 63M-7-506 the purpose of this rule is to provide interpretation and standards for the administration of crime victim reparations.

R270-1-2. Funeral and Burial Award.

A. Pursuant to Subsection 63M-7-511(4)(f), total award for funeral and burial expenses is $7,000 for any reasonable and necessary charges incurred directly relating to the funeral and burial of a victim. This amount includes transportation of the deceased. Allowable expenses in this category may include the emergency acquisition of a burial plot for victims who did not previously possess or have available to them a plot for burial.

B. Transportation of secondary victims to attend a funeral and burial service shall be considered as an allowable expense in addition to the $7,000.

C. Loss of earnings for secondary victims to attend a funeral and burial service shall be allowed as follows:

1. Three days in-state
2. Five days out-of-state

D. When a victim dies leaving no identifying information, claims made by a provider cannot be considered.

R270-1-3. Negligent Homicide and Hit and Run Claims.

A. Negligent homicide claims shall be considered criminally injurious conduct as defined in Subsection 63M-7-502(9).

B. Pursuant to Subsection 63M-7-502(9)(a), criminally injurious conduct shall not include victims of hit and run crimes.

R270-1-4. Counseling Awards.

A. Pursuant to Subsections 63M-7-502(20) and 63M-7-511(4)(c), out-patient mental health counseling awards are subject to limitations as follows:

1. The reparation officer shall approve a standardized treatment plan.

2. The cost of initial evaluation and testing may not exceed $300 and shall be part of the maximum allowed for counseling. For purposes herein, an evaluation shall be defined as diagnostic interview examination including history, mental status, or disposition, in order to determine a plan of mental health treatment.

3. Primary victims of a crime shall be eligible for a $3500 maximum mental health counseling award.

(a) Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient and outpatient counseling.

4. Secondary victims of a crime shall be eligible for a $2000 maximum mental health counseling award.

5. Extenuating circumstances warranting consideration of counseling beyond the maximum may be submitted by the mental health provider when it appears likely that the maximum award will be reached.

6. Counseling costs will not be paid in advance but will be paid on an ongoing basis as victim is being billed.

7. Inpatient hospitalization, residential and day treatment shall be reviewed by the CVR Board or contracting agency who will make recommendations to the Reparation Officers regarding treatment. The CVR Board or contracting agency will review all levels of care and assign a reimbursement percentage based on the crime. All cases having less than a $1000 balance may be determined by the Reparation Officer. Outpatient cases shall be reviewed at the same rate as inpatient reviews.

8. In-patient hospitalization shall only be considered when the treatment has been recommended by a licensed therapist in life-threatening situations. A direct relationship to the crime needs to be established. Acute in-patient hospitalization shall not exceed $600 per day, which includes all ancillary expenses, and will be considered payment in full to the provider. Inpatient psychiatric visits will be limited to one visit per day with payment for the visit made to the institution at the highest rate of the individuals providing therapy as set by rule. Reimbursement for testing costs may also be allowed. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for inpatient hospitalization. All other secondary victims of other crime types are excluded.

9. Residential and day treatment shall only be considered when the treatment has been recommended by a licensed therapist to stabilize the victim's behavior and symptoms. Only facilities with 24 hour nursing care or 24 hour on call nursing care will be compensated for residential and day treatment. Residential and day treatment shall not be used for extended care of dysfunctional families and containment placements. A direct relationship to the crime needs to be established. Residential treatment shall not exceed $300 per day and will be considered payment in full to the provider. Residential treatment shall be limited to 30 days, unless there are extenuating circumstances requiring extended care. All residential clients shall receive routine assessments from a psychiatrist and/or APRN at least once a week for medication management. Day treatment shall not exceed $200 per day and will be capped at $10,000. These charges will be considered payment in full to the provider. Parents, children and siblings of homicide victims shall be considered at the same rate as primary victims for residential and day treatment. All other secondary victims of other crime types are excluded.

10. Wilderness programs shall not be covered as an appropriate treatment modality when considering inpatient hospitalization, residential or day treatment.

11. Child sexual abuse victims under the age of 13 who become perpetrators shall only be considered for mental health treatment awards directly related to the victimization. Perpetrators age 13 and over who have been child sexual abuse victims shall not be eligible for compensation. The CVR Board or contracting agency for managed mental health care shall help establish a reasonable percentage regarding victimization treatment for inpatient, residential and day treatment. Out-patient claims shall be determined by the Reparation Officer on a case by case basis upon review of the mental health treatment plan.

12. Payment for mental health counseling shall only be made to licensed therapists; or to individuals working towards a license that provide certified verification of satisfactory completion of an education and earned degree as required by the State of Utah Department of Commerce, Division of Professional and Occupational Licensing, working under the supervision of a supervisor approved by the Division. Student interns otherwise eligible under 58-1-307(1)(b) Exceptions from licensure, and/or the institution/facility/agency responsible for the supervision of the student, shall not be eligible for payment under this rule for counseling services provided by the student.

13. Payment of hypnotherapy shall only be considered when treatment is performed by a licensed mental health therapist based upon an approved Treatment Plan.

14. The following maximum amounts shall be payable for mental health counseling:

(a) up to $130 per hour for individual and family therapy performed by licensed psychiatrists, and up to $65 per hour for group therapy;

(b) up to $90 per hour for individual and family therapy performed by licensed psychologists and up to $45 per hour for group therapy;

(c) up to $70 per hour for individual and family therapy performed by a licensed master's level therapist or an Advanced Practice Registered Nurse, and up to $35 per hour for group therapy. These rates shall also apply to therapists working

towards a license and supervised by a licensed therapist;

(d) The above-mentioned rates shall apply to individuals performing treatment, and not those supervising treatment.

15. Chemical dependency specific treatment will not be compensated unless the Reparation Officer determines that it is directly related to the crime. The CVR Board may review extenuating circumstance cases.

R270-1-5. Attorney Fees.

Pursuant to Subsection 63M-7-524(2) attorney fees shall be made within the reparation award and not in addition to the award. If an award is paid in a lump sum, the attorney's fee shall not exceed 15% of the total award; if payments are awarded on an on going basis, attorney fees will be paid when warrants are generated but not to exceed 15%. When appeal hearing denials are overturned, attorney fees shall be calculated only on the appealed reparation issue.

R270-1-6. Reparation Awards.

Pursuant to Section 63M-7-503, reparation awards can be made to victims of violent crime where restitution has been ordered by the court but appears unlikely the restitution can be paid within a reasonable time period. However, notification of the award will be sent to the courts, prosecuting attorneys, Board of Pardons or probation and parole counselors indicating any restitution monies collected up to the amount of the award will be forwarded to the Crime Victim Reparations Trust Fund.

R270-1-7. Abortion.

Expenses for an abortion that is permitted pursuant to Sections 76-7-301 through 76-7-325 shall be eligible for a reparation award as long as all the requirements of Section 63M-7-511 have been met.

R270-1-8. Emergency Awards.

Pursuant to Section 63M-7-522, emergency awards up to $1000 can be granted. No time limit is required for filing an emergency claim. Processing of emergency claims is three to five days.

R270-1-9. Loss of Earnings.

A. Pursuant to Subsection 63M-7-511(4)(d), the 66-2/3% of the person's weekly salary or wages is calculated on gross earnings.

B. Loss of earnings for primary and secondary victims may be reimbursed for up to a maximum of twelve (12) weeks work loss, at an amount not to exceed the maximum allowed per week by Worker's Compensation guidelines in effect at the time of work loss. Reference should be made to Section R270-1-11 for guidelines on sick leave, annual leave or bereavement leave as a collateral source. The Crime Victim Reparations Board may review extenuating circumstances on loss of earnings claims.

R270-1-10. Moving, Transportation Expenses.

A. Pursuant to Subsection 63M-7-511(4)(a), victims of violent crime who suffer a traumatic experience or threat of bodily harm are allowed moving expenses up to $2000. Board approval is needed where extenuating circumstances exist.

B. Transportation expenses up to $1000 are allowed for crime-related travel including, but not limited to, participation in court hearings and parole hearings as well as medical or mental health visits for primary and secondary victims. The Board may approve travel expenses in excess of $1000 where extenuating circumstances exist.

R270-1-11. Collateral Source.

A. Crime Victim Reparations Trust Fund monies shall be used before State Social Services contract monies when considering out-of-pocket expenses in child sexual abuse cases, if the individuals qualify as victims. If the victim qualifies for Medicaid, the contract monies should be used first.

B. Crime Victim Reparations Trust Fund monies shall be used before the Utah Medical Assistance Program funds when considering allowable benefits for victims of violent crime.

R270-1-12. Record Retention.

A. Pursuant to Section 63M-7-501, retention of Crime Victim Reparations annual report and crime victim case files shall be as follows:

1. Annual reports and other statistical information shall be retained in office for a period of three years and then transferred to State Archives.

2. Crime victim case files shall be retained in office as needed for administrative use. After closure or denial of a case file, case file shall be retained in office for one year and then transferred to State Archives. Case files will be retained in the State Records Center for eleven years and then destroyed.

R270-1-13. Awards.

A. Pursuant to Section 63M-7-521, when billing from the providers exceeds the maximum allowed, the Reparation Officer shall pay the bills by the date of service. The Reparation Officer shall solicit input from the victim when making this determination. When the services and the billings have occurred at the same time, the Reparation Officer shall determine payment on a percentage basis.

R270-1-14. Essential Personal Property.

Pursuant to Subsection 63M-7-511(4)(h), essential personal property covers all personal articles necessary and essential for the health and safety of the victim. The Reparation Officer may allow up to $1500 for replacement of such items as eyeglasses, hearing aids, burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board shall review any exceptions over $1500.

R270-1-15. Subrogation.

Pursuant to Section 63M-7-519, subrogation monies collected from the perpetrator, insurance, etc., will be placed in the Crime Victim Reparations Trust Fund and will not be credited toward a particular victim or claimant award amount.

R270-1-16. Unjust Enrichment.

A. Pursuant to Subsection 63M-7-510(1)(d), the following criteria shall be used when considering claims involving possible unjust enrichment of an offender:

1. Unjust enrichment determination shall not be based solely on the presence of the offender in the household at the time of the award.

2. Awards shall not be denied on the basis that the offender would be unjustly enriched, if the victim cooperates with investigation and prosecution of the crime and does what is possible to prevent access by the offender to substantial compensation.

3. Payment to third party providers shall be made to prevent monies intended for victim expenses be used by or on behalf of the offender.

4. Collateral resources such as court-ordered restitution and medical insurance that are available to the victim from the offender shall be examined. However, the victim shall not be penalized for failure of an offender to meet legal obligations to pay for the cost of the victim's recovery.

5. Factors to be considered in determining whether enrichment is substantial or inconsequential include the amount of the award and whether a substantial portion of the compensation award will be used directly by or on behalf of the offender. If the offender has direct access to a cash award and/or if a substantial portion of it will be used to pay for his

living expenses, that portion of the award that will substantially benefit the offender may be reduced or denied. When enrichment is inconsequential or minimal, the award shall not be reduced or denied.

R270-1-17. Prescription or Over-the-Counter Medications.

A. Reimbursement of prescription or over-the-counter medications used in conjunction with mental health therapy shall be considered only for the duration of an approved Treatment Plan.

B. Reimbursement of prescription or over-the-counter medications used in conjunction with medical treatment shall be considered only during the course of treatment by the physician.

C. Medication management rates shall be limited to a maximum of $62.50 per thirty minute session.

R270-1-18. Peer Review Committee.

A. A volunteer Peer Review Committee may be established to review issues and/or provide input to Crime Victim Reparations staff on out-patient mental health counseling claims. The composition, duties, and responsibilities of this Committee shall be defined by the Crime Victim Reparations Board by written internal policy and procedure.

R270-1-19. Medical Awards.

A. Pursuant to Subsection 63M-7-511(4)(b), medical awards are subject to limitations as follows:

1. All medical costs must be related directly to the victimization and all treatment must be considered usual and customary.

2. The reparation officer reserves the right to audit any and all billings associated with medical care.

3. The reparation officer will not pay any interest, finance, or collection fees as part of the award.

4. After the effective date of this rule, in-patient hospital medical bills shall be reimbursed at a rate established between the CVR office and individual hospitals and shall be considered payment in full. A Memorandum of Agreement shall be signed and kept on file.

5. Child endangerment examinations for children that have been exposed to drugs shall be paid for when the health and safety of the child is at risk and no other collateral source is available. The cost of the exam needs to be an expense incurred by the victim. The writing of evidentiary reports and any form of lab testing shall not be covered as part of the examination.

R270-1-20. Misconduct.

Pursuant to Subsections 63M-7-502(22) and 63M-7-512(1)(b) misconduct shall be considered conduct which contributed to the victim's injury or death or conduct which the victim could have reasonably foreseen could lead to injury or death. In determining whether the victim engaged in misconduct, the CVR staff shall consider any behavior of the victim that may have directly or indirectly contributed to the victim's injury or death including consent, provocation, verbal utterance, gesture, incitement, prior conduct of the victim or the ability of the victim to have reasonably avoided the incident upon which the claim is based.

R270-1-21. Three Year Limitation.

Pursuant to Subsections 63M-7-506(1)(c) and 63M-7-525(2) a claim for benefits expires and no further payments will be made with regard to the claim after three years have elapsed from the date of application with the CVR office. All claimants who have filed a claim for benefits with the CVR office prior to the effective date of this rule shall be notified in writing of the three year limitation for payment of benefits. Any claimant who filed a claim for benefits more than two and one-half years prior to the effective date of this rule, other than a claim for benefits for permanent disability or loss of support, shall be notified in writing that they have six months in which to submit any remaining expenses before the three year limitation is imposed and the claim is closed. Claims for benefits for permanent disability or loss of support filed prior to the effective date of this rule shall not be subject to the three year limitation. The Crime Victim Reparations Officers may review extenuating circumstances on claims that have been closed because of the Three Year Limitation rule.

R270-1-22. Sexual Assault Forensic Examinations.

A. Pursuant to Subsections 63M-7-502(20) and 63M-7-511(4)(i), the cost of sexual assault forensic examinations for gathering evidence and providing treatment may be paid by the CVR office in the amount of $300.00 without photo documentation and up to $600.00 with a photo examination. The CVR office may also pay for the cost of medication and up to 85% of the hospital expenses. The following agency guidelines need to be adhered to when making payments for sexual assault forensic examinations:

1. A sexual assault forensic examination shall be reported by the health care provider who performs the examination to law enforcement.

2. Victims shall not be charged for sexual assault forensic examinations.

3. Victims shall not be required to participate in the criminal justice system or cooperate with law enforcement or prosecuting attorneys as a condition of being provided a sexual assault forensic examination or as a condition of payment being made pursuant to this rule.

4. The agency may reimburse any licensed health care facility that provides services for sexual assault forensic examinations.

4. The agency may reimburse licensed medical personnel trained to gather evidence of sexual assaults who perform sexual assault forensic examinations.

5. CVR may pay for the collection of evidence and not attempt to prove or disprove the allegation of sexual assault.

6. A request for reimbursement shall include the law enforcement case number or be signed by a law enforcement officer, victim/witness coordinator or medical provider.

7. The application or billing for the sexual assault forensic examination must be submitted to CVR within one year of the examination.

8. The billing for the sexual assault forensic examination shall:

a. identify the victim by name, address, date of birth, Social Security number, telephone number, patient number;

b. indicate the claim is for a sexual assault forensic examination; and

c. itemize services and fees for services.

9. All collateral sources that are available for payment of the sexual assault forensic examination shall be considered before CVR Trust Fund monies are used. Pursuant to Subsection 63-25a-411(i), the Director may determine that reimbursement for a sexual assault forensic examination will not be reduced even though a claim could be recouped from a collateral source.

10. Evidence will be collected only with the permission of the victim or the legal guardian of the victim. Permission shall not be required in instances where the victim is unconscious, mentally incapable of consent or intoxicated.

11. Restitution for the cost of the sexual assault forensic examination may be pursued by the CVR office.

12. Payment for sexual assault forensic examinations shall be considered for the following:

a. Fees for the collection of evidence, for forensic documentation only, to include:

i. history;

ii. physical; and

iii. collection of specimens and wet mount for sperm.

b. Emergency department services to include:

i. emergency room, clinic room or office room fee;

ii. cultures for gonorrhea, chlamydia, trichomonas, and tests for other sexually transmitted disease;

iii. serum blood test for pregnancy;

iv. morning after pill or high dose oral contraceptives for the prevention of pregnancy; and

v. treatment for the prevention of sexually transmitted disease up to four weeks.

13. The victim of a sexual assault that is requesting payment by CVR for services needed or rendered beyond the sexual assault forensic examination needs to submit an application for compensation to the CVR office.

R270-1-23. Loss of Support Awards.

A. Pursuant to Subsection 63M-7-511(4)(g), loss of support awards shall be covered on death claims only.

R270-1-24. Rent Awards.

A. Pursuant to Subsection 63M-7-511(4)(a), victims of domestic violence or child abuse may be awarded for actual rent expenses for up to three months, not to exceed a maximum rent award of $1800, if the following conditions apply:

1. The perpetrator was living with the victim at the time of the crime or the rent assistance appears directly related to the victim's ability to distance herself/himself from the perpetrator.

2. It appears reasonable that the perpetrator was assisting or was solely responsible for rent.

3. The victim agrees that the perpetrator is not allowed on the premises.

4. The victim submits a safety plan to CVR and the plan is approved by CVR.

5. The victim submits a self-sufficiency plan to CVR and the plan is approved by CVR.

6. The need for rent assistance is directly related to and caused by the crime upon which the claim is based.

B. No victim shall receive more than one rent award in their lifetime.

R270-1-25. Secondary Victim.

Secondary victims who are not primary victims pursuant to Subsections 63M-7-502(37) and who are traumatically affected by criminally injurious conduct shall be eligible for compensation as prescribed by the CVR Board. Secondary victims include only immediate family members (spouse, father, mother, stepparents, child, brother, sister, stepchild, stepbrother, stepsister, or legal guardian) and anyone residing in the household at the time of the crime who was traumatically affected by the crime. The CVR Board may review requests by other individuals who are not immediate family members or do not reside in the household.

R270-1-26. Victim Services.

A. Pursuant to Subsection 63M-7-506(1)(i), there is established a Victim Services Grant Program.

B. For purposes of Subsection 63M-7-506(1)(i), "sufficient reserve" means enough funds to sustain the operation of the Office of Crime Victim Reparations, including administrative costs and reparations payments, for one year.

C. The CVR Board shall annually determine whether a sufficient reserve exists in the Crime Victim Reparation Fund. If a sufficient reserve does not exist, the CVR Board shall not authorize the Victim Services Grant Program for that year. If a sufficient reserve does exist, the CVR Board may authorize the Victim Services Grant Program for that year.

D. When the Victim Services Grant Program is authorized, the CVR Board:

1. shall determine the amount available for the Victim Services Grant Program for that year;

2. shall announce the availability of grant funds through a request for proposals or other similar competitive process approved by the Board; and

3. may establish funding priorities and shall include any priorities in the announcement of grant funds.

E. Requests for funding shall be submitted on a form approved by the CVR Board.

F. The CVR Board shall establish a process to review requests for funding and shall make final decisions regarding the approval, modification, or denial of requests for funding. The CVR Board may award less than the amount determined in Subsection (D)(1). The decisions of the CVR Board may not be appealed.

G. All awards shall be for a period of not more than one year. An award by the CVR Board shall not constitute a commitment for funding in future years. The CVR Board may limit funding for ongoing projects.

H. Award recipients shall submit quarterly reports to the Office of Crime Victim Reparations on forms established by the Director. The CVR staff shall monitor all victim services grants and provide regular reports to the CVR Board.

R270-1-27. Nontraditional Cultural Services.

Cultural services rendered in accordance with recognized spiritual or religious methods of healing, legally available in the state of Utah, may be considered for payment. Since a reasonable and customary schedule of charges has not been established, the reparation officer may require the following: a written itemized description of each procedure, function and/or activity performed and an explanation of its benefit to the victim; the location and time involved to perform such services; and a summary of qualifications and experience which allows the service provider to perform the services. Services shall be requested in lieu of traditional treatment methods. Awards shall be deducted from the claimant's outpatient mental health award and shall remain within the allowed limits set upon that benefit. The fund will not pay for intoxicating or psychotropic substances unless prescribed by a medical practitioner licensed to do so. Claim will be denied if no healing benefit can be identified.

KEY: victim compensation, victims of crimes
May 19, 2008 63M-7-501 et seq.
Notice of Continuation July 3, 2006

R270. Crime Victim Reparations, Administration.
R270-2. Crime Victim Reparations Adjudicative Proceedings.
R270-2-1. Contested Determinations.

A. Pursuant to Section 63M-7-515(1), the Director shall review contested determinations by a reparation officer or designate the CVR Board to review the contested determination. The Director will keep the CVR Board apprised of all contested determinations. The decision of the Director or the CVR Board is final and may not be appealed.

KEY: appellate procedures, administrative procedures
September 15, 2000 63G-3
Notice of Continuation July 3, 2006

R270. Crime Victim Reparations, Administration.
R270-4. Government Records Access and Management Act.
R270-4-1. Responsibility and Authority.

A. Authority for the Office of Crime Victim Reparations rule is found in the Government Records Access and Management Act Section 63G-2-101 et seq.

B. The Office of Crime Victim Reparations will be considered as an agency for the purposes of the Government Records Access and Management Act.

C. The Director of the Office of Crime Victim Reparations will be considered to be the agency head for the purposes of activities under the Government Records Access and Management Act.

D. The Office of Crime Victim Reparations maintains an office at 350 East 500 South, Suite 200, Salt Lake City, Utah 84111.

R270-4-2. Requests for Records.

A. Records may be requested by any person desiring access to the Office of Crime Victim Reparations records.

B. Requests should be submitted in writing to the Office of Crime Victim Reparations, Support Services Coordinator.

C. All requests should be made at the agency office listed above, in person during regular office hours or through the U.S. Mail and will be set forth with reasonable specificity:

1. the name of the record requested;
2. the date the record was made;
3. the form in which the record is needed; and
4. the name, address and daytime phone number of the requester.

R270-4-3. Fees for Records.

A. The Office of Crime Victim Reparations will charge fees to supply records to all requesters, except as provided in the Section R270-4-4(A) of this rule.

B. Fees for records will reflect actual costs incurred by the Office of Crime Victim Reparations and will follow any policy guidance of the Division of Finance, Department of Administrative Services.

R270-4-4. Waiver of Fees for Records.

A. Under the Government Records Access and Management Act Section 63G-2-101 et seq. fees may be waived by the Director under any of the following circumstances:

1. when release of the record, in the opinion of the Director, benefits the public interest;
2. if the individual making the records request is the subject of a record and access is not otherwise restricted under Section 63G-2-101 et seq.;
3. if the requester is an individual specified in Subsection 63G-2-202(1) or 63G-2-202(2); or
4. if the requester's rights are directly implicated by a record and he/she is impecunious.

B. Requests for a waiver of fees should be made in writing to the Director and will set forth the reasons why a requester desires a waiver of fees. The Director may delegate the authority to waive fees.

R270-4-5. Classification and Release of Records and Exceptions.

A. Records of the Office of Crime Victim Reparations will be classified and released in accordance with the Government Records Access and Management Act.

B. All records of the Office of Crime Victim Reparations which are not public as described in the Government Records Access and Management Act will be maintained according to and as authorized under the Government Records Access and Management Act.

C. Any person denied access to records of the Office of Crime Victim Reparations under the procedures outlined in the Government Records Access and Management Act has the opportunity to appeal to the Director for access to a particular record. Appeals will be in writing and include:

1. a description of the record requested;
2. an explanation of how the release of the record would serve the interest of the public and how, in the appellant's opinion, the public's interest outweighs the privacy interests of restricted access;
3. the identity of the requester and an address where he/she may be contacted.

D. The Office of Crime Victim Reparations will share its records with other agencies on a case-by-case basis in accordance with the provisions of Section 63G-2-206.

R270-4-6. Responses to Requests for Records.

A. Responses to requests for records by the agency should be in writing and will be performed in accordance with the provisions of the Government Records Access and Management Act Section 63G-2-101 et seq.

B. The Office of Crime Victim Reparations may respond to the requests for information by means of prepared forms.

KEY: government records access
1994 63G-2-101 et seq.
Notice of Continuation September 30, 2004

R313. Environmental Quality, Radiation Control.
R313-12. General Provisions.
R313-12-1. Authority.

The rules set forth herein are adopted pursuant to the provisions of Subsections 19-3-104(4) and 19-3-104(8) and Section 63J-1-303.

R313-12-2. Purpose and Scope.

It is the purpose of these rules to state such requirements as shall be applied in the use of radiation, radiation machines, and radioactive materials to ensure the maximum protection of the public health and safety to all persons at, or in the vicinity of, the place of use, storage, or disposal. These rules are intended to be consistent with the proper use of radiation machines and radioactive materials. Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own or acquire any source of radiation, provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. See also Section R313-12-55.

R313-12-3. Definitions.

As used in these rules, these terms shall have the definitions set forth below. Additional definitions used only in a certain rule will be found in that rule.

"A1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A2" means the maximum activity of radioactive material, other than special form radioactive material, low specific activity, and surface contaminated object material permitted in a Type A package. These values are either listed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100 or may be derived in accordance with the procedures prescribed in 10 CFR 71, Appendix A, which is incorporated by reference in Section R313-19-100.

"Absorbed dose" means the energy imparted by ionizing radiation per unit mass of irradiated material. The units of absorbed dose are the gray (Gy) and the rad.

"Accelerator produced material" means a material made radioactive by a particle accelerator.

"Act" means Utah Radiation Control Act, Title 19, Chapter 3.

"Activity" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the becquerel (Bq) and the curie (Ci).

"Adult" means an individual 18 or more years of age.

"Address of use" means the building or buildings that are identified on the license and where radioactive material may be received, used or stored.

"Advanced practice registered nurse" means an individual licensed by this state to engage in the practice of advanced practice registered nursing. See Sections 58-31b-101 through 58-31b-801, Nurse Practice Act.

"Agreement State" means a state with which the United States Nuclear Regulatory Commission or the Atomic Energy Commission has entered into an effective agreement under Section 274 b. of the Atomic Energy Act of 1954, as amended (73 Stat. 689).

"Airborne radioactive material" means a radioactive material dispersed in the air in the form of dusts, fumes, particulates, mists, vapors, or gases.

"Airborne radioactivity area" means: a room, enclosure, or area in which airborne radioactive material exists in concentrations:

(a) In excess of the derived air concentrations (DACs), specified in Rule R313-15, or

(b) To such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI), or 12 DAC hours.

"As low as reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Area of use" means a portion of an address of use that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon, except as a decay product of source or special nuclear material, and including global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the Department under the Radiation Control Act or Rules.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to one disintegration or transformation per second.

"Bioassay" means the determination of kinds, quantities or concentrations, and in some cases, the locations of radioactive material in the human body, whether by direct measurement (in vivo counting) or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Board" means the Radiation Control Board created under Section 19-1-106.

"Byproduct material" means:

(a) a radioactive material, with the exception of special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material; and

(b) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "byproduct material" within this definition.

"Calibration" means the determination of:

(a) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument; or

(b) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Chelating agent" means a chemical ligand that can form coordination compounds in which the ligand occupies more than one coordination position. The agents include beta diketones, certain proteins, amine polycarboxylic acids, hydroxycarboxylic acids, gluconic acid, and polycarboxylic acids.

"Chiropractor" means an individual licensed by this state to engage in the practice of chiropractic. See Sections 58-73-101 through 58-73-701, Chiropractic Physician Practice Act.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Commission" means the U.S. Nuclear Regulatory Commission.

"Committed dose equivalent" (HT,50), means the dose equivalent to organs or tissues of reference (T), that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" (HE,50), is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of measurement of activity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7 x 1010 disintegrations or transformations per second (dps or tps).

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

(a) release of property for unrestricted use and termination of the license; or

(b) release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of one centimeter (1000 mg/cm^2).

"Dentist" means an individual licensed by this state to engage in the practice of dentistry. See sections 58-69-101 through 58-69-805, Dentist and Dental Hygienist Practice Act.

"Department" means the Utah State Department of Environmental Quality.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent" (H_T), means the product of the absorbed dose in tissue, quality factor, and other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purpose of these rules, "limits" is an equivalent term.

"Effective dose equivalent" (H_E), means the sum of the products of the dose equivalent to each organ or tissue (H_T), and the weighting factor (w_T,) applicable to each of the body organs or tissues that are irradiated.

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means an opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Executive Secretary" means the executive secretary of the board.

"Explosive material" means a chemical compound, mixture, or device which produces a substantial instantaneous release of gas and heat spontaneously or by contact with sparks or flame.

"EXPOSURE" when capitalized, means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons, both negatrons and positrons, liberated by photons in a volume element of air having a mass of "dm" are completely stopped in air. The special unit of EXPOSURE is the roentgen (R). See Section R313-12-20 Units of exposure and dose for the SI equivalent. For purposes of these rules, this term is used as a noun.

"Exposure" when not capitalized as the above term, means being exposed to ionizing radiation or to radioactive material. For purposes of these rules, this term is used as a verb.

"EXPOSURE rate" means the EXPOSURE per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from a source of radiation outside the body.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee.

"Facility" means the location within one building, vehicle, or under one roof and under the same administrative control

(a) at which the use, processing or storage of radioactive material is or was authorized; or

(b) at which one or more radiation-producing machines or radioactivity-inducing machines are installed or located.

"Former United States Atomic Energy Commission (AEC) or United States Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray" (Gy) means the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram.

"Hazardous waste" means those wastes designated as hazardous by the U.S. Environmental Protection Agency rules in 40 CFR Part 261.

"Healing arts" means the disciplines of medicine, dentistry, osteopathy, chiropractic, and podiatry.

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual receiving a dose equivalent in excess of one mSv (0.1 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates. For purposes of these rules, rooms or areas in which diagnostic x-ray systems are used for healing arts purposes are not considered high radiation areas.

"Human use" means the intentional internal or external administration of radiation or radioactive material to human beings.

"Individual" means a human being.

"Individual monitoring" means the assessment of:

(a) dose equivalent, by the use of individual monitoring devices or, by the use of survey data; or

(b) committed effective dose equivalent by bioassay or by determination of the time weighted air concentrations to which an individual has been exposed, that is, DAC-hours.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, individual monitoring equipment and personnel monitoring equipment are equivalent terms. Examples of individual monitoring devices are film

badges, thermoluminescence dosimeters (TLD's), pocket ionization chambers, and personal air sampling devices.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, orders, requirements and conditions applicable to radiation sources.

"Interlock" means a device arranged or connected requiring the occurrence of an event or condition before a second condition can occur or continue to occur.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Lens dose equivalent" (LDE) applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"License" means a license issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Licensee" means a person who is licensed by the Department in accordance with these rules and the Act.

"Licensed or registered material" means radioactive material, received, possessed, used or transferred or disposed of under a general or specific license issued by the Executive Secretary.

"Licensing state" means a state which has been provisionally or finally designated as such by the Conference of Radiation Control Program Directors, Inc., which reviews state regulations to establish equivalency with the Suggested State Regulations and ascertains whether a State has an effective program for control of natural occurring or accelerator produced radioactive material (NARM). The Conference will designate as Licensing States those states with regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM.

"Limits". See "Dose limits".

"Lost or missing source of radiation" means licensed or registered sources of radiation whose location is unknown. This definition includes, but is not limited to, radioactive material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in 10 CFR 71.4.

"Member of the public" means an individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Monitoring" means the measurement of radiation, radioactive material concentrations, surface area activities or quantities of radioactive material, and the use of the results of these measurements to evaluate potential exposures and doses. For purposes of these rules, radiation monitoring and radiation protection monitoring are equivalent terms.

"NARM" means a naturally occurring or accelerator-produced radioactive material. It does not include byproduct, source or special nuclear material.

"NORM" means a naturally occurring radioactive material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides.

"Nuclear Regulatory Commission" (NRC) means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties for the licensee or registrant involve exposure to sources of radiation, whether or not the sources of radiation are in the possession of the licensee, registrant, or other person. Occupational dose does not include doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, from voluntary participation in medical research programs, or as a member of the public.

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator" means a machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of one MeV.

"Permit" means a permit issued by the Executive Secretary in accordance with the rules adopted by the Board.

"Permitee" means a person who is permitted by the Department in accordance with these rules and the Act.

"Person" means an individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, or another state or political subdivision or agency thereof, and a legal successor, representative, agent or agency of the foregoing.

"Personnel monitoring equipment," see individual monitoring devices.

"Pharmacist" means an individual licensed by this state to engage in the practice of pharmacy. See Sections 58-17a-101 through 58-17a-801, Pharmacy Practice Act.

"Physician" means both physicians and surgeons licensed under Section 58-67-301, Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section 58-68-301, Utah Osteopathic Medical Practice Act.

"Physician assistant" means an individual licensed by this state to engage in practice as a physician assistant. See Sections 58-70a-101 through 58-70a-504, Physician Assistant Act.

"Podiatrist" means an individual licensed by this state to engage in the practice of podiatry. See Sections 58-5a-101 through 58-5a-501, Podiatric Physician Licensing Act.

"Practitioner" means an individual licensed by this state in the practice of a healing art. For these rules, only the following are considered to be a practitioner: physician, dentist, podiatrist, chiropractor, physician assistant, and advanced practice registered nurse.

"Protective apron" means an apron made of radiation-attenuating materials used to reduce exposure to radiation.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive materials released by a licensee,or to any other source of radiation under the control of a licensee or registrant. Public dose does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered radioactive material and released in accordance with Rule R313-32, or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130 degrees Fahrenheit (54.4 degrees Celsius) or any solid material, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Quality factor" (Q) means the modifying factor, listed in Tables 1 and 2 of Section R313-12-20 that is used to derive dose equivalent from absorbed dose.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram

"Radiation" means alpha particles, beta particles, gamma

rays, x-rays, neutrons, high speed electrons, high speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include non-ionizing radiation, like radiowaves or microwaves, visible, infrared, or ultraviolet light.

"Radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem), in one hour at 30 centimeters from the source of radiation or from a surface that the radiation penetrates.

"Radiation machine" means a device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection rules and has been assigned such responsibility by the licensee or registrant. For a licensee authorized to use radioactive materials in accordance with the requirements of Rule R313-32,

(1) the individual named as the "Radiation Safety Officer" must meet the training requirements for a Radiation Safety Officer as stated in Rule R313-32; or

(2) the individual must be identified as a "Radiation Safety Officer" on

(a) a specific license issued by the Executive Secretary, the U.S. Nuclear Regulatory Commission, or an Agreement State that authorizes the medical use of radioactive materials; or

(b) a medical use permit issued by a U.S. Nuclear Regulatory Commission master material licensee.

"Radiation source". See "Source of radiation."

"Radioactive material" means a solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay". See "Bioassay".

"Registrant" means any person who is registered with respect to radioactive materials or radiation machines with the Executive Secretary or is legally obligated to register with the Executive Secretary pursuant to these rules and the Act.

"Registration" means registration with the Department in accordance with the rules adopted by the Board.

"Regulations of the U.S. Department of Transportation" means 49 CFR 100 through 189.

"Rem" means the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 sievert (Sv).

"Research and development" means:

(a) theoretical analysis, exploration, or experimentation; or

(b) the extension of investigative findings and theories of a scientific or technical nature into practical application for experimental and demonstration purposes, including the experimental production and testing of models, devices, equipment, materials, and processes. Research and development does not include the internal or external administration of radiation or radioactive material to human beings.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of Rule R313-15.

"Restricted area" means an area, access to which is limited by the licensee or registrant for the purpose of protecting individuals against undue risks from exposure to sources of radiation. A "Restricted area" does not include areas used as residential quarters, but separate rooms in a residential building may be set apart as a restricted area.

"Roentgen" (R) means the special unit of EXPOSURE. One roentgen equals 2.58 x 10-4 coulombs per kilogram of air. See EXPOSURE.

"Sealed source" means radioactive material that is permanently bonded or fixed in a capsule or matrix designed to prevent release and dispersal of the radioactive material under the most severe conditions which are likely to be encountered in normal use and handling.

"Shallow dose equivalent" (Hs) which applies to the external exposure of the skin of the whole body or the skin of an extremity, is taken as the dose equivalent at a tissue depth of 0.007 centimeter (seven mg per cm2).

"SI" means an abbreviation of the International System of Units.

"Sievert" (Sv) means the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

"Site boundary" means that line beyond which the land or property is not owned, leased, or otherwise controlled by the licensee or registrant.

"Source container" means a device in which sealed sources are transported or stored.

"Source material" means:

(a) uranium or thorium, or any combination thereof, in any physical or chemical form, or

(b) ores that contain by weight one-twentieth of one percent (0.05 percent), or more of, uranium, thorium, or any combination of uranium and thorium. Source material does not include special nuclear material.

"Source material milling" means any activity that results in the production of byproduct material as defined by (b) of "byproduct material".

"Source of radiation" means any radioactive material, or a device or equipment emitting or capable of producing ionizing radiation.

"Special form radioactive material" means radioactive material which satisfies the following conditions:

(a) it is either a single solid piece or is contained in a sealed capsule that can be opened only by destroying the capsule;

(b) the piece or capsule has at least one dimension not less than five millimeters (0.197 inch); and

(c) it satisfies the test requirements specified by the U.S. Nuclear Regulatory Commission in 10 CFR 71.75. A special form encapsulation designed in accordance with the U.S. Nuclear Regulatory Commission requirements in effect on June 30, 1983, and constructed prior to July 1, 1985, may continue to be used. A special form encapsulation designed in accordance with the requirements of Section 71.4 in effect on March 31, 1996, (see 10 CFR 71 revised January 1, 1983), and constructed before April 1, 1998, may continue to be used. Any other special form encapsulation must meet the specifications of this definition.

"Special nuclear material" means:

(a) plutonium, uranium-233, uranium enriched in the isotope 233 or in the isotope 235, and other material that the U.S. Nuclear Regulatory Commission, pursuant to the provisions of section 51 of the Atomic Energy Act of 1954, as amended, determines to be special nuclear material, but does not include source material; or

(b) any material artificially enriched by any of the foregoing but does not include source material.

"Special nuclear material in quantities not sufficient to form a critical mass" means uranium enriched in the isotope U-235 in quantities not exceeding 350 grams of contained U-235;

uranium-233 in quantities not exceeding 200 grams; plutonium in quantities not exceeding 200 grams or a combination of them in accordance with the following formula: For each kind of special nuclear material, determine the ratio between the quantity of that special nuclear material and the quantity specified above for the same kind of special nuclear material. The sum of such ratios for all of the kinds of special nuclear material in combination shall not exceed one. For example, the following quantities in combination would not exceed the limitation and are within the formula:

((175(Grams contained U-235)/350) + (50(Grams U-233/200) + (50(Grams Pu)/200)) is equal to one.

"Survey" means an evaluation of the radiological conditions and potential hazards incident to the production, use, transfer, release, disposal, or presence of sources of radiation. When appropriate, such evaluation includes, but is not limited to, tests, physical examinations and measurements of levels of radiation or concentrations of radioactive material present.

"Test" means the process of verifying compliance with an applicable rule.

"These rules" means "Utah Radiation Control Rules".

"Total effective dose equivalent" (TEDE) means the sum of the deep dose equivalent for external exposures and the committed effective dose equivalent for internal exposures.

"Total organ dose equivalent" (TODE) means the sum of the deep dose equivalent and the committed dose equivalent to the organ receiving the highest dose as described in Subsection R313-15-1107(1)(f).

"U.S. Department of Energy" means the Department of Energy established by Public Law 95-91, August 4, 1977, 91 Stat. 565, 42 U.S.C. 7101 et seq., to the extent that the Department exercises functions formerly vested in the U.S. Atomic Energy Commission, its Chairman, members, officers and components and transferred to the U.S. Energy Research and Development Administration and to the Administrator thereof pursuant to sections 104(b), (c), and (d) of Public Law 93-438, October 11, 1974, 88 Stat. 1233 at 1237, effective January 19, 1975 known as the Energy Reorganization Act of 1974, and retransferred to the Secretary of Energy pursuant to section 301(a) of Public Law 95-91, August 14, 1977, 91 Stat. 565 at 577-578, 42 U.S.C. 7151, effective October 1, 1977 known as the Department of Energy Organization Act.

"Unrefined and unprocessed ore" means ore in its natural form prior to processing, like grinding, roasting, beneficiating or refining.

"Unrestricted area" means an area, to which access is neither limited nor controlled by the licensee or registrant. For purposes of these rules, "uncontrolled area" is an equivalent term.

"Waste" means those low-level radioactive wastes that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level waste has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste:

(a) not classified as high-level radioactive waste, spent nuclear fuel, or byproduct material as defined in Section 11e.(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and

(b) classified by the U.S. Nuclear Regulatory Commission as low-level radioactive waste consistent with existing law and in accordance with (a) above.

"Week" means seven consecutive days starting on Sunday.

"Whole body" means, for purposes of external exposure, head, trunk including male gonads, arms above the elbow, or legs above the knees.

"Worker" means an individual engaged in work under a license or registration issued by the Executive Secretary and controlled by a licensee or registrant, but does not include the licensee or registrant.

"Working level" (WL), means any combination of short-lived radon daughters in one liter of air that will result in the ultimate emission of 1.3 x 10^5 MeV of potential alpha particle energy. The short-lived radon daughters are, for radon-222: polonium-218, lead-214, bismuth-214, and polonium-214; and for radon 220: polonium-216, lead-212, bismuth-212, and polonium-212.

"Working level month" (WLM), means an exposure to one working level for 170 hours. 2,000 working hours per year divided by 12 months per year is approximately equal to 170 hours per month.

"Year" means the period of time beginning in January used to determine compliance with the provisions of these rules. The licensee or registrant may change the starting date of the year used to determine compliance by the licensee or registrant provided that the decision to make the change is made not later than December 31 of the previous year. If a licensee or registrant changes in a year, the licensee or registrant shall assure that no day is omitted or duplicated in consecutive years.

R313-12-20. Units of Exposure and Dose.

(1) As used in these rules, the unit of EXPOSURE is the coulomb per kilogram (C per kg). One roentgen is equal to 2.58 x 10^{-4} coulomb per kilogram of air.

(2) As used in these rules, the units of dose are:

(a) Gray (Gy) is the SI unit of absorbed dose. One gray is equal to an absorbed dose of one joule per kilogram. One gray equals 100 rad.

(b) Rad is the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram. One rad equals 0.01 Gy.

(c) Rem is the special unit of any of the quantities expressed as dose equivalent. The dose equivalent in rem is equal to the absorbed dose in rad multiplied by the quality factor. One rem equals 0.01 Sv.

(d) Sievert (Sv) is the SI unit of any of the quantities expressed as dose equivalent. The dose equivalent in sievert is equal to the absorbed dose in gray multiplied by the quality factor. One Sv equals 100 rem.

(3) As used in these rules, the quality factors for converting absorbed dose to dose equivalent are shown in Table 1.

TABLE 1

Quality Factors and Absorbed Dose Equivalencies

Type of Radiation	Quality Factor (Q)	Absorbed Dose Equal to a Unit Dose Equivalent
X, gamma, or beta radiation and high-speed electrons	1	1
Alpha particles, multiple-charged particles, fission fragments and heavy particles of unknown charge	20	0.05
Neutrons of unknown energy	10	0.1
High energy protons	10	0.1

For the column in Table 1 labeled "Absorbed Dose Equal to a Unit Dose Equivalent", the absorbed dose in rad is equal to one rem or the absorbed dose in gray is equal to one Sv.

(4) If it is more convenient to measure the neutron fluence rate than to determine the neutron dose equivalent rate in sievert per hour or rem per hour, as provided in Subsection R313-12-20(3), 0.01 Sv of neutron radiation of unknown energies may, for purposes of these rules, be assumed to result from a total fluence of 25 million neutrons per square centimeter incident upon the body. If sufficient information exists to estimate the approximate energy distribution of the neutrons, the licensee or registrant may use the fluence rate per unit dose equivalent or

the appropriate Q value from Table 2 to convert a measured tissue dose in gray or rad to dose equivalent in sievert or rem.

TABLE 2

Mean Quality Factors, Q, and Fluence Per Unit Dose Equivalent for Monoenergetic Neutrons

	Neutron Energy Mev	Quality Factor Q	Fluence per Unit Dose Equivalent neutrons cm^{-2} rem^{-1}	Fluence per Unit Dose Equivalent neutrons cm^{-2} Sv^{-1}
thermal	2.5×10^{-8}	2	980×10^{6}	980×10^{8}
	1×10^{-7}	2	980×10^{6}	980×10^{8}
	1×10^{-6}	2	810×10^{6}	810×10^{8}
	1×10^{-5}	2	810×10^{6}	810×10^{8}
	1×10^{-4}	2	840×10^{6}	840×10^{8}
	1×10^{-3}	2	980×10^{6}	980×10^{8}
	1×10^{-2}	2.5	1010×10^{6}	1010×10^{8}
	1×10^{-1}	7.5	170×10^{6}	170×10^{8}
	5×10^{-1}	11	39×10^{6}	39×10^{8}
	1	11	27×10^{6}	27×10^{8}
	2.5	9	29×10^{6}	29×10^{8}
	5	8	23×10^{6}	23×10^{8}
	7	7	24×10^{6}	24×10^{8}
	10	6.5	24×10^{6}	24×10^{8}
	14	7.5	17×10^{6}	17×10^{8}
	20	8	16×10^{6}	16×10^{8}
	40	7	14×10^{6}	14×10^{8}
	60	5.5	16×10^{6}	16×10^{8}
	1×10^{2}	4	20×10^{6}	20×10^{8}
	2×10^{2}	3.5	19×10^{6}	19×10^{8}
	3×10^{2}	3.5	16×10^{6}	16×10^{8}
	4×10^{2}	3.5	14×10^{6}	14×10^{8}

For the column in Table 2 labeled "Quality Factor", the values of Q are at the point where the dose equivalent is maximum in a 30 cm diameter cylinder tissue-equivalent phantom.

For the columns in Table 2 labeled "Fluence per Unit Dose Equivalent", the values are for monoenergetic neutrons incident normally on a 30 cm diameter cylinder tissue equivalent phantom.

R313-12-40. Units of Radioactivity.

For purposes of these rules, activity is expressed in the SI unit of becquerel (Bq), or in the special unit of curie (Ci), or their multiples, or disintegrations or transformations per unit of time.

(1) One becquerel (Bq) equals one disintegration or transformation per second.

(2) One curie (Ci) equals 3.7×10^{10} disintegrations or transformations per second, which equals 3.7×10^{10} becquerel, which equals 2.22×10^{12} disintegrations or transformations per minute.

R313-12-51. Records.

(1) A licensee or registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation.

(2) Prior to license termination, each licensee authorized to possess radioactive material with a half-life greater than 120 days, in an unsealed form, may forward the following records to the Executive Secretary:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

NOTE: 10 CFR 20.304 permitted burial of small quantities of licensed materials in soil before January 28, 1981, without specific U.S. Nuclear Regulatory Commission authorization. See 20.304 contained in the 10 CFR, parts 0 to 199, edition revised as of January 1, 1981.

(3) If licensed activities are transferred or assigned in accordance with Subsection R313-19-34(2), each licensee authorized to possess radioactive material, with a half-life greater than 120 days, in an unsealed form, shall transfer the following records to the new licensee and the new licensee will be responsible for maintaining these records until the license is terminated:

(a) records of disposal of licensed material made under Sections R313-15-1002 (including burials authorized before January 28, 1981), R313-15-1003, R313-15-1004, and R313-15-1005; and

(b) records required by Subsection R313-15-1103(2)(d).

(4) Prior to license termination, each licensee may forward the records required by Subsection R313-22-35(7) to the Executive Secretary.

(5) Additional records requirements are specified elsewhere in these rules.

R313-12-52. Inspections.

(1) A licensee or registrant shall afford representatives of the Executive Secretary, at reasonable times, opportunity to inspect sources of radiation and the premises and facilities wherein those sources of radiation are used or stored.

(2) A licensee or registrant shall make available to representatives of the Executive Secretary for inspection, at any reasonable time, records maintained pursuant to these rules.

R313-12-53. Tests.

(1) A licensee or registrant shall perform upon instructions from a representative of the Board or the Executive Secretary or shall permit the representative to perform reasonable tests as the representative deems appropriate or necessary including, but not limited to, tests of:

(a) sources of radiation;

(b) facilities wherein sources of radiation are used or stored;

(c) radiation detection and monitoring instruments; and

(d) other equipment and devices used in connection with utilization or storage of licensed or registered sources of radiation.

R313-12-54. Additional Requirements.

The Board may, by rule, or order, impose upon a licensee or registrant requirements in addition to those established in these rules that it deems appropriate or necessary to minimize any danger to public health and safety or the environment.

R313-12-55. Exemptions.

(1) The Board may, upon application or upon its own initiative, grant exemptions or exceptions from the requirements of these rules as it determines are authorized by law and will not result in undue hazard to public health and safety or the environment.

(2) U.S. Department of Energy contractors or subcontractors and U.S. Nuclear Regulatory Commission contractors or subcontractors operating within this state are exempt from these rules to the extent that the contractor or subcontractor under his contract receives, possesses, uses, transfers, or acquires sources of radiation. The following contractor categories are included:

(a) prime contractors performing work for the U.S. Department of Energy at U.S. Government-owned or controlled sites, including the transportation of sources of radiation to or from the sites and the performance of contract services during temporary interruptions of the transportation;

(b) prime contractors of the U.S. Department of Energy performing research in, or development, manufacture, storage, testing or transportation of, atomic weapons or components thereof;

(c) prime contractors of the U.S. Department of Energy using or operating nuclear reactors or other nuclear devices in a United States Government-owned vehicle or vessel; and

(d) any other prime contractor or subcontractor of the U.S. Department of Energy or of the U.S. Nuclear Regulatory

Commission when the state and the U.S. Nuclear Regulatory Commission jointly determine (i) that the exemption of the prime contractor or subcontractor is authorized by law; and (ii) that under the terms of the contract or subcontract, there is adequate assurance that the work thereunder can be accomplished without undue risk to the public health and safety.

R313-12-70. Impounding.

Sources of radiation shall be subject to impounding pursuant to Section 19-3-111. Persons who have a source of radiation impounded are subject to fees established in accordance with the Legislative Appropriations Act for the actual cost of the management and oversight activities performed by representatives of the Executive Secretary.

R313-12-100. Prohibited Uses.

(1) A hand-held fluoroscopic screen using x-ray equipment shall not be used unless it has been listed in the Registry of Sealed Source and Devices or accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health.

(2) A shoe-fitting fluoroscopic device shall not be used.

R313-12-110. Communications.

All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the Division of Radiation Control, P.O. Box 144850, 168 North 1950 West, Salt Lake City, Utah 84114-4850.

R313-12-111. Submission of Electronic Copies.

(1) All submissions to the Executive Secretary not exempt in paragraph R313-12-111(5) shall also be submitted to the Executive Secretary in electronic format. This requirement extends to all attachments to these documents.

(2) The electronic copy shall be a true, accurate, searchable and reproducible copy of the official submission, except that it need not include signatures or professional stamps.

(3) All electronic copies shall be submitted on a CD or DVD nonrewritable disc, except that documents smaller than 25 megabytes may be submitted by email.

(4) All documents shall be submitted in one of the following electronic formats, at the choice of the submitter:

(a) A searchable PDF document (a document that may be read and searched using Adobe Reader); or

(b) A Microsoft Word document.

(5) The requirements of this rule do not apply to:

(a) X-ray registration applications;

(b) Submissions shorter than 25 pages unless otherwise ordered by the Executive Secretary;

(c) Public comments received during a formal public comment period;

(d) Correspondence received from individuals or organizations that are not currently regulated by the agency, unless that correspondence is about proposing an activity or facility that would be subject to agency regulation; and

(e) Documents used to make payments to the agency.

(6) If an official submission includes information for which business confidentiality is claimed or that is security-sensitive, this requirement applies only to that portion of the submission for which no confidentiality is claimed.

(7) The Executive Secretary may waive the requirements of R313-12-111(1) for good cause.

KEY: definitions, units, inspections, exemptions
April 11, 2008 19-3-104
Notice of Continuation July 10, 2006 19-3-108

R313. Environmental Quality, Radiation.
R313-17. Administrative Procedures.
R313-17-1. Application of Rule.

This rule applies to proceedings under Title 19, Chapter 3 (Radiation Control Act).

R313-17-2. Public Notice and Public Comment Period.

(1) The Executive Secretary shall give public notice of, and an opportunity to comment on the following actions:

(a) Proposed licensing action for license categories 2b and c, 4a, b, c, d and 6 identified in R313-70-7 or a proposed approval or denial of a significant radioactive materials license, license amendment, or license renewal.

(b) The initial proposed registration of an ionizing radiation producing machine which operates at a kilovoltage potential (kVp) greater than 200 in an open beam configuration. R313-17-2(1)(b) does not apply to use in the healing arts.

(c) Board activities that may have significant public interest and the Board requests the Executive Secretary to take public comment on those proposed activities.

(2) Public notice shall allow at least 30 days for public comment.

(3) Public notice may describe more than one action listed in R313-17-2(1) and may combine notice of a public hearing with notice of the proposed action.

(4) Public notice shall be given by publication in a newspaper of general circulation in the area affected by the proposed action. Notice shall also be given to persons on a mailing list developed by the Executive Secretary and those who request in writing to be notified.

R313-17-3. Public Comments, Response to Comments and Requests for Public Hearings.

(1) During the public comment period provided under R313-17-2, any interested person may submit written comments on the proposed action and may request a public hearing, if no hearing has already been scheduled.

(2) A request for a public hearing shall be in writing and shall state the nature of the issues proposed to be raised in the hearing.

(3) Comments received during the public comment period and during any hearing shall be considered in making the final decision.

(4) At the time of the final decision, the Executive Secretary shall issue a response to comments, which shall include:

(a) Specific provisions, if any, that have been changed in the final action and the reasons for the change; and

(b) A brief description and response to all significant comments raised during the public comment period or during any hearing.

(5) The Executive Secretary's response to public comments shall be available to the public.

R313-17-4. Public Hearings.

(1) This section applies to hearings for public comment on proposed actions specified in R313-17-2. This section does not govern adjudicative proceedings.

(2) The Executive Secretary shall hold a public hearing whenever he finds, on the basis of requests, a significant degree of public interest in the proposed action.

(3) The Executive Secretary may also hold a public hearing at his discretion, whenever, for instance, a hearing might clarify one or more issues involved in the proposed action.

(4) The Executive Secretary shall hold a public hearing whenever he receives written notice of opposition to a proposed action and a request for a hearing within 30 days of public notice under R313-17-2.

(5)(a) Public notice of the hearing shall be given as specified in R313-17-2.

(b) The public comment period under R313-17-2 shall automatically be extended to the close of any public hearing under this section. The hearing officer may also extend the comment period by so stating at the hearing.

(c) Whenever possible the Executive Secretary shall schedule a hearing under this section at a time and location convenient to the parties involved.

(d) Any person at the hearing may submit oral or written statements and data concerning the proposed action. Reasonable limits may be set upon the time allowed for oral statements and the submission of statements in writing may be required.

(e) A tape recording or written transcript of the hearing shall be made available to the public.

R313-17-5. Administrative Procedures General Provisions.

(1) PURPOSE AND SCOPE

R313-17-5 through R313-17-13 set out procedures for conducting formal adjudicative proceedings in accordance with the Utah Administrative Procedures Act (UAPA), Section 63G-4-102 et seq. and govern:

(a) the contest of the validity of initial order or notice of violation as described in R313-17-5(2);

(b) the contest of proposed imposition of civil penalties under Section 19-3-109; and

(c) other formal adjudicative proceedings before the Radiation Control Board.

(2) INITIAL PROCEEDINGS EXEMPT FROM UAPA

Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Radiation Control Act are not governed by UAPA as specified in Section 63G-4-102(2)(k). This includes, but is not limited to, initial proceedings regarding:

(a) approval, amendment, denial, termination, transfer, revocation, or renewal of licenses;

(b) requests for variances, exemptions, and other approvals;

(c) notices of violation and orders associated with notices of violation;

(d) orders to comply and orders to cease and desist;

(e) impoundment of radioactive material;

(f) orders for decommissioning;

(g) declaratory orders; and

(h) orders for surveying, monitoring, sampling, or information;

(3) DESIGNATION OF PROCEEDINGS

(a) Contest of an initial order or notice of violation or proposed imposition of civil penalties shall be conducted as a formal proceeding.

(b) The Board in accordance with Section 63G-4-202(3) may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced.

(c) Unless otherwise stated in R313, informal adjudicative proceedings shall be conducted in accordance with Section 63G-4-203.

(4) APPEARANCES AND REPRESENTATION

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding.

(b) Any participant may be represented by legal counsel.

(5) COMPUTATION OF TIME

Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure except that no additional time shall be allowed for service by mail.

R313-17-6. Commencing a Formal Adjudicative Proceeding.

(1) Except as otherwise permitted by emergency orders as described in Section 63G-4-502, all adjudicative proceedings shall be commenced by either:

(a) a Notice of Agency Action in accordance with Section 63G-4-201, if proceedings are commenced by the Board; or

(b) a Request for Agency Action in accordance with R313-17-6(2), if proceedings are commenced by a person other than the Board.

(2)(a) The validity of initial orders, notices of violation and proposed imposition of civil penalties, as described in R313-17-5(1) and (2), may be contested by filing a written Request for Agency Action with the Board and submitted to:

Executive Secretary, Utah Radiation Control Board
Division of Radiation Control
168 North 1950 West
PO Box 144850
Salt Lake City, Utah 84114-4850.

(b) Any such request is governed by and shall comply with the requirements of Section 63G-4-201(3) and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

(c)(i) All initial orders or notices of violation are effective upon issuance and shall become final if not contested within 30 days after the date issued.

(ii) Issuance of such orders or notices of violation means the time a signed order is mailed by certified mail to the recipient's most current address or hand delivered to the recipient.

(iii) If delivery by certified mail is refused, the issued order or notice shall be sent by regular first class mail.

(d) Failure to timely contest an initial order or notice of violation waives any right of administrative contest, reconsideration, review or judicial appeal.

(3) RESPONSE TO REQUEST FOR AGENCY ACTION

In accordance with Section 63G-4-201(3)(d) and (e), notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.

(4) PRE-HEARING RECORD

The Executive Secretary shall compile an administrative record prior to a scheduled hearing and give any party the opportunity to supplement the record. The pre-hearing record shall also consist of pleadings or other documents filed prior to the hearing.

R313-17-7. Parties and Intervention.

(1) DETERMINATION OF A PARTY.

The following persons are Parties to a formal proceeding governed by these rules:

(a) The person to whom an initial order or notice of violation is directed, such as a person who submitted a license application that was approved or disapproved by order of the Executive Secretary;

(b) The Executive Secretary of the Radiation Control Board; and

(c) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom the Board has granted intervention under R313-17-7(2).

(2) INTERVENTION

A petition for intervention may be filed by a petitioner to commence an adjudicative proceeding in accordance with R313-17-6(2) or to intervene after a notice of agency action or request for agency action has been filed. A petitioner for intervention shall meet the following requirements:

(a)(i) The request for agency action is timely filed in accordance with R313-17-6(2); or

(ii) The Petition to Intervene in a proceeding commenced by a party other than the Petitioner for Intervention is filed with the Board, with a copy to all parties, within 20 days from the date of the Notice of Agency Action or Request for Agency Action.

(b) The Petition to Intervene:

(i) Identifies the proceedings in which intervention is sought;

(ii) Contains a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding and the petitioner qualifies as an Intervenor under Section 63G-4-207; and

(iii) Includes a statement of relief sought from the Board, including the basis thereof.

(c) Unless modified by the Presiding Officer, any party may respond to a Petition for Intervention during the period allowed for responsive pleadings under Section 63G-4-204. The Chair of the Radiation Control Board may act as Presiding Officer for purposes of this paragraph.

(d) Intervention may only be granted by order of the Board to a petitioner who meets the requirements of R313-17-7(2)(a) and (b).

(3) DESIGNATION OF PARTIES

Unless otherwise designed by the Hearing Officer:

(a) The person filing a Request for Agency Action shall be the Petitioner and the Executive Secretary shall be the Respondent.

(b) In a proceeding requested by a Petitioner for Intervention, the person granted Intervenor status shall be the Petitioner. The Executive Secretary and the person to whom the challenged order or notice is directed shall be the Respondents.

(4) AMICUS CURIAE (Friend of the Court)

Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).

R313-17-8. Conduct of Proceedings.

(1) ROLE OF BOARD

(a) The Board is the "agency head" as that term is used in Section 63G-4. The Board is also the "presiding officer," as that term is used in Section 63G-4, except:

(i) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(ii) The Board may by order appoint one or more Presiding Officers to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his or her authority as specified in this Rule to another Board member.

(2) APPOINTED PRESIDING OFFICERS

Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer shall be for the purpose of conducting all aspects of an adjudicative proceeding, except grant of intervention, stays of orders and issuance of the final order. As used in these rules, the term Presiding Officer shall mean Presiding Officers if more than one Presiding Officer is appointed by the Board.

(3) PRE-HEARING CONFERENCES

The Presiding Officer may direct the Parties to appear at a specified time and place for pre-hearing conferences for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

(4) BRIEFS

(a) Unless otherwise directed by the Presiding Officer, parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Presiding Officer.

(b) Response briefs may not be filed unless permitted by the Presiding Officer.

(5) SCHEDULES

(a) The Presiding Officer shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

(b) The parties are encouraged to prepare a joint proposed schedule. If the parties cannot agree on a joint proposed schedule, the Presiding Officer may consider proposals by any party.

(6) EXTENSIONS OF TIME

Except as otherwise provided by statute, the Presiding Officer may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R313-17-8(5). The Presiding Officer may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

(7) MOTIONS

All motions shall be filed a minimum of 12 days before a scheduled hearing, unless otherwise directed by the Presiding Officer. A memorandum in opposition to a motion may be filed within ten days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

(8) FILING AND COPIES OF SUBMISSIONS

The original of any motion, brief, petition for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and to all parties or their counsel of record.

R313-17-9. Hearings.

(1) CONDUCT OF HEARING

The Presiding Officer shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony, cross-examination, oral arguments or opening and closing statements.

(2) ORDER OF PRESENTATION

Unless otherwise directed by the Presiding Officer, the Executive Secretary shall present its case first, followed by the Petitioner and any other party, then the Executive Secretary, and other parties if appropriate, shall have the opportunity for rebuttal.

R313-17-10. Orders.

(1) PROPOSED ORDERS BY PARTIES

Unless otherwise directed by the Presiding Officer, each party may provide proposed orders for the Presiding Officer within ten days of the conclusion of the hearing.

(2) DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS

(a) The appointed Officer presiding over the adjudicative proceeding shall prepare a recommended order, provide a copy of the order to the Board and mail a copy of the order to all parties or their counsel of record.

(b) The Board shall review the recommended order and hearing record.

(c) The Board may give each party the opportunity to make a presentation to the Board specific to the recommended order.

(d) After deliberation, the Board shall determine whether to accept, reject or modify the recommended order. The Board may remand part or all of the matter to the Presiding Officer for further proceedings.

(e) The Board may modify this procedure with notice to all parties.

(3) FINAL ORDERS

The Board shall issue a final order which shall include the information required by Sections 63G-4-208 or 63G-4-203(1)(i).

R313-17-11. Stays of Orders.

(1) STAY OF ORDERS PENDING ADMINISTRATIVE ADJUDICATION

(a) A party seeking a stay of a challenged order during an adjudicative proceeding shall file a motion with the Board. If granted, a stay would suspend the challenged Order for the period as directed by the Board.

(b) The Board may order a stay of the Order that is the subject of the formal adjudicative proceeding if the party seeking the Stay demonstrates the following:

(i) The party seeking the Stay will suffer irreparable harm unless the stay issues;

(ii) The threatened injury to the party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the party restrained or enjoined;

(iii) The Stay, if issued, would not be adverse to the public interest; and

(iv) There is substantial likelihood that the party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further adjudication.

(2) STAY OF THE ORDER PENDING JUDICIAL REVIEW

(a) A party seeking a stay of the Board's final order during judicial review shall file a motion with the Board.

(b) The Board as Presiding Officer may grant a stay of its order during the pendency of judicial review if the standards of R317-17-11(1)(b) are met.

R313-17-12. Reconsideration.

No agency review under Section 63G-4-301 is available. A party may request reconsideration of an order of the Presiding Officer as provided in Section 63G-4-302.

R313-17-13. Disqualification of Presiding Officer(s).

(1) DISQUALIFICATION OF PRESIDING OFFICER

(a) A member of the Board or other Presiding Officer shall disqualify himself or herself from performing the functions of the Presiding Officer regarding any matter in which he or she, or his or her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(i) Is a party to the proceeding, or an officer, director, or trustee of a party;

(ii) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a party concerning the matter in controversy;

(iii) Knows that he or she has an financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(iv) Knows that he or she has any other interest that could be substantially affected by the outcome of the proceeding; or

(v) Is likely to be a material witness in the proceeding.

(b) A member of the Board or other Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(2) MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer. If the Presiding Officer is appointed, any determination of the Presiding Officer upon a motion for disqualification may be appealed to the Board.

R313-17-14. Other Forms of Address.

Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R313-17-6.

R313-17-15. Requests for Records.

Requests for records under the Utah Government Record

Access and Management Act, Title 63G, Chapter 2, Utah Code Ann., are not governed by R313. See R305-1.

KEY: administrative procedures, public comment, public hearings, orders
September 12, 2002 19-3-103.5
Notice of Continuation July 10, 2006 19-3-104

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Chapter 6, Title 19. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) This rule identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Board has reason to believe that the material may be a solid waste within the meaning of subsection 19-6-102(13) and a hazardous waste within the meaning of subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being;

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(17) for mineral processing secondary materials)."

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(17), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid

wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) RESERVED.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under R315-2-16 and R315-2-17, or paragraph (f) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, which incorporates by reference 40 CFR 261 subpart D, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil

containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) or (f) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste,

including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(f)(1) A hazardous waste that is listed in R315-2-10 or R315-2-11 solely because it exhibits one or more characteristics of ignitability as defined under R315-2-9(d), corrosivity as defined under R315-2-9(e), or reactivity as defined under R315-2-9(f) is not hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d), (e), (f), or (g).

(2) The exclusion described in paragraph (f)(1) of this section also pertains to

(i) Any mixture of a solid waste and a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(a)(2)(iv); and,

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(c)(2)(i).

(3) Wastes excluded from R315-2-3 are subject to R315-13-1, which incorporates by reference 40 CFR 268, (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under R315-2-4(b)(7) and a hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d) - (g) for which the hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, was listed.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 261.1(c), 40 CFR.

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and

extent of harm to human and environmental receptors via each exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Executive Secretary, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(a)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Executive Secretary which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation;

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Executive Secretary that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Executive Secretary an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to

the submission of the one-time notice described in R315-2-4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each

treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 1996 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.5 ed., or a "Class 1 explosive" as defined in 49 CFR 173.50(b)(1), (2), or (3), which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)
Corrosive Waste: (C)
Reactive Waste: (R)
Toxicity Characteristic Waste: (E)
Acute Hazardous Waste: (H)
Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2000 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2002 ed., as amended by 70 FR 9138, February 24, 2005, is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 2000 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Executive Secretary. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Executive Secretary requires.

(f) Nothing in R315-2-13(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in section 19-6-111. A person applying for a variance under R315-9-2 shall provide such information described under R315-2-13(d) as the Executive Secretary directs.

R315-2-14. Violations, Orders, and Hearings.

(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of R315-1 through R315-101.

(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The request shall:

(1) be in writing;

(2) be addressed to the Executive Secretary;

(3) include the order number;

(4) state the facts;

(5) state the relief sought; and

(6) state the reasons the relief requested should be granted.

(c) Utah Administrative Procedures Act, 63G-4, and R315-12, shall govern the conduct of hearings before the Board.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including, where appropriate, suggested regulatory language;

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;

(5) A full description of the proposed method, including all procedural steps and equipment used in the method;

(6) A description of the types of wastes or waste matrices for which the proposed method may be used;

(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;

(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63G-3-601.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:

(1) Substitute "Board" for "Administrator;"

(2) Include the following paragraphs:

(i) The Board will consider any petitions in accordance with rulemaking procedures outlined in 63G-3, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, 63G-4, and R315-12.

(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63G-601 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.

The variances from classification as a solid waste of 40 CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.

The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:

Substitute "Executive Secretary" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Executive Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.

(a) If a generator is accumulating the waste, the Executive Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with R315-5 is required. The order becomes effective 30 days after service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste permit in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste permit, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-4-1.11 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes

Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury thermostats as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.5.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 2001 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

KEY: hazardous wastes
December 1, 2006 19-6-105
Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-12. Administrative Procedures.
R315-12-1. Application of Rule.

(a) This rule applies to proceedings under Title 19, Chapter 6, Part 1 (Solid and Hazardous Waste Act), Title 19, Chapter 6, Part 5 (Solid Waste Management Act), Title 19, Chapter 6, Part 6 (Lead Acid Battery Disposal), Title 19, Chapter 6, Part 7 (Used Oil Management Act), Tile 26, Chapter 32a (Waste Tire Recycling), and Title 19, Chapter 6, Part 10 (Mercury Switch Removal Act).

(b) For purposes of these rules, an appeal under the Used Oil Management Act shall mean the process of agency decision making under the Utah Administrative Procedures Act (UAPA), Section 63G-4-101 through 63G-4-209, and the standards, deadlines, procedures, and other requirements for an appeal shall be same as the standards, deadlines, procedures, and other requirements for contesting the validity of an initial order or violation under R315-12.

R315-12-2. Orders, NOVs, and Other Decisions by the Executive Secretary.

2.1 INITIAL PROCEEDINGS EXEMPT FROM UAPA

Proceedings that culminate in the issuance of an initial order or a notice of violation under the Utah Solid and Hazardous Waste Act are not governed by the provisions of the Utah Administrative Procedures Act (UAPA) as specified in Section 63G-4-102(2)(k). This includes initial proceedings regarding: approval, modification, denial, termination, transfer, revocation, or reissuance of permits; approval for equivalent testing or analytical methods; notices of violation and orders associated with notices of violation; orders for corrective action; and consent orders.

2.2 INITIAL ORDERS AND NOTICES OF VIOLATION ISSUED BY EXECUTIVE SECRETARY

(a) The initial orders and notices described in R315-12-2.1 shall be issued by the Executive Secretary.

(b) An initial order or notice shall become final in 30 days if not contested as described in R315-12-3. Failure to contest an initial order or notice waives any right of administrative review or judicial appeal.

R315-12-3. Contesting the Validity of an Initial Order or Notice of Violation Issued by the Executive Secretary.

3.1 CONTESTING THE VALIDITY OF AN INITIAL ORDER OR NOTICE OF VIOLATION -- REQUEST FOR AGENCY ACTION

(a) The validity of initial orders or notices of violation described in R315-12-2 may be contested by filing a written Request for Agency Action with the Board:

Solid and Hazardous Waste Control Board
Division of Solid and Hazardous Waste
288 North 1460 West
PO Box 144880
Salt Lake City, Utah 84114-4880.

(b) Any such request is governed by and shall comply with the requirements of Section 63G-4-201(3) of UAPA, and shall be received for filing within 30 days of the issuance of the Executive Secretary's order or notice of violation.

3.2 RESPONSE TO REQUEST FOR AGENCY ACTION

Notice of the time and place for a hearing shall be provided in the response to a request for agency action, or shall be provided promptly after the hearing is scheduled.

3.3 UAPA GOVERNS SUBSEQUENT PROCEEDINGS

A Request for Agency Action, and all subsequent proceedings acting on that request, are governed by UAPA. Section 63G-4-102(2)(k) of UAPA.

R315-12-4. Parties and Intervention.

4.1 WHO IS A PARTY?

(a) The following persons are Parties to a proceeding governed by this Rule:

(1) The person to whom an initial order or notice of violation is directed, such as a person who submitted a permit application that was approved or disapproved by order of the Executive Secretary;

(2) The Executive Secretary; and

(3) All persons whose legal rights or interests are substantially affected by the proceeding, who have standing to participate in the proceeding, and to whom intervention rights have been granted under R315-12-4.2.

(b) In a proceeding requested by the person to whom an initial order or notice of violation is directed, that person shall be the Petitioner and the Executive Secretary shall be the Respondent.

(c) In a proceeding requested by a person requesting intervention, the Intervenor shall be the Petitioner, provided that Intervention is granted, and the Executive Secretary and the person to whom an initial order or notice of violation is directed shall be the Respondents.

4.2 INTERVENTION

(a) A person who is not a party to a proceeding may request intervention under Section 63G-4-207 of UAPA for the purpose of filing a Request for Agency Action, and may simultaneously file that Request. Any such Requests for Intervention and Agency Action must be received by the Board for filing as provided in R315-12-3.1 within 30 days of the date of the challenged order or notice of violation.

(b) Any Party may, within 20 days or such earlier time as established by the Presiding Officer(s), respond to a Request for Intervention. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

4.3 Amicus curiae (Friend of the Court)

Persons may be permitted by the Presiding Officer(s) to enter an appearance as Amicus Curiae (Friend of the Court), subject to conditions established by the Presiding Officer(s).

4.4 APPEARANCES AND REPRESENTATION

(a) An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or governmental entity which is a participant to a proceeding, may represent his or its interest in the proceeding.

(b) Any participant may be represented by an attorney at law.

R315-12-5. Conduct of Proceedings.

5.1 ROLE OF BOARD

(a) The Board is the "agency head" as that term is used in UAPA. The Board is also the "presiding officer," as that term is used in UAPA, except:

(1) The Chair of the Board shall be considered the Presiding Officer to the extent that these rules allow; and

(2) The Board may by order appoint a Presiding Officer to preside over all or a portion of the proceedings.

(b) The Chair of the Board may delegate his/her authority as specified in this Rule to another Board member.

5.2 APPOINTED PRESIDING OFFICERS

Unless otherwise explicitly provided in an order of appointment, any appointment of a Presiding Officer or Presiding Officers shall be for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order. See also R315-12-7.2 regarding orders of Presiding Officers.

5.3 DESIGNATION OF PROCEEDINGS AS FORMAL OR INFORMAL

(a) Proceedings pursuant to a Request for Agency Action shall be conducted formally if the Request for Agency Action is made to contest the validity of the following:

(1) An order regarding approval, modification, denial, termination, transfer, revocation, or reissuance of a permit;

(2) An order regarding approval, denial, or modification of a corrective action, clean-up, or closure plan;

(3) A notice of violation or order associated with a notice of violation; or

(4) A consent order.

(b) The Board may convert proceedings which are designated to be formal to informal, and proceedings which are designated as informal to formal if conversion is in the public interest and rights of all parties are not unfairly prejudiced. See Section 63G-4-202(3) of UAPA.

5.4 PRE-HEARING CONFERENCES

The Presiding Officer(s) may direct the Parties to appear at a specified time and place for a pre-hearing conference(s) for the purposes of clarifying the issues, simplifying the evidence, facilitating discovery, expediting proceedings, or encouraging settlement.

5.5 BRIEFS

(a) Unless otherwise directed by the Presiding Officer(s), parties to the proceeding may submit a pre-hearing brief at least five business days before the hearing. Post-hearing briefs will be allowed only as authorized by the Board. Parties are not required to submit pre-hearing or post-hearing briefs unless directed to do so by the Presiding Officer(s). Pre-hearing and post-hearing briefs shall not exceed 15 pages unless otherwise provided by the Presiding Officer for all Parties.

(b) Response briefs may not be filed unless permitted by the Presiding Officer(s).

5.6 PARTIES MAY PROPOSE SCHEDULE

Parties to a proceeding are encouraged to prepare a joint proposed schedule addressing the matters specified in R315-12-5.7. If the parties cannot agree on a joint proposed schedule, the Presiding Officer(s) may consider proposals by any party.

5.7 PRESIDING OFFICER(S) SHALL ESTABLISH SCHEDULES

The Presiding Officer(s) shall establish schedules for discovery and other pre-hearing proceedings, for the hearing, and for any post-hearing proceedings.

5.8 EXTENSIONS OF TIME

Except as otherwise provided by statute, the Presiding Officer(s) may approve extensions of time limits established by this rule, and may extend time limits adopted in schedules established under R315-12-5.7. The Presiding Officer(s) may also postpone hearings. The Chair of the Board may act as Presiding Officer for purposes of this paragraph.

5.9 COMPUTATION OF TIME

Time shall be computed as provided in Rule 6(a) of the Utah Rules of Civil Procedure. No additional time shall be allowed for service by mail.

5.10 MOTIONS

All motions shall be filed a minimum of ten days before a scheduled hearing, unless otherwise allowed or required by the Presiding Officer(s). A memorandum in opposition to a motion may be filed within eight days of the filing of the motion, or at least one day before any scheduled hearing, whichever is earlier. Memoranda in support of or in opposition to motions may not exceed 15 pages unless otherwise provided by the Presiding Officer.

5.11 FILING AND COPIES OF SUBMISSIONS

The original of any motion, brief, request for intervention, or other submission shall be filed with the Executive Secretary. In addition, the submitter shall provide a copy to each Presiding Officer and, through counsel of record if applicable, to each party.

R315-12-6. Hearings.

6.1 CONDUCT OF HEARING

The Presiding Officer(s) shall govern the conduct of a hearing, and may establish reasonable limits on the length of witness testimony and cross-examination, and on the length of argument.

6.2 ORDER OF PRESENTATION

Unless otherwise directed by the Presiding Officer(s), the Petitioner shall present its case first, followed by the Executive Secretary, unless the Executive Secretary is the petitioner, and any other Parties. Rebuttal, if any, shall follow the same order.

R315-12-7. Orders.

7.1 PROPOSED ORDERS BY PARTIES

Unless otherwise directed by the Presiding Officer(s), each party may provide proposed orders for the Presiding Officer(s) within three days of the conclusion of the hearing.

7.2 DRAFT ORDERS OF APPOINTED PRESIDING OFFICERS

(a) A Presiding Officer or Presiding Officers appointed for the purpose of conducting all aspects of an adjudicative proceeding, except issuance of the final order, shall prepare a draft order. A copy of the draft order shall be provided to all Parties.

(b) Any Party may, within 10 days of the date the draft order is mailed, delivered, or published, comment on the draft order. Such comments shall be limited to 15 pages, and shall cite to specific parts of the record which support the comments.

(c) The Board shall review the draft order, comments on the draft order, and those specific parts of the record cited by the Parties in any comments. The Board shall then determine whether to accept or modify the draft order, to remand the matter to an appointed Presiding Officer or Presiding Officers for further proceedings, or to act as Presiding Officers for further proceedings.

(d) The Board may modify this procedure with notice to all Parties.

7.3 CONTENT OF ORDERS

An order shall include the information required by Sections 63G-4-208 or 63G-4-203(1)(i) of UAPA.

R315-12-8. Stays of Orders.

8.1 STAY OF THE ORDER OF THE EXECUTIVE SECRETARY

(a) A Party seeking a Stay of the Order of the Executive Secretary shall file a motion with the Presiding Officer(s). A Stay, if granted, would suspend the effect of the challenged Order.

(b) The Presiding Officer(s) may order a stay of the Executive Secretary's Order if the Party seeking the Stay demonstrates that:

(1) The Party seeking the Stay will suffer irreparable harm unless the stay issues;

(2) The threatened injury to the Party seeking the Stay outweighs whatever damage the proposed stay is likely to cause the Party restrained or enjoined;

(3) The Stay, if issued, would not be adverse to the public interest; and

(4) There is substantial likelihood that the Party seeking the Stay will prevail on the merits of the underlying claim, or the case presents serious issues on the merits which should be the subject of further evaluation by the Presiding Officer(s).

8.2 STAY OF THE ORDER OF THE PRESIDING OFFICER(S)

The Board as Presiding Officer may grant a stay of its order (or the Order of its appointed Presiding Officer) during the pendency of judicial review if the standards of 8.1(b) are met.

R315-12-9. Reconsideration.

No agency review under Section 63G-4-301 of UAPA is available. A Party may request reconsideration of an order of the Presiding Officer(s) as provided in Section 63G-4-302 of UAPA.

R315-12-10. Disqualification of Presiding Officer(s).

10.1 DISQUALIFICATION OF PRESIDING OFFICER

A member of the Board or other Presiding Officer shall disqualify him/herself from performing the functions of the Presiding Officer regarding any matter in which:

(a) He/she, or his/her spouse, or a person within the third degree of relationship to either of them, or the spouse of such person:

(1) Is a party to the proceeding, or an officer, director, or trustee of a Party;

(2) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented a Party concerning the matter in controversy;

(3) Knows that he/she has an financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a Party to the proceeding;

(4) Knows that he/she has any other interest that could be substantially affected by the outcome of the proceeding; or

(5) Is likely to be a material witness in the proceeding.

(b) The Presiding Officer is subject to disqualification under principles of due process and administrative law.

10.2 MOTIONS FOR DISQUALIFICATION

A motion for disqualification shall be made first to the Presiding Officer or Presiding Officers. If the Presiding Officer is or Presiding Officers are appointed, any determination of the Presiding Officer or Presiding Officers upon a motion for disqualification may be appealed to the Board.

R315-12-11. Other Forms of Address.

Nothing in these rules shall prevent any person from requesting an opportunity to address the Board as a member of the public, rather than as a party. An opportunity to address the Board shall be granted at the discretion of the Board. However, addressing the Board in this manner does not constitute a request for agency action under R315-12-3.

R315-12-12. Requests for Records.

Requests for records under the Utah Government Record Access and Management Act, Title 63G, Chapter 2, Utah Code Ann., are not governed by R315. See R305-1, U.A.C.

KEY: hazardous waste
December 1, 2006 63G-4-202
Notice of Continuation August 24, 2006

R331. Financial Institutions, Administration.
R331-20. Designation of Adjudicative Proceedings as Informal.
R331-20-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Section 63G-4-202 and Subsection 7-1-301(15).

(2) This rule applies to all proceedings before the department.

(3) This rule designates all proceedings before the Department of Financial Institutions as informal hearings.

R331-20-2. Rule.

In accordance with Section 63G-4-202 all proceedings before the Department of Financial Institutions which are subject to the requirements of the Utah Administrative Procedures Act are designated informal proceedings.

KEY: financial institutions, government hearings
1995 63G-4-202
Notice of Continuation August 27, 2003 7-1-301(15)

R331. Financial Institutions, Administration.
R331-22. Rule Governing Reimbursement of Costs of Financial Institutions for Production of Records.
R331-22-1. Authority, Scope, and Purpose.

(1) This rule is issued pursuant to Sections 7-1-301(6) and 7-1-1004.

(2) This rule applies to both federal and state chartered financial institutions.

(3) The purpose of this rule is to set consistent and reasonable rates of reimbursement for costs to financial institutions for their production of records.

R331-22-2. Definitions.

(1) "Financial institutions" means "financial institutions" as defined in Section 7-1-103(10).

(2) "Financial record" means an original of, a copy of, or information known to have been derived from, any record held by a financial institution pertaining to a customer's relationship with the financial institution.

(3) "Party" shall mean an individual, corporation, partnership, trust, association, joint venture, pool, syndicate, sole proprietorship, unincorporated organization or any form of business entity. Party also includes any authorized representative of that party who utilized or is utilizing any service of a financial institution, or for whom a financial institution is acting or has acted as a fiduciary, in relation to an account maintained in the party's name.

(4) "Direct incurred costs" means costs incurred solely and necessarily as a consequence of searching for, reproducing or transporting books, papers, records, or other data in order to comply with legal process or a formal written request or a party's authorization to produce a party's financial records. The term does not include any allocation of fixed costs including overhead, equipment, and depreciation. If a financial institution has financial records that are stored in an independent storage facility that charges a fee to search for, reproduce, or transport particular records requested, these costs are considered to be directly incurred by the financial institution.

R331-22-3. Costs Reimbursement.

As hereinafter provided, a party requiring or requesting access to financial records pertaining to a party shall pay to the financial institution that assembles or provides the financial records a fee for reimbursement of reasonably necessary costs which have been directly incurred according to the following schedule:

(1) Search and processing costs.

(a) Manual Search and Processing Cost. Reimbursement of search and processing costs shall be the total amount of direct personnel time spent in locating and retrieving, reproducing, packaging and preparing financial records for shipment. The rate for search and processing costs is $11.00 per hour per clerical/technical person and $17.00 per hour per manager/supervisory person, computed per quarter hour and is limited to the total amount of actual time spent in locating and retrieving documents or information or reproducing or packaging and preparing documents for shipment which were required or requested by a party. If less than a quarter hour is spent, the minimum charge shall be for a quarter hour.

(b) Data Processing Search and Processing Cost. Search and processing costs reflecting the actual costs of extracting information stored by computer in the format in which it is normally produced, based on computer time and necessary supplies will be charged. Personnel time for computer search shall be paid for only at the rates specified in this section.

(2) Reproduction costs. Reimbursement for reproduction costs shall be the costs incurred in making the copies of documents required or requested. The rate for reproduction costs for making copies of required or requested documents is 25 cents for each page, including copies produced by reader/printer reproduction process, photographs and films. Duplicate microfiche is 50 cents per microfiche and computer diskette is $5.00 per diskette. Other materials are reimbursed at actual costs.

(3) Transportation costs. Reimbursement for transportation costs shall be for reasonably necessary costs directly incurred to transport personnel to locate and retrieve the information required or requested and necessary costs directly incurred solely by the need to convey the required or requested material to the place of examination.

R331-22-4. Conditions for Payment.

(1) Limitations. Payment for reasonably necessary, directly incurred costs to financial institutions shall be limited to material required or requested.

(2) Separate consideration for component costs. Payment shall be made only for costs that are both directly incurred and reasonably necessary. In determining whether costs are reasonably necessary, search and processing, reproduction and transportation costs shall be considered separately.

(3) Compliance with legal process, requests, or authorization. No payment shall be made until the financial institution satisfactorily complies with the legal process or formal written request, or party authorization, except that in the case where the legal process or formal written request is withdrawn, or the party authorization is revoked, the financial institution shall be reimbursed for reasonably necessary costs directly incurred in the assembling of financial records required or requested to be produced prior to the time that the financial institution is notified that the legal process or request is withdrawn or defeated or that the party has revoked his or her authorization.

(4) Itemized bill or invoice. No payment shall be made unless the financial institution submits an itemized bill or invoice showing specific details concerning the search and processing, reproduction and transportation costs.

KEY: financial institutions, costs
November 17, 1998 7-1-301(6)
Notice of Continuation April 16, 2007 7-1-1004

R380. Health, Administration.
R380-1. Petitions for Department Declaratory Orders.
R380-1-1. Authority.

As required by Section 63G-4-503, and as authorized by Sections 26-1-5(3) and 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department. R380-5 governs petitions for declaratory orders concerning orders issued by committees having statutory authority to issue orders.

R380-1-2. Petition Procedure.

(1) Any person or government agency directly affected by a statute administered by the Department, a rule promulgated by the Department or any of its committees having statutory authority to make rules, or an order issued by the Department may petition for a declaratory order.

(a) For petitions seeking a declaratory order determining the applicability of statutes administered by the Department, the petitioner shall file the petition with the Executive Director.

(b) For petitions seeking a declaratory order determining the applicability of rules promulgated by the Department or any of its committees, the petitioner shall file the petition with the Department division that administers the program to which the rule pertains.

(c) For petitions seeking a declaratory order determining the applicability of orders promulgated by the Department, and not by a committee given statutory authority to issue orders, the petitioner shall file the petition with the Department division that administers the program associated with the subject matter of the order.

R380-1-3. Petition Form.

The petition shall:

(1) be clearly designated as a request for a declaratory order;

(2) identify the statute, rule, or order to be reviewed;

(3) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the statute, rule, or order is to be reviewed;

(4) describe the reason or need for the applicability review;

(5) identify the person or agency directly affected by the statute, rule, or order;

(6) include an address and telephone where the petitioner can be reached during regular work days; and

(7) be signed by the petitioner.

R380-1-4. Petition Review and Recommendation.

(1) The Executive Director may determine the applicability of a statute, rule or order or may refer the request to the particular committee having statutory authority to make rules if such a committee exists for the statute, or may refer the request to a division or other administrative unit within the Department that more closely administers the statute.

(2) The committee to which a petition has been referred shall, without undue delay, make a written recommendation on the disposition of the petition to the Executive Director.

R380-1-5. Petition Disposition.

(1) The committee or administrative unit within the department making the recommendation to the Executive Director under this rule shall:

(a) review and consider the petition;

(b) prepare a recommended declaratory order stating:

(i) the applicability or non-applicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(iii) any requirements imposed on the agency, the petitioner, or any person as a result of the declaratory order.

(2) The person or committee making the recommendation under this rule may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with other Department staff, committee members, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

(3) The Executive Director may modify the recommendation, refer the recommendation back for modification, or reject the recommendation. The Executive Director shall prepare the final declaratory order without undue delay and send the petitioner a copy of the order when completed.

KEY: administrative procedures, rules and procedures, declaratory orders

1992	**63G-4-503**
Notice of Continuation August 20, 2007	**26-1-5(3)**
	26-1-17

R380. Health, Administration.
R380-5. Petitions for Declaratory Orders on Orders Issued by Committees.
R380-5-1. Authority.

As required by Section 63G-4-503, and as authorized by Sections 26-1-5(3) and 26-1-17, this rule provides the procedures for the submission, review, and disposition of petitions for agency declaratory orders concerning orders issued by committees having statutory authority to issue orders. R380-1 governs petitions for declaratory orders concerning the applicability of statutes administered by the Department, rules promulgated by the Department or any of its committees having statutory authority to make rules, and orders issued by the Department.

R380-5-2. Petition Procedure.

Any person or government agency directly affected by an order issued by a committee having statutory authority to issue orders may petition for a declaratory order concerning the order issued by the committee. The petitioner shall file the petition with the Department division that administers the program over which the committee has statutory authority to issue orders.

R380-5-3. Petition Form.

The petition shall:

(1) be clearly designated as a request for a declaratory order;

(2) identify the order to be reviewed;

(3) describe the situation or circumstances giving rise to the need for the declaratory order or in which applicability of the order is to be reviewed;

(4) describe the reason or need for the applicability review;

(5) identify the person or agency directly affected by the order;

(6) include an address and telephone where the petitioner can be reached during regular work days; and

(7) be signed by the petitioner.

R380-5-4. Petition Review and Recommendation.

(1) The statutory committee may determine the applicability of the order, may refer the request to the division or other administrative unit within the Department that administers the program over which the committee has statutory authority to issue orders for a recommended decision, or may refer the request to the division or other administrative unit within the Department that administers the program over which the committee has statutory authority to issue orders for a final decision.

(2) The division or other administrative unit within the Department that administers the program to which a petition has been referred shall, without undue delay, make a written recommendation on the disposition of the petition to the committee, or make a decision on the petition, depending on the delegation from the committee.

R380-5-5. Petition Disposition.

(1) The committee or administrative unit within the department shall:

(a) review and consider the petition;

(b) prepare a recommended declaratory order stating:

(i) the applicability or non-applicability of the order at issue;

(ii) the reasons for the applicability or non-applicability of the order; and

(iii) any requirements imposed on the agency, the petitioner, or any person as a result of the declaratory order.

(2) The committee or the administrative unit within the Department may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with other Department staff, committee members, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

(3) For petitions which a committee has referred to an administrative unit within the Department that administers the program for a recommended decision, the committee may modify the recommendation, refer the recommendation back for modification, or reject the recommendation. The committee shall prepare the final declaratory order without undue delay and send the petitioner a copy of the order when completed.

KEY: administrative procedures, rules and procedures, declaratory orders

1992	**63G-4-503**
Notice of Continuation August 20, 2007	**26-1-5(3)**
	26-1-17

R380. Health, Administration.
R380-10. Informal Adjudicative Proceedings.
R380-10-1. Authority and Purpose.

This rule sets forth informal adjudicative procedures for the Department of Health and committees created within the Department under Section 26-1-7. Utah Code Sections 26-1-5, 26-1-17, and 26-1-24, and Title 63G, Chapter 4 authorize it.

R380-10-2. Definitions.

For purposes of this rule, the definitions in Section 63G-4-103 of the Utah Administrative Procedures Act apply, in addition:

(1) "Agency" means the Department of Health bureau, office, or division that most closely administers the program under which the agency action is taken or which is responsible to administer the program that deals with the request for agency action.

(2) "Agency action" means an agency determination after conducting adjudicative proceedings by agency staff of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4102(2).

(3) "Initial agency determination" means a decision without conducting adjudicative proceedings by agency staff of the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all determinations to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license, all as limited by Subsection 63G-4102(2).

(4) "Notice of agency action" means the formal notice that meets the requirements of Subsection 63G-4-201(2) which an agency or policy making committee issues to commence an adjudicative proceeding.

(5) "Presiding officer" means the individual designated by the Department or by a policy making committee in accordance with R380-10-5 or by statute to conduct an adjudicative proceeding.

(6) "Policy making committee" means a committee that is created under Section 26-1-7 and to which a statute delegates authority to make rules.

(7) "Request for agency action" means the formal written request that meets the requirements of Subsection 63G-4-201(3) and that clearly expresses a request that the agency commence adjudicative proceedings.

R380-10-3. Form of Proceeding and Applicability.

(1) The Department of Health prefers to resolve disputes at the lowest level. This rule does not foreclose simple resolution through discussion and negotiation between an agency and any person affected by an agency action.

(2) Except as provided in this rule or as otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all Department of Health adjudicative proceedings are informal proceedings.

(3) Unless otherwise designated by rule or statute or converted pursuant to Subsection 63G-4-202(3), all adjudicative proceedings before any policy making committee and all appeals to the Executive Director are designated as formal proceedings.

(4) The provisions of this rule do not govern actions or proceedings which a federal statute or regulation requires to be conducted solely in accordance with federal procedures. If federal statute or regulation requires a modification to these procedures, the federal procedures prevail.

(5) To the extent that this rule conflicts with a similar rule adopted by an agency within the Department that governs adjudicative proceedings, the conflicting provisions of the other rule govern.

R380-10-4. Adjudicative Authority.

(1) An agency's or policy making committee's authority to decide an adjudicative matter is limited to the specific subject matter of the program that it administers.

(2) If an adjudicative matter is not solely within the program administration of a single agency or policy making committee, the executive director may appoint a presiding officer for the matter.

(3) A committee that is not a policy making committee has no adjudicative authority, except as it may be designated to serve as a presiding officer or to otherwise render a recommended decision.

R380-10-5. Presiding Officer.

The agency head shall serve as the presiding officer for all informal proceedings, except that the agency head may designate a presiding officer as approved by the executive director. A policy making committee may designate as a presiding officer:

(1) an individual from the committee;

(2) an individual from Department staff as approved by the executive director;

(3) some other qualified and experienced person approved by the executive director.

R380-10-6. Commencement of Proceedings, Response.

(1) If a person is aggrieved by an initial agency determination, he may file with the agency a request for agency action within the shorter of 30 calendar days of either receiving the initial agency determination or the agency's mailing of the initial agency determination.

(2) If the informal adjudicative proceeding is commenced by a notice of agency action, all parties in the action, except the agency or policy making committee that initiates the agency action, shall file an answer or other pleading responsive to the allegations contained in the notice of agency action.

(3) If the informal adjudicative proceeding is commenced by a request for agency action, the agency or policy making committee that performed the agency action need not file an answer or other responsive pleading. However, the particular agency or policy making committee must consider the request and grant or deny it or set the request for further proceedings as required by Section 63G-4-201(d).

R380-10-7. Adjudicative Hearings.

(1) The agency or policy making committee before which the matter resides shall hold a hearing if:

(a) a statute or other rule requires it; or

(b) another rule permits it and a party requests it with the request for agency action or within 25 calendar days of the mailing of the notice of agency action, or within 25 days of notice of the agency's setting a matter for informal adjudicative proceedings, or within another period as prescribed by rule.

(2) If any party requests a hearing and if there is a disputed issue of fact, the presiding officer shall conduct an evidentiary hearing. In any evidentiary hearing, the parties named in the notice of agency action or in the request for agency action may testify, present evidence, and comment on the issues. If there is no disputed issue of fact, the presiding officer may determine all issues in the adjudicative proceeding based on oral or written argument.

(3) Hearings may be held only after timely notice to all parties.

(4) All hearings are open to all parties, but the hearing officer may take appropriate measures to preserve the integrity of the hearing, exclude witnesses if requested by a party, and protect the confidentiality of records or other information protected by law.

(5) Discovery is prohibited, but the agency may issue

subpoenas or other orders to compel production of necessary evidence.

(6) All parties may access information contained in the agency's files and all materials and information gathered in any investigation, to the extent permitted by law.

(7) Intervention is prohibited, except that the agency may enact rules permitting intervention where a federal statute or regulation requires that a state permit intervention.

(8) All parties to the proceedings are responsible to assure the appearance of witnesses and for the costs of appearance of witnesses.

(9) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that states the following:

(a) the decision;

(b) the reasons for the decision;

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

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

(10) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

(11) The agency shall promptly mail a copy of the presiding officer's order to each party. (12) All hearings shall be tape recorded or recorded by a shorthand reporter at the agency's expense.

(a) If all parties agree, the hearing may be recorded by a certified shorthand reporter at the requesting party's expense. The certified short hand reporter's transcript is the official transcript of the hearing and is the property of the agency.

(b) Any party, at its own expense, may have a reporter who is approved by the agency prepare a transcript from the agency's record of the hearing; however, the agency's or policy making committee's record of the hearing is the official record of the hearing.

R380-10-8. Presiding Officer's Decision.

In all instances where an agency head has designated a person to serve as presiding officer in an adjudicative proceeding, the presiding officer's decision is a recommended decision to the agency head and the agency head may accept, reverse, or modify the presiding officer's order and may remand the order to the presiding officer for further proceedings. If the agency head reverses or modifies the presiding officer's order, the agency head's order shall contain revised findings of fact and conclusions of law as needed, based on the record before the presiding officer and as may be supplemented before the agency head.

R380-10-9. Agency Review.

Any party may seek review of an agency action by filing a written request as provided in Section 63G-4-301. For decisions that are appealable to a policy making committee, the party must file the request with the agency that administers the program that deals with the matter. For all other appeals, the party must file the request with the Executive Director.

KEY: administrative procedures, health administration

1993	**26-1-5**
Notice of Continuation August 20, 2007	**26-1-17**
	26-1-24
	63G-4

R380. Health, Administration.
R380-20. Government Records Access and Management.
R380-20-1. Purpose.

This rule establishes procedures that implement the Government Records Access and Management Act, Chapter 2, Title 63G, within the Department of Health. It is authorized by Sections 26-1-5, 26-1-17, 63G-2-204(2), and 63A-12-104(2).

R380-20-2. Requests for Access.

All public requests for a record under Section 63G-2-204 shall be directed to the GRAMA Records Officer in the Office of the Executive Director, with the exception of records created by or held by the entities listed below within the Department. For records created or held by the entities listed, the request must be made to the specific entity listed.

Office of the Medical Examiner
Bureau of Human Resource Management
Employee Assistance Section
Bureau of Vital Records and Health Statistics

R380-20-3. Research Requests for Access.

Notwithstanding R380-20-2, all requests for records for research purposes pursuant to Section 63G-2-202(8) shall be directed to the GRAMA Records Officer in the Office of the Executive Director.

KEY: public records, government documents, GRAMA
1992 **63G-2-202(8)**
Notice of Continuation April 26, 2007 **63G-2-204**
63A-12-104
26-1-5
26-1-17

R380. Health, Administration.
R380-100. Americans with Disabilities Act Grievance Procedures.
R380-100-1. Authority and Purpose.

(1) This rule is promulgated under authority of Section 26-1-17 and Section 63G-3-102(2). As required by 28 CFR 35.107, the Utah Department of Health, as a public entity that employs more than 50 persons, adopts and publishes the grievance procedures within this rule for the prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act of 1990 and 28 CFR Part 35, 1991 edition.

(2) The provisions of 28 CFR 35 implement Title II of the Americans with Disabilities Act of 1990, which provides that no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by the Department of Health.

R380-100-2. Definitions.

(1) "ADA Coordinator" means the head of the Employee Assistance Section of the Office of Administrative Services within the Department of Health.

(2) "Disability" means, with respect to a qualified individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment.

(3) "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(4) "Qualified Individual with a Disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Health.

R380-100-3. Filing of Complaints.

(1) Any qualified individual with a disability may file a complaint within 180 days of the alleged noncompliance with the provisions Title II of the Americans with Disabilities Act of 1990 or the regulations promulgated thereunder. Complaints should be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the effective date of this rule. The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act and information otherwise protected by statute, rule, regulation, or other law.

(2) The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall:

(a) include the complainant's name and address;

(b) include the nature and extent of the individual's disability;

(c) describe the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by his legal representative.

(3) Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

(4) If the complaint is not in writing, the ADA coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

R380-100-4. Investigation of Complaints.

(1) The ADA coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in R380-100-3(3) of this rule if it is not made available by the complainant.

(2) The coordinator may seek assistance from the Department's legal, human resource, and budget staff in determining what action, if any, should be taken on the complaint. The ADA coordinator may also consult with the division or office head in reaching a recommendation. Before making any recommendation that would (a) involve an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation, (b) facility modifications, or (c) reclassification or reallocation in grade, the coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

R380-100-5. Recommendation and Decision.

(1) Within 15 business days after receiving the complaint, the ADA Coordinator shall recommend to the division or office head what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the coordinator is unable to make a recommendation within the 15 business day period, he shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The division or office head may confer with the ADA coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The division or office head shall make his decision within 15 business days. The division or office head shall take all reasonable steps to implement his decision. The decision shall be in writing or in another accessible format suitable to the complainant.

R380-100-6. Appeals.

(1) The complainant may appeal the division or office head's decision to the executive director within ten business days from the receipt of the decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The executive director may name a designee to assist on the appeal. The ADA coordinator may not also be the executive director's designee for the appeal.

(4) The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without undue hardship to the Department.

(5) The executive director or designee shall review the ADA coordinator's recommendation, the division or office director's decision, and the points raised on appeal prior to reaching a decision. The executive director may direct additional investigation as necessary. Before making any decision that would (a) involve an expenditure of funds beyond

what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation, (b) facility modifications, or (c) reclassification or reallocation in grade, the executive director shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General.

(6) The executive director shall issue his decision within 15 business days after receiving the appeal. It shall be in writing or in another accessible format suitable to the complainant.

(7) If the executive director or his designee is unable to reach a decision within the 15 business day period, he shall notify the individual in writing or by another accessible format suitable to the complainant why the decision is being delayed and the additional time needed to reach a decision.

R380-100-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures; the Federal ADA Complaint Procedures; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: grievance procedures, disabled persons
1992 26-1-17
Notice of Continuation August 20, 2007 63G-3-102(2)

R380. Health, Administration.
R380-200. Patient Safety Sentinel Event Reporting.
R380-200-1. Purpose and Authority.

(1) This rule establishes a patient safety sentinel event reporting program. It requires certain health care facilities to report serious patient injuries and to allow an independent, external review of and response to the thoroughness and credibility of the processes of investigating and responding to these events. The reporting under this rule will also help the Department and health care providers to understand patterns of failures in the health care system and to recommend statewide resolutions. It limits access to identifiable health information that facilities report to the Department under this rule.

(2) This rule is authorized by Utah Code Subsections 26-1-30(2)(a), (b), (d), (e), and (g) and Section 26-3-8.

R380-200-2. Definitions.

"Contaminated" means contamination that can be seen with the naked eye, or with use of detection mechanisms in general use, as they become reported or known to the health care facility.

"Facility" means a general acute hospital, critical access hospital, ambulatory surgical center, psychiatric hospital, orthopedic hospital, rehabilitation hospital, chemical dependency/substance abuse hospital or long-term acute care hospital as those terms are defined in Title 26, Chapter 21.

"Incident facility" means a facility where the patient safety sentinel event occurred.

"Medication Error" means medication administration:

(a) of a drug other than as prescribed or indicated;

(b) of a dose other than as prescribed or indicated;

(c) to a patient who was not prescribed the drug;

(d) at a time other than prescribed or indicated;

(e) at a rate other than as prescribed or indicated;

(f) of a improperly prepared drug;

(g) by a means other than as prescribed or indicated; and

(h) administration of a medication to which the patient has a known allergy or drug interaction to the prescribed medication.

"Major permanent loss of function" means sensory, motor, physiologic, or intellectual impairment not present on admission requiring continued treatment or life-style change. When major loss of function cannot be immediately determined, applicability of the policy is not established until either the patient is discharged with continued major loss of function, or two weeks have elapsed with persistent major loss of function, whichever occurs first.

"Patient safety sentinel event" means an event which has resulted in an unanticipated death or major permanent loss of function, not related to the natural course of the patient's illness or underlying condition or is an unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof. Serious injury specifically includes loss of limb or function. The phrase "or the risk thereof" includes any process variation for which a recurrence would carry a significant chance of adverse outcome. Such events are called "sentinel" because they signal the need for immediate investigation and response.

"Root cause analysis" means a process for identifying the basic or causal factor(s) that underlie variation in performance, resulting in the occurrence or possible occurrence of a patient safety sentinel event.

R380-200-3. Reporting of Patient Safety Sentinel Events.

(1) Each facility shall report to the Department all patient safety sentinel events within seventy-two hours of the facility's determination that a patient safety event may have occurred, but in no event later than four hours prior to convening a formal root cause analysis.

(2) Patient safety sentinel events include:

(a) Surgical Events:

(i) Surgery performed on the wrong body part;

(ii) Surgery performed on the wrong patient;

(iii) Incorrect surgical procedure performed on a patient;

(iv) Retention of a foreign object in a patient after surgery or other procedure, except for:

(A) objects intentionally implanted as a part of a planned intervention;

(B) objects present prior to surgery that were intentionally left in place, and

(C) broken microneedles; and

(v) Intraoperative or immediately post-operative death of a patient who the facility classified prior to surgery as Anesthesia Surgical Assessment Class I. "Intraoperative" means literally during surgery. "Immediately post-operative" means within 24 hours after surgery, or other invasive procedure was completed, or after induction of anesthesia if surgery not completed.

(b) Product or Device Events.

(i) Patient death or disability arising from the use of contaminated drugs, devices, or biologics provided by the facility.

(ii) Patient death or disability associated with the use or function of a device in patient care in which the device is used for an off-label use, except where the off-label use is pursuant to informed consent.

(iii) Patient death or disability associated with intravascular air embolism that occurs while being cared for in the facility, except for intravascular air emboli associated with neurosurgical procedures.

(c) Patient Protection Events.

(i) Infant discharged to the wrong person;

(ii) Patient death or disability arising from a patient elopement or the disappearance of other than competent adults;

(iii) Patient suicide while in the facility or within 72 hours of discharge.

(d) Care management Events.

(i) Patient death or major permanent loss of function arising from a medication error;

(ii) Patient death or major permanent loss of function arising from a hemolytic reaction due to the administration of ABO/HLA incompatible blood or blood products;

(iii) Maternal death or major permanent loss of function in a low-risk pregnancy arising from labor or delivery while being cared for in a facility, except deaths from pulmonary or amniotic fluid embolism, acute fatty liver of pregnancy or cardiomyopathy. "Low Risk Pregnancy" refers to a woman aged 18-39, with no previous diagnosis of essential hypertension, renal disease, collagen-vascular disease, liver disease, cardiovascular disease, placenta previa, multiple gestation, intrauterine growth retardation, smoking, pregnancy-induced hypertension, premature rupture of membranes, or other previously documented condition that poses a high risk of poor pregnancy outcome.

(iv) Unanticipated death of a full-term newborn;

(v) Patient death or major permanent loss of function arising from hypoglycemia, the onset of hypoglycemia which occurs while the patient is being cared for in the facility;

(vi) Kernicterus associated with failure to identify and treat hyperbilirubinemia, bilirubin greater than 30 milligrams per deciliter, in neonates.

(vii) Stage 3 or 4 pressure ulcers acquired after admission to the facility, except for pressure ulcers that progress from stage 2 to stage 3, if the stage 2 ulcer was documented upon admission.

(viii) Patient death or major permanent loss of function due to spinal manipulative therapy; and

(ix) Prolonged fluoroscopy with cumulative dose greater

than 1500 rads to a single field;

(x) Radiotherapy to the wrong body region;

(xi) Radiotherapy greater than 25% above the prescribed radiotheraphy dose; and

(xii) Death or major permanent loss of function related to a health care acquired infection.

(e) Environmental Events.

(i) Patient death or major permanent loss of function arising from an electric shock while being cared for at a health care facility, excluding emergency defibrillation in ventricular fibrillation and electroconvulsive therapies;

(ii) Any incident in which a line designated for oxygen or other gas to be delivered to a patient contains the wrong gas or is contaminated by a toxic substance;

(iii) Patient death or major permanent loss of function arising from a burn incurred from any source while being cared for in a facility;

(iv) Patient death or major permanent loss of function associated with the use of restraints or bedrails while being cared for in a facility; and

(v) Patient death or major permanent loss of function arising from a fall while being cared for in a health care facility, including fractures and intracranial hemorrhage.

(f) Criminal Events.

(i) Any care ordered by or provided by someone impersonating a physician, nurse, pharmacist, or other licensed or certified health care provider;

(ii) Abduction of a patient of any age;

(iii) Non-consensual sexual contact on a patient, staff member, or visitor by another patient, staff member or unknown perpetrator while on the premises of the facility; or

(iv) Patient death or major permanent loss of function resulting from a criminal assault or battery that occurs on the premises of the health care facility.

(3) If a facility suspects that a patient safety sentinel event may have occurred to a patient who was transferred from another facility, the receiving facility shall report the suspected patient safety sentinel event to the facility that initiated the transfer.

(4) The report shall be submitted in a Department-approved paper or electronic format and shall include at a minimum:

(a) facility information;

(b) patient information;

(c) event information

(d) type of occurrence;

(e) analysis;

(f) corrective action.

R380-200-4. Root Cause Analysis.

(1) The incident facility shall establish a root cause analysis process and designate a responsible individual to be the facility lead for each patient safety sentinel event.

(2) The Department representative may participate in the facility's root cause analysis in a consultative role with the facility lead to enhance the credibility and thoroughness of the root cause analysis. The Department shall notify the facility lead within 72 hours of receiving the report of the patient safety sentinel event if it intends to participate in the facility's root cause analysis. The Department representative shall not be present at the facility's internal root cause analysis meetings unless invited by the facility lead.

(3) Participation in the facility's root cause analysis by the Department representative shall not be construed to imply Department endorsement of the facility's final findings or action plan.

(4) The incident facility and the Department shall each make reasonable accommodations when necessary to allow for the Department representative's participation in the root cause analysis.

(5) If, during the review process, the Department representative discovers problems with the facility's processes that limit either the thoroughness or credibility of the findings or recommendations, the representative shall report these to the designated responsible individual orally within 24 hours of discovery and in writing within 72 hours.

(6) The facility shall conduct a root cause analysis which is timely, thorough and credible to determine whether reasonable system changes would likely prevent a patient safety sentinel event in similar circumstances.

(7) The root cause analysis shall:

(a) focus primarily on systems and processes, not individual performance;

(b) progress from specific, direct causes in clinical processes to contributing causes in organizational processes;

(c) seek to determine related and underlying causes for identified causes; and

(d) identify changes which could be made in systems and processes, either through redesign or development of new systems or processes, that would reduce the risk of such events occurring in the future.

(8) The Department shall determine the root cause analysis to be thorough if it:

(a) involves a complete review of the patient safety sentinel event including interviews with all readily identifiable witnesses and participants and a review of all related documentation;

(b) identifies the human and other factors in the chain of events leading to the final patient safety sentinel event, and the process and system limitations related to their occurrence;

(c) searches readily retrievable records to analyze the underlying systems and processes to determine where redesign might reduce risk;

(d) inquires into all areas appropriate to the specific type of event as described in the Joint Commission for the Accreditation of Healthcare Organizations' "Root Cause Analysis Matrix, Minimum Scope of Root Cause Analysis for Specific Types of Sentinel Events - October 2005" found at http://www.jointcommission.org/NR/rdonlyres/3CB064AC-2CEB-4CBF-85B8-CFC9E7837323/0/se_root_cause_analysis_matrix.pdf, last viewed on February 22, 2007, which is incorporated by reference.

(e) makes reasonable attempts to identify and analyze trends of similar events which have occurred at the facility in the past;

(f) identifies risk points and their potential contributions to this type of event; and

(g) determines potential improvement in processes or systems that would tend to decrease the likelihood of such events in the future, or determining, after analysis, that no such improvement opportunities exist.

(9) The Department shall determine the root cause analysis to be credible if it:

(a) is led by someone with training in root cause analysis processes and who was not involved in the patient safety sentinel event;

(b) involves, if necessary, consultation with either internal or external experts in the processes in question who were not involved in the patient safety sentinel event;

(c) includes participation by the leadership of the organization and by the individuals most closely involved in the processes and systems under review;

(d) is internally consistent, i.e., not contradicting itself or leaving obvious questions unanswered;

(e) provides an explanation for all findings of "not applicable" or "no problem;" and

(f) includes consideration of relevant, available literature.

R380-200-5. Reports and Action Plan.

(1) Within 60 calendar days of determination of the patient safety sentinel event, the incident facility shall submit a final report with an action plan that:

(a) identifies changes that can be implemented to reduce risk, or formulates a rationale for not implementing changes; and

(b) where improvement actions are planned, identifies who is responsible for implementation, when the action will be implemented (including any pilot testing), and how the effectiveness of the actions will be evaluated.

(2) The incident facility shall provide a final report to the facility's administration and the Department in a Department-approved paper or electronic format that includes:

(a) type of harm;

(b) contributing factors;

(c) actions taken.

(3) If the Department representative identifies problems with the processes that limit the thoroughness or credibility of the findings and recommendations and that have not been corrected after reporting them to the designated responsible individual, the representative may submit a separate written dissenting report to the administrator of the incident facility, and the Department.

(4) The incident facility may seek review of the dissenting report by filing a request for agency as allowed by the Utah Administrative Procedures Act and Department rule. If a dissenting report is not challenged or is upheld on review:

(a) the facility shall include it in the facility's records of the root cause analysis; and

(b) the Department may forward it, together with the facility's report, to the appropriate state agencies responsible for licensing the facility.

R380-200-6. Confidentiality.

(1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest needs to foster health care systems improvements, the Department exercises its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant to the provisions of Subsections 26-3-7(1) or (8).

(2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.

R380-200-7. Extensions and Waivers.

(1) The Department may grant an extension of any time requirement of this rule if the facility demonstrates that the delay is due to factors beyond its control or that the delay will not adversely affect the required root cause analysis and the purposes of this rule. A facility requesting a waiver must submit the request to the department representative prior to the deadline for the required action.

(2) The Department may grant a waiver of any other provision of this rule if the facility demonstrates that the waiver will not adversely affect the required root cause analysis and the purposes of this rule.

R380-280-8. Advisory Panel.

The department shall establish a multi-disciplinary advisory panel to assist it in carrying out its responsibilities under this rule. Representatives from facilities that are required to report under this rule shall be included as members of the advisory panel.

R380-200-9. Penalties.

As required by Section 63G-3-201(5): An entity that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: hospital, sentinel event, quality improvement, patient safety

April 26, 2007	**26-1-30(2)(a)**
Notice of Continuation October 10, 2006	**26-1-30(2)(b)**
	26-1-30(2)(d)
	26-1-30(2)(e)
	26-1-30(2)(g)
	26-3-8

R380. Health, Administration.
R380-210. Health Care Facility Patient Safety Program.
R380-210-1. Purpose and Authority.

(1) This rule establishes the requirement for designated facilities to have a patient safety program and have in place effective internal patient safety processes for specified problems. The reporting under this rule will also help the Department and health care providers to understand patterns of system failures in the health care delivery system and, where appropriate, to recommend statewide improvements to reduce the incidence of patient injuries. It limits access to identifiable health information that facilities report to the Department under this rule.

(2) This rule is authorized by Utah Code Subsections 26-1-30(2)(a), (b), (d), (e), and (g) and Section 26-3-8.

R380-210-2. Definitions.

"Adverse drug event" means any event involving a medication that causes or leads to patient harm, while the medication is in the control of the facility. Such events may be related to professional practice, health care products, procedures, and systems including: prescribing; order communication; product labeling, packaging and nomenclature; compounding; dispensing; distribution; administration; education; monitoring; and use."

"Facility" means a general acute hospital, critical access hospital, ambulatory surgical center, psychiatric hospital, orthopedic hospital, rehabilitation hospital, chemical dependency/substance abuse hospital or chronic disease hospital as those terms are defined in Title 26, Chapter 21.

"Harm" means death or temporary or permanent impairment of body function or structure requiring intervention such as:

(1) a change in monitoring the patient's condition;
(2) a change in therapy; or
(3) active medical or surgical treatment.

R380-210-3. Patient Injury Identification.

(1) Each facility shall implement processes to effectively identify and report to the Department the incidence of all:

(a) adverse drug events.

(2) Reporting to the Department may occur through established, statewide, electronic health care facility reporting systems managed by the Department.

(3) The report shall include codes applicable to the event from the current International Classification of Diseases Clinical Modification (ICD-CM) diagnosis coding, including codes for external cause of injury (E-codes) and codes for place of occurrence.

(4) Each facility shall have the implementation and accuracy of the internal patient safety identification processes required in R380-210-3(1) audited every three years by an independent auditor approved by the Department's Facility Licensing Committee.

R380-210-4. Patient Injury Reduction.

(1) Each facility shall implement processes that are effective in reducing the incidence of:

(a) adverse drug events.

(2) Each facility shall have the implementation and effectiveness of the internal patient injury reduction processes required in R380-210-4(1) audited every three years by an independent auditor approved by the Department's Facility Licensing Committee.

R380-210-5. Confidentiality.

(1) Information that the Department holds under this rule is confidential under the provisions of Title 26, Chapter 3. Because of the public interest needs to foster health care systems improvements, the Department exercises its discretion under Section 26-3-8 and shall not release information collected under this rule to any person pursuant the provisions of Subsections 26-3-7(1) or (8).

(2) Information produced or collected by a facility is confidential and privileged under the provisions of Title 26, Chapter 25.

R380-210-6. Penalties.

As required by Section 63G-3-201(5): An entity that violates any provision of this rule may be assessed a civil money penalty not to exceed the sum of $5,000 or be punished for violation of a class B misdemeanor for the first violation and for any subsequent similar violation within two years for violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: hospital, injury prevention, quality improvement, patient safety

October 15, 2001	**26-1-30(2)(a)**
Notice of Continuation October 10, 2006	**26-1-30(2)(b)**
	26-1-30(2)(d)
	26-1-30(2)(e)
	26-1-30(2)(g)
	26-3-8

R380. Health, Administration.
R380-250. HIPAA Privacy Rule Implementation.
R380-250-1. Authority and Purpose.

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Health.

(2) This rule is authorized by Utah Code Sections 26-1-5 and 26-1-17.

R380-250-2. Definitions.

As used in this rule:

(1) "Covered program" means the smallest agency or program unit within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(2) "HIPAA Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information found in 45 CFR Part 160 and Subparts A and E of Part 164.

(3) "Individual" means a natural person. In the case of a individual without legal capacity or a deceased person, the personal representative of the individual.

R380-250-3. General Compliance.

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered programs shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R380-250-4. Changes to Rule.

The Department reserves the right to alter this rule and its notices of privacy practices required by the HIPAA Privacy Rule.

R380-250-5. Sanctions, Retaliation.

(1) An employee of a covered program may be disciplined for failure to comply with the HIPAA Privacy Rule requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered program may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by the HIPAA Privacy Rule or for opposing in good faith any act or practice made unlawful by the HIPAA Privacy Rule.

R380-250-6. Waiver of Rights Prohibited.

A covered program may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R380-250-7. Complaints.

(1) An individual may seek a review of a covered program's policies and procedures or its compliance with such policies and procedures through informal contact with the covered program.

(2) An individual may file a formal complaint concerning a covered program's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing with the Office of the Executive Director of the Department a request for program action meeting the requirements of the Utah Administrative Procedures Act.

R380-250-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R380-250-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered program.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R380-250-10. Amendment of Protected Health Information.

(1) An individual may request amendment to protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered program.

(2) The decision whether to grant the request, the time frames for action by the covered program, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R380-250-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered program.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

KEY: HIPAA, privacy
June 9, 2003 26-1-5
Notice of Continuation May 19, 2008 26-1-17

R382. Health, Children's Health Insurance Program.
R382-1. Benefits and Administration.
R382-1-1. Authority and Purpose.

This rule implements the Children's Health Insurance Program under Title XXI of the Social Security Act, as adopted in the state under Title 26, Chapter 40 of the Utah Code. It is authorized by Section 26-40-103.

R382-1-2. Definitions.

The definitions found in Title 26, Chapter 40 apply to this rule. In addition,

(1) "Applicant" means a child on whose behalf has been made an application for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(2) "Department" means the Utah Department of Health.

R382-1-3. Nature of Program and Benefits.

(1) The Children's Health Insurance Program provides reimbursement to medical providers for services rendered to a child who meets the eligibility requirements and application requirements of R382-10. The Children's Health Insurance Program provides limited benefits as described in this rule. The Department provides reimbursement coverage under the program only for benefits and levels of coverage for each program benefit:

(a) as provided in rule governing the Children's Health Insurance Program;

(b) as described and limited in Section 6.2 of the State Plan for the Children's Health Insurance Program, July 1, 2005 ed., which is adopted and incorporated by reference, and all applicable laws and rules.

(2) The Children's Health Insurance Program is not health insurance. A relationship with the Department as the insurer and the enrollee as the insured is not created under the program.

R382-1-4. Limitation of Abortion Benefits.

Abortion is a covered benefit only if necessary to save the life of the mother.

R382-1-5. Providers.

The Department requires a child to enroll in one of the managed care organizations that contracts with the Department under the program.

R382-1-6. Reimbursement.

(1) The Department shall reimburse only for benefits as limited in its contracts with the managed care organizations.

(2) Payment for services by the contracted managed care organization and enrollee co-payment, if any, constitutes full payment for services. A provider may not bill or collect any additional monies for services rendered.

R382-1-7. Cost Sharing.

A provider may require an enrollee to pay a co-payment equal to that listed in Section 8 of the State Plan for the Children's Health Insurance Program, July 1, 2005 ed., which is adopted and incorporated by reference.

R382-1-8. Grievances and Appeals.

(1) An applicant or enrollee may request an agency conference at any time to resolve a problem without requesting an agency action under the Utah Administrative Procedures Act.

(a) Agency conferences may be held at the discretion of the Department.

(b) A representative authorized in writing may participate in the agency conference.

(c) The Department may conduct an agency conference by telephone if the applicant or enrollee does not object.

(2) The enrollee, the enrollee's parent(s), or representative authorized in writing by the enrollee or the enrollee's parent(s) may request an agency action. An applicant, the applicant's parent(s), or representative authorized in writing by the applicant or the applicant's parent(s) may request an agency action.

(a) Any request for agency action must be in writing clearly stating a desire to commence an agency proceeding, delivered or mailed to the Department, Department of Workforce Services, or the local eligibility office. The request must be mailed within 90 days of the Department's action or initial decision.

(b) Proceedings pursuant to requests for agency action under the Children's Health Insurance Program are designated as formal proceedings.

(c) An applicant's or enrollee's authorized representative may participate in the administrative proceedings before the Department.

(d) The Department may conduct the administrative proceeding, including any hearings, telephonically or by other similar means if the applicant or enrollee does not object.

(e) The enrollee may choose not to accept the continued benefits that the Department offers pending an administrative decision.

(f) The Department need not conduct a hearing if the sole issue is one of state or federal law or policy.

(3) Enrollees must exhaust grievance remedies with the managed care organization before they can request an agency action.

KEY: children's health benefits
July 1, 2007 26-1-5
Notice of Continuation May 30, 2008 26-40-103

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule.

(2) "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(3) "Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(4) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Department" means the Utah Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(8) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(9) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(10) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(11) "Local office" means any Bureau of Eligibility Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(12) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(13) "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(15) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The Department may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply for Children's Health Insurance Program benefits on behalf of a child during an open enrollment period. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide the Department with verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.

(a) The agency will provide the enrollee a written request of the needed verifications.

(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is 5:00 p.m. on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.

(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the enrollee asks for more time to provide the verifications or forms.

(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.

(2) The Department may release information concerning applicants and enrollees and their households to other state and

federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP.

(a) An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(b) An applicant who voluntarily terminates health insurance coverage purchased after the previous CHIP open enrollment period ended but before the beginning of the current open enrollment period and who met CHIP eligibility requirements at the time of purchase, is eligible for CHIP without a 90 day waiting period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-

siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

(4) If an individual is caring for a child of his or her former spouse, in a case in which a divorce has been finalized, the child may be included in the household if the child resides in the home.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count income that is defined in 20 CFR 416(K) Appendix, 2006 edition, which is adopted and incorporated by reference.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse, is not countable income.

(22) If the household expects to receive less than $500 per year, taxable interest and dividend income are not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income for parents and stepparents of any child included in the household size is counted to determine a child's eligibility, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and

cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department shall request income information from a recent time period during which the individual had farm or self-employment income. The Department shall deduct 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department shall request expense information and deduct the expenses from the gross income. The Department shall deduct the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during open enrollment periods in person, through the mail, by fax, or online.

(4) A family who has a child enrolled in CHIP, may enroll a new child born to or adopted by a household member without waiting for the next open enrollment period.

(5) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(6) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in CHIP without waiting for the next open enrollment period.

(7) A child enrolled in the UPP program who discontinues his or her coverage under an employer-sponsored health plan, may enroll in CHIP without waiting for the next open enrollment period.

(8) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(9) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within 45 days of the date of application. If a decision can not be made in 45 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid and chooses not to meet the spenddown can be enrolled in CHIP.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by 5:00 p.m. on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after 5:00 p.m. of a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered at a time when the outreach office is closed, including being closed for weekends or holidays, the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The

Department shall not pay for any services received before the effective enrollment date.

(4) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(5) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(6) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(7) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-19. Open Enrollment Period.

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(a) The Department shall notify the public of the open enrollment period 10 days in advance through a newspaper of general circulation.

(b) During an open enrollment period, the Department accepts applications in person, through the mail, by fax, or online. The Department sorts applications according to the date received. If the applications received on a day exceed the number of openings available, the Department shall randomize all applications for that day and select the number needed to fill the openings.

(c) The Department will not accept applications prior to the open enrollment date, except as provided in R382-10-16.

R382-10-20. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-21. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $60.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

R382-10-22. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return;

(c) the child has entered a public institution; or

(d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.

R382-10-23. Case Closure or Withdrawal.

The Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits
July 1, 2007 26-1-5
Notice of Continuation May 19, 2008 26-40

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-302. Design, Construction and Operation of Public Pools.
R392-302-1. Authority and Purpose of Rule.

This rule is authorized under Section 26-15-2. It establishes minimum standards for the design, construction, operation and maintenance of public pools. This rule does not regulate any pool used only by an individual, family, or members or guests of multiple housing units of three or fewer units.

R392-302-2. Definitions.

The following definitions apply in this rule.

(1) "Bather Area" means any area normally occupied by bathers as they participate in bathing activities. Bather areas include pools, decks, slides, and dressing rooms.

(2) "Bather Load" means the number of persons using a pool at any one time or specified period of time.

(3) "Cleansing shower" means the cleaning of the entire body surfaces with soap and water to remove any matter, including fecal matter, that may wash off into the pool while swimming.

(4) "Department" means the Utah Department of Health.

(5) "Diver area" means the area of a pool that is designed, operated, and reserved around each diving board or platform.

(6) "Executive Director" means the Executive Director of the Utah Department of Health, or his designated representative.

(7) "Facility" means any premises, building, pool, equipment, system, and appurtenance which appertains to the operation of a public pool.

(8) "Float Tank or Relaxation Tank" means a tank containing skin-temperature salt water that is designed to provide for solitary body floatation upon or within the water.

(9) "High Bather Load" means 90% or greater of the designed maximum bather load."

(10) "Hydrotherapy Pool" means a pool designed primarily for medically prescribed therapeutic use.

(11) "Illuminance Uniformity" means the ratio between the brightest illuminance falling on a surface compared to the lowest illuminance falling on a surface within an area. The value of illuminance falling on a surface is measured in foot candles.

(12) "Lamp Lumens" means the quantity of light, illuminance, produced by a lamp.

(13) "Lifeguard" means an attendant who supervises the safety of bathers.

(14) "Living Unit" means one or more rooms or spaces that are, or can be, occupied by an individual, group of individuals, or a family, temporarily or permanently for residential or overnight lodging purposes. Living units include motel and hotel rooms, condominium units, travel trailers, recreational vehicles, mobile homes, single family homes, and individual units in a multiple unit housing complex.

(15) "Local Health Officer" means the health officer of the local health department having jurisdiction, or his designated representative.

(16) "Non-swimmer area" means each area of a pool with water 5 feet, 1.52 meters, or less in depth.

(17) "Pool" means a man-made basin, chamber, receptacle, tank, or tub which, when filled with water, creates an artificial body of water used for swimming, bathing, diving, recreational and therapeutic uses.

(18) "Pool Deck" means the area contiguous to the outside of the pool curb, diving boards, diving towers and slides.

(19) "Private Residential Pool" means a swimming pool, spa pool or wading pool used only by an individual, family, or living unit members and guests, but not serving any type of multiple unit housing complex of four or more living units.

(20) "Public Pool" means a swimming pool, spa pool, wading pool, or special purpose pool facility which is not a private residential pool."

(21) "Saturation Index" means a value determined by application of the formula for calculating the saturation index in Table 5, which is based on interrelation of temperature, calcium hardness, total alkalinity and pH which indicates if the pool water is corrosive, scale forming or neutral.

(22) "Spa Pool" means a pool which uses therapy jet circulation, hot water, cold water, bubbles produced by air induction, or any combination of these, to impart a massaging effect upon a bather. Spa pools include, spas, whirlpools, hot tubs, or hot spas.

(23) "Special Purpose Pool" means a pool with design and operational features that provide patrons recreational, instructional, or therapeutic activities which are different from that associated with a pool used primarily for swimming, diving, or spa bathing.

(24) "Splash Pool" means the area of water located at the terminus of a water slide or vehicle slide.

(25) "Swimmer area" means each area of a pool with water over 5 feet, 1.52 meters, in depth, which is not designed, operated, or reserved as a diver area.

(26) "Swimming Pool" means a pool used primarily for recreational, sporting, or instructional purposes in bathing, swimming, or diving activities.

(27) "Surge Tank" means a tank receiving the gravity flow from an overflow gutter and main drain or drains from which the circulation pump takes water which is returned to the system.

(28) "Turnover" means the circulation of a quantity of water equal to the pool volume through the filter and treatment facilities.

(29) "Vehicle Slide" means a recreational pool where bathers ride vehicles, toboggans, sleds, etc., down a slide to descend into a splash pool.

(30) "Wading Pool" means any pool or pool area used or designed to be used by children five years of age or younger for wading or water play activities.

(31) "Water play activity" means play associated with or facilitated by playground type equipment or recreational features and incorporates water as part of its designed function. Water play does not include swimming, diving, waterslides as described in R392-302-31,or organized sports, or instruction of these activities.

(32) "Water Slide" means a recreational facility consisting of flumes upon which bathers descend into a splash pool.

R392-302-3. General Requirements.

This rule does not require a construction change in any portion of a public pool facility if the facility was installed and in compliance with law in effect at the time the facility was installed, except as specifically provided otherwise in this rule. However if the Executive Director or the Local Health Officer determines that any facility is dangerous, unsafe, unsanitary, or a nuisance or menace to life, health or property, the Executive Director or the Local Health Officer may order construction changes consistent with the requirements of this rule to existing facilities.

R392-302-4. Water Supply.

(1) The water supply serving a public pool and all plumbing fixtures, including drinking fountains, lavatories and showers, must meet the requirements for drinking water established by the Department of Environmental Quality.

(2) All portions of water supply, re-circulation, and distribution systems serving the facility must be protected against backflow. Water introduced into the pool, either directly or through the circulation system, must be supplied through an air gap.

R392-302-5. Sewer System.

(1) Each public pool must discharge waste water to a public sanitary sewer system if the sewer system is within 300 feet of the property line. Where no public sanitary sewer system is available within 300 feet of the property line, the local health department may approve connections made to a disposal system designed, constructed, and operated in accordance with the minimum requirements of the Department of Environmental Quality.

(2) Each public pool must connect to a sewer or wastewater disposal system through an air break to preclude the possibility of sewage or waste backup into the piping system.

R392-302-6. Construction Materials.

(1) Each public pool and the appurtenances necessary for its proper function and operation must be constructed of materials that are inert, non-toxic to humans, impervious, enduring over time, and resist the effects of wear and deterioration from chemical, physical, radiological, and mechanical actions.

(2) Construction of a public pool must withstand the stresses associated with the normal uses for which the public pool was designed.

(3) Each pool shell must be bonded to the supporting members.

(4) Each pool shell must be designed and constructed in a manner that provides a smooth, easily cleanable surface.

(5) Except for spa pools, the pool shell surface must be of a white or light pastel color.

(6) Sand, clay, or earth bottoms are prohibited.

(7) Vinyl or other flexible liners are prohibited.

(8) The pool shell surface coatings and textures, including flexible coating materials of at least 60 mils in thickness, may be used if they are bonded to a pool shell that is constructed as provided in Subsections R392-302-6(1), (2) and (3).

(a) The coatings must provide a smooth surface that is easily cleanable.

(b) The coatings must be slip resistant.

(9) The pool shell surfaces must be free of cracks or open joints with the exception of structural expansion joints.

(10) A pool shell constructed of materials other than concrete must:

(a) be listed by the International Association of Plumbing and Mechanical Officials (IAPMO) and the spa or other pool basin or tub shall bear the IAPMO logo; or

(b) meet construction and material standards that are equivalent to IAPMO's.

R392-302-7. Bather Load.

(1) The bather load capacity for each area of a public pool is determined as follows:

(a) Ten square feet, 0.929 square meters, of pool water surface area must be provided for each bather in a non-swimmer area during maximum load.

(b) Twenty-four square feet, 2.23 square meters, of pool water surface area must be provided for each bather in a swimmer area during maximum load.

(c) Three hundred square feet, 27.87 square meters, of pool water surface area must be reserved for each diving area. This area may not be included in computing swimmer and non-swimmer areas.

(d) A design limit of nine persons is allowed for each diving area.

(2) The department may make additional allowance for bathers when the facility operator can demonstrate that lounging and sunbathing patrons will not adversely affect water quality due to over-loading of the pool.

R392-302-8. Design Detail and Structural Stability.

(1) The designing architect or engineer is responsible to certify the design for structural stability and safety of the public pool.

(2) The shape of a pool and design and location of appurtenances must be such that the circulation of pool water and control of swimmer's safety are not impaired. The designing architect or engineer shall designate sidewalls and endwalls on pool plans. The pool design shall separate wading pools from other pools. Wading pools may not share common circulation, filtration, or chemical treatment systems, or walls.

(3) A pool must have a circulation system with necessary treatment and filtration equipment as required in R392-302-16, unless turnover rate requirements as specified in sub-section R392-302-16(1) can be met by continuous introduction of fresh water and wasting of pool water under conditions satisfying all other requirements of this rule.

(4) Where a facility is subject to freezing temperatures, all parts of the facility subject to freezing damage must be adequately and properly protected from damage due to freezing, including the pool, piping, filter system, pump, motor, and other components and systems.

(5) The pool operator or the designing architect or engineer shall submit plans for a new pool, pool renovation or pool remodeling project to the local health department for approval. This includes the replacement of equipment which is different from that originally approved by a health authority having jurisdiction. The local health department may require a pool renovation or pool remodeling project to meet the current requirements of R392-302.

R392-302-9. Depths and Floor Slopes.

(1) In determining the horizontal slope ratio of a pool floor, the first number shall indicate the vertical change in value or rise and the second number shall indicate the horizontal change in value or run of the slope.

(a) The horizontal slope of the floor of any portion of a pool having a water depth of less than 5 feet, 1.52 meters, may not be steeper than a ratio of 1 to 10.

(b) The horizontal slope of the floor of any portion of a pool having a water depth greater than 5 feet, 1.52 meters, must be uniform, must allow complete drainage and may not exceed a ratio of 1 to 3. The horizontal slope of the pool bottom in diving areas must be consistent with the requirements for minimum water depths as specified in Section R392-302-11 for diving areas.

(2) A wading pool may not exceed a maximum water depth of 2 feet, 60.96 centimeters.

(3) A spa pool may not exceed a maximum water depth of 4 feet, 1.22 meters. The department may grant exceptions for a spa pool designed for special purposes, such as instruction, treatment, or therapy.

R392-302-10. Walls.

(1) Pool walls must be vertical or within 11 degrees of vertical for a minimum distance of 2 feet 9 inches, 83.82 centimeters, below the water line in areas with a depth of 5 feet, 1.52 meters, or greater. Pool walls must be vertical or within 11 degrees of vertical for a minimum distance equal to or greater than one half the pool depth as measured from the water line.

(2) Where walls form an arc to join the floors, the transitional arc from wall to floor must:

(a) Have its center no less than 2 feet 9 inches, 83.82 centimeters, below the normal water level in areas with a depth greater than 5 feet, 1.52 meters.

(b) Have its center no less than 75% of the pool depth beneath the normal water level, in areas of the pool with a depth of 5 feet, 1.52 meters, or less.

(c) Be tangent to the wall.

(d) Have a radius at least equal to or greater than the depth

of the pool minus the vertical wall depth measured from the water line, as described in Subsection R392-302-9(1), minus 3 inches, 7.62 centimeters, to allow draining to the main drain. Radius minimum = Pool Depth - Vertical wall depth - 3 inches, 7.62 centimeters, where the water depth is greater than 5 feet, 1.52 meters.

(e) Have a radius which may not exceed a length greater than 25% of the water depth, in areas with a water depth of 5 feet, 1.52 meters, or less.

(3) Underwater ledges are prohibited.

R392-302-11. Diving Areas.

(1) Where diving is permitted, the diving area design, equipment placement, and clearances must meet the minimum standards established by the USA Diving Rules and Regulations 2004, Appendix B, which are incorporated by reference.

(2) Where diving from a height of less than 3.28 feet, 1 meter, from normal water level is permitted, the diving bowl shall meet the minimum depths outlined in Section 6, Figure 1 and Table 2 of ANSI/NSPI-1, 2003, which is adopted by reference, for type VI, VII and VIII pools according to the height of the diving board above the normal water level. ANSI/NSPI pool type VI is a maximum of 26 inches, 2/3 meter, above the normal water level; type VII is a maximum of 30 inches, 3/4 meter, above the normal water level; and type VIII is a maximum of 39.37 inches, 1 meter, above the normal water level.

(3) The use of a starting platform is restricted to competitive swimming events or supervised training for competitive swimming events.

(a) If starting platforms are used for competitive swimming or training, the water depth shall be at least four feet.

(b) The operator shall either remove the starting platforms or secure them with a lockable cone-type platform safety cover when not in competitive use.

(4) Areas of a pool where diving is not permitted must have "NO DIVING" or the international no diving icon, or both provided in block letters at least four inches in height in a contrasting color on the deck, located on the horizontal surface of the deck or coping as close to the water's edge as practical.

(a) Where the "NO DIVING" warnings are used, the spacing between each warning may be no greater than 25 feet.

(b) Where the icon alone is used on the deck as required, the operator shall also post at least one "NO DIVING" sign in plain view within the enclosure. Letters shall be at least four inches in height with a stroke width of at least one-half inch.

R392-302-12. Ladders, Recessed Steps, and Stairs.

(1) In areas of a pool where the water depth is greater than 2 feet, 60.96 centimeters, and less than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, steps or ladders must be provided, and be located in the area of shallowest depth.

(2) In areas of the pool where the water depth is greater than 5 feet, 1.52 meters, as measured vertically from the bottom of the pool to the mean operating level of the pool water, ladders or recessed steps must be provided.

(3) A pool over 30 feet, 9.14 meters, wide must be equipped with steps, recessed steps, or ladders as applicable, installed on each end of both side walls.

(4) A pool over 30 feet, 9.14 meters, wide and 75 feet, 22.8 meters, or greater in length, must have ladders or recessed steps midway on both side walls of the pool, or must have ladders or recessed steps spaced at equal distances from each other along both sides of the pool at distances not to exceed 30 feet, 9.14 meters, in swimming and diving areas, and 50 feet, 15.23 meters, in non-swimming areas.

(5) Ladders or recessed steps must be located within 15 feet, 4.56 meters, of the diving area end wall.

(6) The steps, recessed steps, and ladders, must have one or more handrails.

(a) Handrails must be rigidly installed and constructed in such a way that they can only be removed with tools.

(b) Handrails must be constructed of corrosion resistant materials.

(c) The outside diameter of handrails may not exceed 2 inches, 5.08 centimeters.

(d) Submerged steps or rungs which are not recessed must be guarded by handrails. The hand rail must be mounted on the deck and extend to the bottom step.

(7) Steps must be constructed of corrosion-resistant material, be easily cleanable, and be of a safe design.

(a) Steps leading into pools must be of non-slip design, have a minimum run of 10 inches, 25.4 centimeters, and a maximum rise of 12 inches, 30.48 centimeters.

(b) Steps must have a line at least 1 inch, 2.54 centimeters, in width, and be of a contrasting dark color for maximum visual distinction within 2 inches, 5.08 centimeters, of the leading edge of each step.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters, as measured at the leading edge of the step.

(d) In a spa pool where the bottom step serves as a bench or seat, the bottom riser must be a maximum of 14 inches, 35.56 centimeters.

(8) Pool ladders must meet the following requirements:

(a) Pool ladders must be corrosion-resistant and must be equipped with non-slip rungs.

(b) All ladders must be designed to provide a handhold and must be rigidly installed.

(c) There must be a clearance of not more than 5 inches, 12.7 centimeters, nor less than 3 inches, 7.62 centimeters, between any ladder rung and the pool wall.

(9) Full or partial recessed steps must meet the following requirements:

(a) Where full or partial recessed steps are used, a set of handrails must be located at the top of the course with a rail on each side. The handrails must extend over the coping or edge of the deck.

(b) Full or partial recessed steps must be designed to be readily cleanable and to provide drainage into the pool to prevent the accumulation of dirt on the step.

(c) Full or partial recessed steps must have a minimum run of 5 inches, 12.7 centimeters, and a minimum width of 14 inches, 35.56 centimeters.

(10) The designing architect or engineer or the facility owner must anticipate maximum loads on supports, platforms and steps for diving boards, and ensure that supports, platforms, and steps are of substantial construction and of sufficient structural strength to safely carry the maximum anticipated loads.

(a) Handrails must be provided at all steps and ladders leading to diving boards more than 3'3" feet, 1 meter, above the water.

(11) Platforms and diving boards which are over 3'3" feet, 1 meter, high, must be designed to protect divers from falls to the deck or pool curb by the installation of guard railings.

(12) A spa pool must be equipped with at least one handrail for each 50 feet, 15.24 meters, of perimeter, or portion thereof, to designate the point of entry and exit. Points of entry and exit must be evenly spaced around the perimeter of the spa pool and afford unobstructed entry and egress.

R392-302-13. Decks and Walkways.

(1) A continuous, unobstructed deck at least 5 feet, 1.52 meters, wide as measured from the pool side edge of the coping must extend completely around the pool.

(2) At least 5 feet, 1.52 meters, of deck area must be provided behind the deck end of any diving board, platform,

slide, step, or ladder.

(3) The deck must slope away from the pool to floor drains at a grade of 1/4 inch, 6.35 millimeters, to 3/8 inch, 9.53 millimeters, per linear foot.

(4) Decks and walkways must be maintained free of standing water and must have non-slip surfaces.

(5) Wooden decks, walks or steps are prohibited.

(a) The department may grant exceptions for deck construction materials for spa pools or other applications where sealed, clear-heart redwood is used.

(6) Deck drains may not return water to the pool or the circulation system.

(7) Decks must be maintained in a sanitary condition and free from litter.

(8) Carpeting may not be installed within 5 feet, 1.52 meters, of the water side edge of the coping and must be wet vacuumed as often as necessary to keep it clean and free of accumulated water.

(9) Steps serving decks must meet the following requirements:

(a) Risers of steps for the deck must be uniform and have a minimum height of 3-3/4 inches, 9.53 centimeters, and a maximum height of 7-3/4 inches, 19.7 centimeters.

(b) The minimum run of steps shall be 10 inches, 25.4 centimeters.

(c) Steps must have a minimum width of 18 inches, 45.72 centimeters.

(10) The deck of a wading pool may be included as part of adjacent pool decks.

(11) A spa deck must meet each of the following requirements:

(a) A spa pool must have a continuous, unobstructed deck at least 3 feet, 91.44 centimeters, wide around 25 percent or more of the spa. This width may include the coping.

(b) A pool deck may be included as part of the spa deck if the pools are separated by a minimum of 5 feet, 1.52 meters. The department may grant an exception to deck and pool separation requirements if a spa pool and another pool are constructed adjacent to each other and share a common pool sidewall which separates the two pools. The common pool side wall may not exceed 12 inches, 30.48 centimeters, in width.

R392-302-14. Fencing.

(1) A fence or other barrier is required and must provide complete perimeter security of the facility, and be at least 6 feet, 1.83 meters, in height. Openings through the fence or barrier, other than entry or exit access, may not permit a sphere greater than 4 inches, 10.16 centimeters, to pass through it at any location.

(a) If the local health department determines that the safety of children is not compromised, it may exempt indoor pools from the fencing requirements.

(b) The local health department may grant exceptions to the height requirements in consideration of architectural and landscaping features for pools designed for hotels, motels and apartment houses.

(2) A fence or barrier that has an entrance to the facility must be equipped with a self-closing and self-latching gate or door. Except for self-locking mechanisms, self-latching mechanisms must be at least 54 inches, 1.37 meters, above the ground and must be provided with hardware for locking the gate when the facility is not in use.

(3) Bathing areas must be separated from non-bathing areas by barriers with a minimum height of 4 feet, 1.22 meters, or by a minimum of 5 feet, 1.53 meters, distance separation.

R392-302-15. Depth Markings and Safety Ropes.

(1) The depth of the water must be plainly marked at locations of maximum and minimum pool depth, and at the points of separation between the swimming and non-swimming areas of a pool. Pools must also be marked at intermediate 1 foot, 30.48 centimeters, increments of depth, spaced at distances which do not exceed 25 feet, 7.62 meters. Markings must be located above the water line or within 2 inches, 5.8 centimeters, from the coping on the vertical wall of the pool and on the edge of the deck or walk next to the pool with numerals at least 4 inches, 10.16 centimeters, high.

(2) A pool with both swimming and diving areas must have a floating safety rope separating the swimming and diving areas. An exception to this requirement is made for special activities, such as swimming contests or training exercises when the full unobstructed length of the pool is used.

(a) The safety rope must be securely fastened to wall anchors. Wall anchors must be of corrosion-resistant materials and must be recessed or have no projections that may be a safety hazard if the safety rope is removed.

(b) The safety rope must be marked with visible floats spaced at intervals of 7 feet, 2.13 meters or less.

(c) The rope must be at least 0.5 inches, 1.27 centimeters, in diameter, and of sufficient strength to support the loads imposed on it during normal bathing activities.

(3) A pool constructed with a change in the slope of the pool floor must have the change in slope designated by a floating safety rope and a line of demarcation on the pool floor.

(a) The floating safety rope designating a change in slope of the pool floor must be attached at the locations on the pool wall that place it directly above and parallel to the line on the bottom of the pool. The floating safety rope must meet the requirements of Subsections R392-302-15(2)(a),(b),(c).

(b) A line of demarcation on the pool floor must be marked with a contrasting dark color.

(c) The line must be at least 2 inches, 5.08 centimeters, in width.

(d) The line must be located 12 inches, 30.48 centimeters, toward the shallow end from the point of change in slope.

(4) The department may exempt a spa pool from the depth marking requirement if the spa pool owner can successfully demonstrate to the department that bather safety is not compromised by the elimination of the markings.

R392-302-16. Circulation Systems.

(1) A circulation system, consisting of pumps, piping, filters, water conditioning and disinfection equipment and other related equipment must be provided. The normal water line of the pool must be maintained within 9 inches, 22.86 centimeters, of the deck whenever the pool is open for bathing. An exemption to this requirement may be granted by the department if it can be demonstrated that the safety of the bathers is not compromised.

(a) Except for spas, wading pools, wave pools, slide pools, vehicle slide pools, and floatation tanks, the circulation system shall clarify and disinfect the entire volume of pool water in eight hours or less, thus providing a minimum turnover of at least three times in 24 hours.

(b) The turnover rate must be increased to provide a six hour turnover for pools subjected to high bather loads if a review of bacteriological water quality reports by the department or local health department having jurisdiction demonstrates that high bather loads may have contributed to unsatisfactory water samples.

(c) The circulation equipment must be operated continuously except for periods of routine or other necessary maintenance and must be designed to permit complete drainage of the system. Table 1 further describes these requirements.

(d) Piping must be of non-toxic material, resistant to corrosion and be able to withstand operating pressures.

(e) Plumbing must be identified by a color code or labels.

(2) The water velocity in discharge piping may not exceed

10 feet, 3.05 meters, per second, except for copper pipe where the velocity for piping may not exceed 8 feet, 2.44 meters, per second.

(3) Suction velocity for all piping may not exceed 6 feet, 1.83 meters, per second.

(4) The circulation system must include a strainer to prevent hair, lint, etc., from reaching the pump.

(a) Strainers must be corrosion-resistant with openings not more than 1/8 inch, 3.18 millimeters, in size.

(b) Strainers must provide a free flow capacity of at least four times the area of the pump suction line.

(c) Strainers must be readily accessible for frequent cleaning.

(d) Strainers must be maintained in a clean and sanitary condition.

(e) Each pump strainer must be provided with necessary valves to facilitate cleaning of the system without excessive flooding.

(5) A vacuum-cleaning system must be provided.

(a) If this system is an integral part of the circulation system, connections must be located in the walls of the pool, at least 8 inches, 20.32 centimeters, below the water line. This requirement does not apply to vacuums operated from skimmers.

(b) The number of connections provided must facilitate access to all areas of the pool through hoses less than 50 feet, 15.24 meters, in length.

(6) A rate-of-flow indicator, reading in gallons per minute, must be properly installed and located according to manufacturer recommendations. The indicator must be located in a place and position where it can be easily read.

(7) Pumps must be of adequate capacity to provide the required number of turnovers of pool water as specified in Subsection R392-302-16, Table 1. The pump or pumps must be capable of providing flow adequate for the backwashing of filters. Under normal conditions, the pump or pumps must supply the circulation rate of flow at a dynamic head which includes, in addition to the usual equipment, fitting and friction losses, an additional loss of 15 feet, 4.57 meters, for rapid sand filters, vacuum diatomite filters or vacuum cartridge filters and 40 feet, 12.19 meters, for pressure diatomite filters, high rate sand filters or cartridge filters, as well as pool inlet orifice loss of 15 feet, 4.57 meters.

(8) A pool equipped with heaters must meet the requirements for boilers and pressure vessels as required by the State of Utah Boiler and Pressure Vessel Rules, R576-201, and must have a fixed thermometer mounted in the pool circulation line downstream from the heater outlet. The heater must be provided with a heatsink as required by manufacturer's instructions.

(9) The area housing the circulation equipment must be designed with adequate working space so that all equipment may be easily disassembled, removed, and replaced for proper maintenance.

(10) All circulation lines to and from the pool must be regulated with valves in order to control the circulation flow.

(a) All valves must be located where they will be readily and easily accessible for maintenance and removal.

(b) Multiport valves must comply with National Sanitation Foundation NSF/ANSI 50-2004, which is incorporated and adopted by reference.

(11) Written operational instructions must be immediately available at the facility at all times.

(12) A wading pool must have a minimum of one turnover per hour and have a separate circulation system.

(13) A spa pool must have a minimum of one turnover every 30 minutes. The circulation lines of jet systems and other forms of water agitation used in spa and therapy pool must be independent and separate from the circulation-filtration and heating systems.

(14) Float tank circulation systems, consisting of pumps, piping, filters, and disinfection equipment must be provided which will clarify and disinfect the tank's volume of water in 15 minutes or less. The total volume of water within a float tank must be turned over at least twice between uses by patrons.

(15) Wave pool circulation-filtration systems must be operated at a minimum of one turnover every six hours.

(16) Slide and vehicle slide pools must be operated at a minimum of one turnover every hour.

TABLE 1

Circulation

Type of Pool	Minimum Number of Wall Inlets	Minimum Number of Skimmers per 3,500 square feet or less	Minimum Turnover Time
1. Swim	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters.	8 hours
2. Swim, high bather load	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	6 hours
3. Wading pool	1 per 20 feet, 6.10 meters, minimum of 2 equally spaced	1 per 500 sq. ft. 46.45 sq. meters	1 hour
4. Spa	One per 20 feet, 6.10 meters	1 per 100 sq. ft., 9.29 sq. meters	30 minutes
5. Wave	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	6 hours
6. Slide	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour
7. Vehicle slide	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour
8. Float tank	1	1	15 minutes with 2 turnovers between patrons
9. Special Purpose Pool	1 per 10 feet, 3.05 meters	1 per 500 sq. ft., 46.45 sq. meters	1 hour

(17) Each air induction system installed must comply with the following requirements:

(a) An air induction system must be designed and maintained to prevent any possibility of water back-up that could cause electrical shock hazards.

(b) An air intake may not introduce contaminants such as noxious chemicals, fumes, deck water, dirt, etc. into the pool.

R392-302-17. Inlets.

(1) Inlets for fresh or treated water must be located to produce uniform circulation of water and to facilitate the maintenance of a uniform disinfectant residual throughout the entire pool.

(2) If wall inlets from the circulation system are used, they must be flush with the pool wall and submerged at least 5 feet, 1.52 meters, below the normal water level or at the bottom of the vertical wall surface tangent to the arc forming the transition between the vertical wall and the floor of the pool. Except as provided in Subsections R392-302-17(4) and (5), wall inlets must be placed every 10 feet, 3.05 meters, around the pool perimeter.

(a) The department or the local health officer may require floor inlets to be installed in addition to wall inlets if a pool has a width greater than 50 feet, 4.57 meters, to assure thorough chemical distribution. If floor inlets are installed in addition to wall inlets, there must be a minimum of one row of floor inlets centered on the pool width. Individual inlets and rows of inlets shall be spaced a maximum of 15 feet, 4.57 meters, from each other. Floor inlets must be at least 15 feet, 4.57 meters, from a pool wall with wall inlets.

(b) Each wall inlet must be designed as a non-adjustable orifice with sufficient head loss to insure balancing of flow through all inlets. The return loop piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(3) If floor inlets from the circulation system are used, they must be flush with the floor. Floor inlets shall be placed at maximum 15 foot, 4.46 meter, intervals. The distance from floor inlets to a pool wall shall not exceed 7.5 feet, 2.29 meters if there are no wall inlets on that wall. Each floor inlet must be designed such that the flow can be adjusted to provide sufficient head loss to insure balancing of flow through all inlets. All floor inlets must be designed such that the flow cannot be adjusted without the use of a special tool to protect against swimmers being able to adjust the flow. The return supply piping must be sized to provide less than 2.5 feet, 76.20 centimeters, of head loss to the most distant orifice to insure approximately equal flow through all orifices.

(4) A wading pool that utilizes wall inlets shall have a minimum of two equally spaced inlets around its perimeter at a minimum of one in each 20 feet, 6.10 meters, or fraction thereof.

(a) Each wading pool shall have a minimum of two equally spaced wall inlets located to avoid the creation of a vortex in the pool.

(5) Spa pool filtration system inlets shall be wall-type inlets and the number of inlets shall be based on a minimum of one for each 20 feet, 6.10 meters, or fraction thereof, of pool perimeter.

(6) The department may grant an exemption to the inlet placement requirements on a case by case basis for inlet designs that can be demonstrated to produce uniform mixing of pool water.

R392-302-18. Outlets.

(1) Each pool shall have a minimum of either two grated outlets, two anti-entrapment outlets, or two anti-vortex type outlets that meet the following design criteria:

(a) Outlets shall have a suitable protective grate or cover securely fastened in such a way that the use of tools is required to remove it. A pool shall not operate with broken, damaged or missing drain grates or covers. Protective grates or covers smaller than 24 inches by 24 inches, 61 centimeters by 61 centimeters, shall meet the requirements of ASME/ANSI A112.19.8M.

(b) The outlets must be constructed so that if one of the outlets is completely obstructed, the remaining outlet(s) will be capable of handling 100 percent of the maximum design circulation flow.

(c) All pool outlets must connect to pipes of equal diameter.

(d) The outlet system must not allow any outlet to be cut out of the suction line by a valve or other means.

(e) The outlets centered in the deepest area of the pool must permit the pool to be completely and easily emptied.

(f) There must be one main drain outlet for each 30 feet, 9.14 meters, of pool width. To prevent body entrapment, multiple main drain outlets shall not be spaced more than 30 feet, 9.14 meters, apart nor spaced closer than 4 feet, 1.22 meters, apart. The outermost main drain outlets must be located within 15 feet, 4.57 meters, from a side wall.

(g) If an outlet discharge pipe is 8 inches, 20.32 centimeters, or greater in diameter it shall have an additional device that shall prevent the passage of a sphere greater than 6 inches, 15.24 centimeters, in diameter. Such a device shall be designed by the designing architect or engineer and may not alter the required flow design characteristics.

(h) Devices or methods used for draining pools shall prevent overcharging the sanitary sewer.

(i) Multiple pumps may utilize the same outlets only if the outlets are sized to accommodate 100 percent of the total combined design flow from all pumps and only if the flow characteristics of the system meet the requirements of subsection R392-302-18(2)(a) or (3)(a).

(j) No feature or circulation pump shall be connected to less than two outlets unless connected to an anti-entrapment outlet system that the operator demonstrates to the Department as being effective in preventing entrapment.

(2) Grated Outlets.

(a) The designing architect or engineer shall ensure that outlet grate openings in the floor of the pool are at least four times the area of discharge or provide sufficient area so the maximum velocity of the water passing through the grate will not exceed 1.5 feet per second.

(b) The openings in a grate shall have a minimum width of 0.25 inches, 0.635 centimeters, and a maximum length of 1.5 inches, 3.81 centimeters. A grate opening that is neither square nor rectangular in shape, may not be greater than 0.75 inches, 1.905 centimeters., measured in any dimension along the exposed surface of the grate.

(3) Anti-vortex or anti-entrapment drains.

The total velocity of water through the open area of an anti-vortex or anti-entrapment drain shall not exceed the manufacturer's recommended maximum velocity or a maximum of three feet per second through the open area of the drain, whichever is more restrictive.

(4) Spa pool outlets shall meet all of the requirements of subsections R392-302-18(1) through R392-302-18(3); however, the following exceptions apply:

(a) The designing architect or engineer shall ensure multiple spa outlets are spaced at least three feet apart from each other or that a third drain is provided and that the separation distance between individual outlets is at the maximum possible spacing.

(b) The department may exempt an acrylic or fiberglass spa from the requirement to locate outlets at the deepest point in the pool, if the outlets are located on side walls within three inches of the pool floor, and a wet-vacuum is available on site to remove any water left in the pool after draining.

(5) A wading pool shall have drainage to waste through a quick opening valve to facilitate emptying the wading pool should accidental bowel discharge or other contamination occur.

(6) Subsections R392-302-18(6) through R392-302-18(6)(c) supersede section R392-302-3. The pool owner or certified pool operator shall retrofit each swimming pool circulation system on existing pools that do not meet the requirements of subsections R392-302-18(1) through R392-302-18(5) by any of the following means:

(a) A vacuum switch that meets both the American Society for Testing and Materials Standard Provisional Specification for Manufactured Safety Vacuum Release Systems (SVRS) for Swimming Pools, Spas, and Hot Tubs, PS 10-03, and the requirements of American Society of Mechanical Engineers Manufactured Safety Vacuum Release Systems for Residential and Commercial Pools, ASME A112.19.17 - 2002, which are incorporated by reference, installed on the suction side of the pump to prevent outlet entrapment. To ensure proper operation, the certified pool operator shall inspect and test the vacuum switch at least once a week but no less often than established by

the manufacturer. The certified pool operator shall test the switch in a manner specified by the manufacturer. The certified pool operator shall log all inspections, tests and maintenance and retain the records for a minimum of two years for review by the Department and local health department upon request.

(b) An outlet system that includes no fewer than two suction outlets separated by no less than 4 feet, 1.22 meters, on the horizontal plane or located on two different planes and connected to pipes of equal diameter. The suction outlets shall be plumbed so water is drawn simultaneously without valves through the outlets to a common line to the pump system; or

(c) Any other system that the operator demonstrates to the Department to prevent outlet entrapment.

R392-302-19. Overflow Gutters and Skimming Devices.

(1) A pool having a surface area of over 3,500 square feet, 325.15 square meters, must have overflow gutters. A pool having a surface area less than 3,500 square feet, 325.15 square meters, must have either overflow gutters or skimmers provided.

(2) Overflow gutters must extend completely around the pool, except at steps, ramps, or recessed ladders. The gutter system must be capable of continuously removing pool water at 100 percent of the maximum flow rate. This system must be connected to the circulation system by means of a surge tank.

(3) Overflow gutters must be designed and constructed in compliance with the following requirements:

(a) The opening into the gutter beneath the coping must be at least 3 inches, 7.62 centimeters, in height with a depth of at least 3 inches, 7.62 centimeters.

(b) Gutters must be designed to prevent entrapment of any part of a bather's body.

(c) The edge must be rounded so it can be used as a handhold and must be no thicker than 2.5 inches, 6.35 centimeters, for the top 2 inches, 5.08 centimeters.

(d) Gutter outlet pipes must be at least 2 inches, 5.08 centimeters, in diameter. The outlet grates must have clear openings and be equal to at least one and one-half times the cross sectional area of the outlet pipe.

(4) Skimmers complying with National Sanitation Foundation NSF/ANSI 50-2004 standards or equivalent are permitted on any pool with not more than 3,500 square feet, 325.15 square meters, of surface area. At least one skimming device must be provided for each 500 square feet, 46.45 square meters, of water surface area or fraction thereof. Where two or more skimmers are required, they must be spaced to provide an effective skimming action over the entire surface of the pool.

(5) Skimming devices must be built into the pool wall and must meet the following general specifications:

(a) The piping and other components of a skimmer system must be designed for a total capacity of at least 80 percent of the maximum flow rate of the circulation system.

(b) Skimmers must be designed with a minimum flow rate of 25 gallons, 94.64 liters, per minute and a maximum flow rate of 55 gallons, 208.12 liters, per minute. Alternatively, skimmers may also be designed with a minimum of 3.125 gallons, 11.83 liters, to 6.875 gallons, 26.02 liters, per lineal inch, 2.54 centimeters, of weir.

(6) Each skimmer weir must be automatically adjustable and must operate freely with continuous action to variations in water level over a range of at least 4 inches, 10.16 centimeters. The weir must operate at all flow variations.

(7) An easily removable and cleanable basket or screen through which all overflow water passes, must be provided to trap large solids.

(8) The skimmer must be provided with a device to prevent air-lock in the suction line. These devices may include an equalizer pipe, surge tank, or other arrangement that will assure a sufficient amount of water for pump suction in the event the pool water drops below the weir level.

(a) If an equalizer pipe is used, the following requirements must be met:

(i) An equalizer pipe must be sized to meet the capacity requirements for the filter and pump.

(ii) An equalizer pipe may not be less than 2 inches, 5.08 centimeters, in diameter.

(iii) This pipe must be located at least 1 foot, 30.48 centimeters, below a valve or equivalent device that will remain tightly closed under normal operating conditions. In a shallow pool, such as a wading pool, where an equalizer outlet can not be submerged at least one foot below the skimmer valve, the equalizer pipe shall be connected to a separate outlet with an anti-entrapment cover in the floor of the pool.

(iv) The equalizer pipe must have an anti-vortex cover.

(9) The skimmer weir and basket must be maintained in a clean and sanitary condition.

(10) A spa pool must have a minimum number of surface skimmers based on one skimmer for each 100 square feet, 9.29 square meters of surface area.

R392-302-20. Filtration.

(1) The filter system must provide for isolation of individual filters for backwashing or other service.

(2) The filtration system must be designed to allow the pool operator to easily observe the discharge backwash water from the filter in order to determine if the filter cells are clean.

(3) A public pool must use either a rapid sand filter, hi-rate sand filter, diatomaceous earth filter, or a cartridge filter.

(4) The following requirements are applicable to gravity and pressure rapid sand filters, all of which must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004 or is determined to be equivalent by the department.

(a) Rapid sand filters must be designed for a filter rate of 3 gallons, 11.36 liters, or less, per minute per square foot, 929 square centimeters, of bed area at time of maximum head loss. The filter bed surface area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover.

(b) The filter system must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filters. Air-relief valves must be provided at or near the high point of the filter or piping system.

(c) The filter system must be designed with necessary valves and piping to permit:

(i) filtering of all pool water;

(ii) individual backwashing of filters to a sanitary sewer at a minimum rate of 15 gallons, 56.78 liters, per minute per square foot, 929 square centimeters, of filter area;

(iii) isolation of individual filters;

(iv) complete drainage of all parts of the system;

(v) necessary maintenance, operation and inspection in a convenient manner.

(d) Each pressure type filter tank must be provided with an access opening of at least a standard size 11 inch, 27.94 centimeters, by 15 inch, 38.10 centimeters, manhole with a cover.

(5) Hi-rate sand filters must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or be determined to be equivalent by the department.

(a) Hi-rate sand filters must be designed for a filter rate of less than 18 gallons, 68.14 liters, per minute per square foot, 929 square centimeters, of bed area. The filter bed area must be sufficient to meet the design rate of flow required by Section R392-302-16, Table 1, for required turnover. Minimum flow rates must be at least 13 gallons, 49.21 liters, per minute per square foot, 929 square centimeters, of bed area.

(b) The filter tank and all components must be installed in compliance with the manufacturer's recommendations.

(c) An air-relief valve must be provided at or near the high

point of the filter.

(d) The filter system must be provided with an influent pressure gauge to indicate the condition of the filter.

(6) Diatomaceous earth filters, whether of the vacuum or pressure type, must comply in all respects with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or be determined to be equivalent standards by the department. The filtering area must be compatible with the design pump capacity as required by Section R392-302-16, Table 1.

(a) The design rate of filtration may not exceed 2.0 gallons per minute per square foot, 7.57 liters per 929 square centimeters, of effective filtering surface without continuous body feed, nor greater than 2.5 gallons per minute per square foot, 9.46 liters per 929 square centimeters, with continuous body feed.

(b) Where body feed is provided, the feeder device must be accurate to within 10 percent, must be capable of continual feeding within a calibrated range, and must be adjustable from two to six parts per million. The device must feed at the design capacity of the circulation pump.

(c) Where fabric is used, filtering area must be determined on the basis of effective filtering surfaces.

(d) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations.

(e) If a precoat device is supplied with a potable water supply, then the water must be delivered through an air gap.

(f) The filter plant must be provided with influent pressure, vacuum, or compound gauges to indicate the condition of the filter. In vacuum-type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off device must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(g) A filter must be designed to facilitate cleaning by one or more of the following methods: backwashing, air-bump-assist backwashing, automatic or manual water spray, or agitation.

(h) The filter system must provide for complete and rapid draining of the filter.

(i) Diatomaceous earth filter backwash water must discharge to the sanitary sewer system through a separation tank. The separation tank must have a visible precautionary statement warning the user not to start up the filter pump without first opening the air relief valve.

(j) Personal protection equipment suitable for preventing inhalation of diatomaceous earth must be provided.

(7) The department may waive National Sanitation Foundation, NSF/ANSI 50-2004, standards for diatomaceous earth filters and approve site-built or custom-built vacuum diatomite filters, if the diatomaceous earth filter elements are easily accessible for cleaning by hand hosing after each filtering cycle. Site-built or custom-built vacuum diatomaceous earth filters must comply with all design requirements as specified in Subsection R392-302-20(6). Any design which provides the equivalent washing effectiveness as determined by the department may be acceptable. Where the department or the local health department determines that a potential cross-connection exits, a hose bib in the vicinity of the filter to facilitate the washing operation must be equipped with a vacuum breaker listed by the International Association of Plumbing and Mechanical Officials, IAPMO, the American Society of Sanitary Engineering, A.S.S.E., or other nationally recognized standard.

(8) Vacuum or pressure type cartridge filters must comply with the standards of the National Sanitation Foundation, NSF/ANSI 50-2004, or equivalent standards covering such filters as determined by the department.

(a) Sufficient filter area must be provided to meet the design pump capacity as required by Subsection R392-302-16, Table 1.

(b) The designed rate of filtration may not exceed 0.375 gallons, 1.42 liters, per minute per square foot, 929 square centimeters, of effective filter area.

(c) The filter and all component parts must be designed and constructed of materials which will withstand normal continuous use without significant deformation, deterioration, corrosion or wear which could adversely affect filter operations. The filter element must be constructed of polyester fiber only.

(d) The filter must be fitted with influent and effluent pressure gauges, vacuum, or compound gauges to indicate the condition of the filter. In vacuum type filter installations where the circulating pump is rated at two horsepower or higher, an adjustable high vacuum automatic shut-off must be provided to prevent damage to the pump. Air-relief valves must be provided at or near the high point of the filter system.

(e) Cleaning of cartridge type filters must be accomplished in accordance with the manufacturer's recommendations.

R392-302-21. Disinfectant and Chemical Feeders.

(1) A pool must be equipped with a disinfectant feeder or feeders which conform to the National Sanitation Foundation, NSF/ANSI 50-2004, standards relating to adjusted output rate chemical-feeding equipment and flow through chemical feeding equipment for swimming pools, or be deemed equivalent by the department.

(2) A spa pool must be equipped with oxidation reduction potential controllers which monitor chemical demands, including pH and disinfectant demands, and regulate the amount of chemicals fed into the pool circulation system. A spa pool constructed and approved prior to September 16, 1996 is exempt from this requirement if it is able to meet bacteriological quality as required in Subsection R392-302-27(10). Supervisory water testing, calibration checks, inspection and cleaning of sensor probes and chemical injectors must be performed in accordance with the manufacturer's recommendations. If specific manufacturer's recommendations are not made, the inspections, calibration checks, and cleaning of sensor probes must be done at least weekly.

(3) Where compressed chlorine gas is used, the following additional features must be provided:

(a) Chlorine and chlorinating equipment must be located in a secure, well-ventilated enclosure separate from other equipment systems or equipment rooms. Such enclosures may not be below ground level. If an enclosure is a room within a building, it must be provided with vents near the floor which terminate at a location out-of-doors. Enclosures must be located to prevent contamination of air inlets to any buildings and areas used by people. Forced air ventilation capable of providing at least one complete air change per minute, must be provided for enclosures.

(b) Substances which are incompatible with chlorine may not be kept in the chlorine enclosure.

(c) Chlorine cylinders must be secured to prevent their falling over. An approved valve stem wrench must be maintained on the chlorine cylinder so the supply can be shut off quickly in case of emergency. Valve protection hoods and cap nuts must be kept in place except when the cylinder is connected.

(d) Doors to chlorine gas and equipment rooms must be labeled DANGER CHLORINE GAS in letters at least 4 inches, 10.16 centimeters, in height and display the United States Department of Transportation placard and I.D. number for chlorine gas.

(e) The chlorinator must be designed so that leaking chlorine gas will be vented to the out-of-doors.

(f) The chlorinator must be a solution feed type, capable

of delivering chlorine at its maximum rate without releasing chlorine gas to the atmosphere. Injector water must be furnished from the pool circulation system with necessary water pressure increases supplied by a booster pump. The booster must be interlocked with both the pool circulation pump and with a flow switch on the return line.

(g) Chlorine feed lines may not carry pressurized chlorine gas.

(h) An unbreakable bottle of ammonium hydroxide, of approximately 28 percent solution in water, must be readily available for chlorine leak detection.

(i) A self-contained breathing apparatus approved by NIOSH for entering environments that are immediately dangerous to life or health must be available and must have a minimum capacity of fifteen minutes.

(j) The breathing apparatus must be kept in a closed cabinet located outside of the room in which the chlorinator is maintained, and must be accessible without use of a key or lock combination.

(k) The facility operator shall demonstrate to the local health department through training documentation, that all persons who operate, or handle gas chlorine equipment, including the equipment specified in Subsections R392-203-21(3)(h) and (i) are knowledgeable about safety and proper equipment handling practices to protect themselves, staff members, and the public from accidental exposure to chlorine gas.

(l) The facility operator or his designee shall immediately notify the local health department of any inadvertent escape of chlorine gas.

(4) Bactericidal agents, other than chlorine and bromine, and their feeding apparatus may be acceptable if approved by the department. Each bactericidal agent must be registered by the U.S. Environmental Protection Agency for use in swimming pools.

(5) Equipment of the positive displacement type and piping used to apply chemicals to the water must be sized, designed, and constructed of materials which can be cleaned and maintained free from clogging at all times. Materials used for such equipment and piping must be resistant to the effects of the chemicals in use.

(6) All auxiliary chemical feed pumps must be wired electrically to the main circulation pump so that the operation of these pumps is dependent upon the operation of the main circulation pump. If a chemical feed pump has an independent timer, the main circulation pump and chemical feed pump timer must be interlocked.

R392-302-22. Safety Requirements and Lifesaving Equipment.

(1) A public pool where a lifeguard is required under Subsection R392-302-30(2) shall provide for a minimum number of elevated lifeguard chair(s) in accordance with Table 2. Lifeguard chair(s) shall be located to provide a clear unobstructed view of the pool bottom by lifeguards on duty.

(2) A public pool must have at least one unit of lifesaving equipment. One unit of lifesaving equipment must consist of the following: a Coast Guard-approved ring buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, American Red Cross-approved rescue tube; a life pole or shepherd's crook type pole with blunted ends and a minimum length of 12 feet, 3.66 meters. The facility operator may substitute a rescue tube for a ring buoy where lifeguard service is provided. Additional units must be provided at the rate of one for each 2,000 square feet, 185.8 square meters, of surface area or fraction thereof. The operator of a pool that has lifeguard services shall provide at least one backboard designed with straps and head stabilization capability.

(3) A public pool must be equipped with a Utah Department of Health standard 27-unit first aid kit which includes the following items:

2 Units 1 inch adhesive compress.
2 Units 2 inch bandage compress.
2 Units 3 inch bandage compress.
2 Units 4 inch bandage compress.
2 Units 3 inch square plain gauze pads.
2 Units gauze roller bandage.
2 Units eye dressing packet.
1 Unit plain absorbent gauze, .5 sq. yard.
1 Unit plain absorbent gauze, 24 inches by 72 inches.
2 Units bandage tape.
1 Unit butterfly closures, 1 box.
1 Unit 3 inch ace bandage.
1 Unit assorted adhesive band-aids, 1 box.
2 Units triangular bandages.
1 Unit microshield.
1 Unit scissors.
1 Unit tweezers.
1 Unit latex gloves, 6 pairs per unit.

(a) The 27 unit first-aid kit must be kept filled, available and ready for use.

(4) Lifesaving equipment must be mounted in readily accessible, conspicuous places around the pool deck. It must be maintained in good repair and operable condition. Lifesaving equipment may not be used or removed by anyone for any reason other than its intended purpose.

(5) Where no lifeguard service is provided in accordance with Subsection R392-302-30(2), a warning sign must be placed in plain view and shall state: WARNING - NO LIFEGUARD ON DUTY and BATHERS SHOULD NOT SWIM ALONE, with clearly legible letters, at least 4 inches high, 10.16 centimeters. In addition, the sign must also state CHILDREN 14 AND UNDER SHOULD NOT USE POOL WITHOUT RESPONSIBLE ADULT SUPERVISION.

(6) Where lifeguard service is required, the facility must have a readily accessible area designated and equipped for emergency first aid care.

TABLE 2

Safety Equipment and Signs

	POOLS WITH LIFEGUARD	POOLS WITH NO LIFEGUARD
Elevated Chair 1,000 through 2,999 sq. ft., 92.9 through 278.61 sq. meters, of surface area	1	None
Each additional 2,000 sq. ft., 185.8 sq. meters, of surface area or fraction	1 additional	None
Backboard	1 per facility	None
Room for Emergency Care	1 per facility	None
Ring Buoy with an attached rope equal in length to the maximum width of the pool plus 10 feet, 3.05 meters	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction
Rescue Tube	1 per 2,000 sq. ft., 185 sq. meters, of pool area or fraction	None
Life Pole or	1 per 2,000	1 per 2,000

Shepherds Crook	sq. ft. 185, sq. meters, of pool area or fraction	sq. ft. 185, sq. meters, of pool area or fraction
First Aid Kit	1 per facility	1 per facility

(7) A spa pool is exempt from Section R392-302-22, except for Section R392-302-22(3).

(8) The water temperature in a spa pool may not exceed 105 degrees Fahrenheit.

R392-302-23. Lighting, Ventilation and Electrical Requirements.

(1) A pool constructed after September 16, 1996 may not be used for night swimming in the absence of underwater lighting. The local health officer may grant an exemption to this if it can be demonstrated to him that a 6 inch, 15.24 centimeters, diameter black disk on a white background placed in the deepest part of the pool can be clearly observed from the pool deck during night time hours. The local health department shall keep a record of this exemption on file. The pool operator shall keep a record of this exemption on file at the facility.

(2) Where night swimming is permitted and underwater lighting is used, refer to Table 3 for illumination requirements.

TABLE 3

Underwater Illumination Requirements

Class	Application	Lamp lumens per square foot of pool surface area-Indoor	Lamp lumens per square foot of pool surface area-Outdoor	Illuminance Uniformity: Maximum to Minimum
I	International, Professional, Tournament	100	60	2.0 : 1
II	College and Diving	75	50	2.5 : 1
III	High School Without Diving	50	30	3.0 : 1
IV	Recreational	30	15	4.0 : 1

(3) Where night swimming is permitted and underwater luminaires are used, area lighting must be provided for the deck areas and directed away from the pool surface as practical to reduce glare. The luminance must be at least 5 horizontal foot candles of light per square foot, 929 square centimeters, of deck area, but less than the luminance level for the pool shell.

(4) Electrical wiring must conform with Article 680 of the National Electrical Code, as adopted by the State.

(a) Wiring may not be routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool as provided in Article 680 of the National Electric Code, without the written approval of the department. The department may deny the installation and use of any electrical appliance, device, or fixture, if its power service is routed under a pool or within the area extending 5 feet, 1.52 meters, horizontally from the inside wall of the pool, except in the following circumstances;

(i) For underwater lighting,

(ii) electrically powered automatic pool shell covers, and

(iii) competitive judging, timing, and recording apparatus.

(5) Buildings containing indoor pools, bathhouses, dressing rooms, shower rooms, and toilet spaces must be ventilated in accordance with American Society of Heating, Refrigerating and Air-Conditioning Engineers Standard 62.1-2004, which is incorporated and adopted by reference.

R392-302-24. Dressing Rooms.

(1) All areas and fixtures within dressing rooms must be maintained in a clean and sanitary condition. Dressing rooms must be equipped with minimum fixtures as required in Subsection R392-302-25(1). The local health department may exempt any bathers from the total number of bathers used to calculate the fixtures required in Subsection R392-302-25(1) who have private use fixtures available within 150 feet, 45.7 meters of the pool.

(2) A separate dressing room must be provided for each sex. The entrances and exits must be designed to break the line of sight into the dressing areas from other locations.

(3) Dressing rooms must be constructed of materials that have smooth, non-slip surfaces, and are impervious to moisture.

(4) Floors must slope to a drain and be constructed to prevent accumulation of water.

(5) Carpeting may not be installed on dressing room floors.

(6) Junctions between walls and floors must be coved.

(7) Partitions between dressing cubicles must be raised at least 10 inches, 25.4 centimeters, above the floor or must be placed on continuous raised masonry or concrete bases at least 4 inches, 10.16 centimeters, high.

(8) Lockers must be set either on solid masonry bases 4 inches, 10.16 centimeters, high or on legs elevating the bottom locker at least 10 inches, 25.4 centimeters, above the floor.

(a) Lockers must have louvers for ventilation.

(9) A dressing room must exit to the shallowest area of the pool. The dressing room exit door and the pool deck must be separated by at least 10 feet, 3.05 meters, and be connected by an easily cleanable walkway.

R392-302-25. Toilets and Showers.

(1) The minimum number of toilets and showers for dressing room fixtures must be based upon the designed maximum bather load. Required numbers of fixtures must be based upon 50 percent of the total number of bathers being male and 50 percent being female, except where the facility is used exclusively by one sex. The minimum number of sanitary fixtures must be in accordance with Table 4.

TABLE 4

Sanitary Fixture Minimum Requirements

Water Closets

Male	Female
1:1 to 25	1:1 to 25
2:26 to 75	2:26 to 75
3:76 to 125	3:76 to 125
4:126 to 200	4:126 to 200
5:201 to 300	5:201 to 300
6:301 to 400	6:301 to 400

Over 400, add one fixture for each additional 200 males or 150 females.
Where urinals are provided, one water closet less than the number specified may be provided for each urinal installed, except the number of water closets in such cases may not be reduced to less than one half of the minimum specified.

(2) Lavatories must be provided on the basis of one for each water closet up to four, then one for each two additional water closets.

(3) One shower head for each sex must be provided for each 50 bathers or fraction thereof.

(4) Potable water must be provided at all shower heads. Water heaters and thermostatically controlled mixing valves must be inaccessible to bathers and must be capable of providing 2 gallons per minute, 7.57 liters per minute, of 90 degree F. water to each shower head for each bather.

(5) Soap must be dispensed at all lavatories and showers. Soap dispensers must be constructed of metal or plastic. Use of

bar soap is prohibited.

(6) Fixtures must be designed so that they may be readily cleaned. Fixtures must withstand frequent cleaning and disinfecting.

(7) At least one covered waste can must be provided in each restroom.

R392-302-26. Visitor and Spectator Areas.

(1) When a 4 foot, 1.22 meters, fence is not present as described in Subsection R392-302-14(3), then visitors, spectators, or animals may not be allowed within 10 feet, 3.05 meters, of the pool or 5 feet, 1.53 meters, of the pool deck. Animals assisting handicapped individuals are exempt from this requirement.

(2) Food or drink is prohibited within ten feet, 3.05 meters, of the pool. Beverages must be served in non-breakable containers.

(3) Trash containers must be provided in visitor and spectator areas. The entire area must be kept free of litter and maintained in a clean, sanitary condition.

R392-302-27. Disinfection and Quality of Water.

(1) A public pool must be continuously disinfected by a process which meets all of the following requirements:

(a) Is registered with the United States Environmental Protection Agency as a disinfecting process or disinfectant product for water.

(b) Imparts a disinfectant residual which may be easily and accurately measured by a field test procedure appropriate to the disinfectant in use.

(c) Is compatible for use with other chemicals normally used in pool water treatment.

(d) Does not create harmful or deleterious physiological effects on bathers if used according to manufacturer's specifications.

(e) Does not create an undue safety hazard if handled, stored and used according to manufacturer's specifications.

(2) If the active disinfecting agent is chlorine, the unstabilized free chlorine residual, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet the concentration levels listed in Table 6 for all circumstances, bather loads, and the pH level of the water.

(3) If cyanuric acid is used to stabilize the free residual chlorine, or if one of the chlorinated isocyanurate compounds is used as the disinfecting chemical, the concentration of cyanuric acid in the water must be at least ten parts per million, but may not exceed 100 parts per million and the free residual chlorine, as measured by the diethyl-p-phenylene diamine, leuco crystal violet test or other test method approved by the department, must meet concentrations levels shown in Table 6, depending upon the pH of the water.

(4) If disinfection of the pool water is accomplished by bromine or iodine, the disinfectant must be within the ranges specified in Table 6.

(5) An easy to operate, pool side disinfectant testing kit, compatible with the disinfectant in use and accurate to within 0.2 parts per million, must be provided at each public pool. If stabilized chlorine is used, a testing kit for cyanuric acid, accurate to within 10.0 parts per million must be provided.

(a) Test kit reagents may not be used if they have exceeded their expiration dates.

(6) Circulation equipment must be operated 24 hours continuously during the operating seasons.

(7) The water must have sufficient clarity at all times so that a black disc, 6 inches, 15.24 centimeters, in diameter, is readily visible if placed on a white field at the deepest point of the pool. The facility must be closed immediately if this requirement is not met.

(8) In a public pool, the difference between the total chlorine and the free chlorine must not be greater than 0.5 parts per million as determined by the diethyl-p-phenylene diamine, leuco crystal violet tests or other test method approved by the department.

(a) If the concentration of combined residual chlorine is greater than 0.5 parts per million the pool water must be breakpoint chlorinated to oxidize and reduce the concentration of combined chlorines.

(9) A water sample must be collected from a pool at least once per month or as otherwise directed by the local health department, while it is in use, and must be submitted to a laboratory approved by the department to perform Safe Drinking Water Program testing.

(a) The laboratory shall subject the sample to the standard 35 degree Celsius heterotrophic plate count and test for coliform organisms utilizing either a membrane filter test, a multiple tube fermentation test, or a Colilert test.

(b) The testing laboratory must promptly report the results of such analysis to the local health department having jurisdiction and to the facility operator. When requested, the lab or local health department shall report the results of such analysis to the Utah Department of Health.

(c) When less than two samples per month are collected and submitted for bacteriological analysis, the local health department shall conduct a follow-up inspection for each failing sample to identify the causes for the sample failure. The local health department shall conduct a follow-up within three working days following the reporting of the sample failure to the local health department.

(10) Not more than 15 percent of the samples covering a four month period of time may fail bacteriological quality standards. A seasonal or other pool in operation less than four months may only fail bacteriological quality standards with an initial pre-opening sample prior to the opening of the operating season. If a seasonal or other pool in operation less than four months in a year is sampled on a once per month basis, then failure of any bacteriological water quality sample shall require submission of a second sample within one working day after the sample report has been received.

(a) A pool water sample fails bacteriological quality standards if it:

(i) contains more than 200 bacteria per milliliter, as determined by the standard 35 degrees Celsius heterotrophic plate count;

(ii) shows positive test, confirmed test, for coliform organisms in any of the five 10-milliliter portions of a sample; or

(iii) contains more than 1.0 coliform organisms per 50 ml if the membrane filter test is used; or

(iv) indicates a positive MMO-MUG type test approved by the EPA.

(11) Pool water temperatures, excluding spas and special purpose pools, must meet the following requirements:

(a) Pool water temperatures for general use must be within the range of 82 degrees Fahrenheit, 27.8 degrees Celsius, to 86 degrees Fahrenheit, 30.0 degrees Celsius.

(b) The water in a pool dedicated primarily for swim training and high exertion activities must be within the temperature range of 78 degrees Fahrenheit, 25.6 degrees Celsius, to 82 degrees Fahrenheit, 27.8 degrees Celsius to reduce safety hazards associated with hyperthermia.

(c) The minimum water temperature for a pool is 78 degrees Fahrenheit, 25.6 degrees Celsius.

(d) The local health department may grant an exemption to the pool water temperature requirements for a special purpose pool including a cold plunge pool, but may not exempt maximum hot water temperatures for a spa pool.

(12) Total dissolved solids in a public pool may not

exceed 2,500 parts per million.

(13) Total alkalinity must be with the range from 100-125 parts per million for plaster pools, 80-150 parts per million for a spa pool, and 125-150 parts per million for a painted or fiberglass pool.

(14) A calcium hardness of at least 200 parts per million must be maintained.

(15) The saturation index value of the pool water must be within the range of positive 0.3 and minus 0.3. The saturation index shall be calculated in accordance with Table 5.

TABLE 5

CHEMICAL VALUES AND FORMULA FOR CALCULATING SATURATION INDEX

Formula for Calculating the Saturation Index: SI = pH + TF + CF + AF - 12.1 where SI means saturation index, TF means temperature factor, CF means calcium factor, ppm means parts per million, deg F means degrees Fahrenheit, and AF means alkalinity factor.

Temperature		Calcium Hardness		Total Alkalinity	
deg. F	TF	ppm	CF	ppm	AF
32	0.0	5	0.3	5	0.7
37	0.1	25	1.0	25	1.4
46	0.2	50	1.3	50	1.7
53	0.3	75	1.5	75	1.9
60	0.4	100	1.6	100	2.0
66	0.5	150	1.8	150	2.2
76	0.6	200	1.9	200	2.3
84	0.7	300	2.1	300	2.5
94	0.8	400	2.2	400	2.6
105	0.9	800	2.5	800	2.9
128	1.0	1,000	2.6	1,000	3.0

If the SATURATION INDEX is 0, the water is chemically in balance.
If the INDEX is a minus value, corrosive tendencies are indicated.
If the INDEX is a positive value, scale-forming tendencies are indicated.
EXAMPLE: Assume the following factors:
pH 7.5, Temperature 80 degrees F, 19 degrees C, CalciumHardness 235
Total Alkalinity 100
1- pH - 7.5
2- TF - 0.7
3- CF - 1.9
4- AF - 2.0
TOTAL: 12.1 - 12.1 = 0.0
This water is balanced.

TABLE 6

DISINFECTANT LEVELS AND CHEMICAL PARAMETERS

	POOLS	SPAS	SPECIAL PURPOSE
Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	2.0(1)	3.0(1)	2.0(1)
pH 7.7 to 8.0	3.0(1)	5.0(1)	3.0(1)
Non-Stabilized Chlorine (parts per million)			
pH 7.2 to 7.6	1.0(1)	2.0(1)	2.0(1)
pH 7.7 to 8.0	2.0(1)	3.0(1)	3.0(1)
Bromine (parts per million)	4.0(1)	4.0(1)	4.0(1)
Iodine (parts per million)	1.0(1)	1.0(1)	1.0(1)
Ultraviolet and Hydrogen Peroxide (parts per million hydrogen peroxide)	40.0(1)	40.0(1)	40.0(1)
pH	7.2 to 7.8	7.2 to 7.8	7.2 to 7.8
Total Dissolved Solids (parts per million)	2,500	2,500	2,500
Cyanuric Acid (parts per million)	10 to 100	10 to 100	10 to 100
Maximum Temperature degrees Fahrenheit)	105	105	105
Calcium Hardness (parts per million)	200(1)	200(1)	200(1)
Total Alkalinity (parts per million)	Plaster Pools	100 to 125	80 to 150 100 to 125
Painted or Fiberglass Pools	125 to 150	80 to 150	125 to 150
Saturation Index (see Table 5)	Plus or Minus 0.3	Plus or Minus 0.3	Plus or Minus 0.3
Chloramines (combined chlorine residual, parts per million)	0.5	0.5	0.5

Note (1): Minimum Value

R392-302-28. Cleaning Pools.

(1) Visible dirt on the bottom of the pool must be removed at least once every 24 hours or more frequently as needed to keep the pool free of visible dirt.

(2) The pool water surface must be cleaned as often as needed to keep the pool free of visible scum or floating matter.

(3) Pool shell surfaces, handrails, floors, walls, and ceilings of rooms enclosing pools, dressing rooms and equipment rooms, must be kept clean, sanitary, and in good repair.

(4) The operator shall respond to all discovered releases of fecal matter into a public pool in accordance with the following protocol: Centers for Disease Control and Prevention. Fecal Accident Response Recommendations for Pool Staff and Notice to Readers--Revised Guidance for Responding to Fecal Accidents in Disinfected Swimming Venues. Morbidity Mortality Weekly Report February 15, 2008 Volume 57, pages 151-152 and May 25, 2001 Volume 50, pages 416-417, which are incorporated by reference. The operator shall include in the records required in R392-302-29(2) information about all fecal matter releases into a public pool. The records shall include date, time, and where the fecal matter was discovered; whether the fecal matter was loose or solid; and the responses taken. The Local Health Officer may approve the alteration of the required Centers for Disease Control protocol for the hyperchlorination step for a loose fecal release if an operator is able to achieve a 99.9 percent kill or removal of cryptosporidium oocysts in the entire pool system by another method such as ultraviolet light, ozone, or enhanced filtration prior to allowing bathers to reenter the pool.

R392-302-29. Supervision of Pools.

(1) Each public pool must be operated by at least one qualified operator as evidenced by a current National Swimming Pool Foundation Certified Pool Operator, CPO, certification; a National Recreation and Parks Association Aquatic Facility Operator, AFO, certification; or an equivalent certification approved by the department.

(a) Approved certifications are valid under this rule for no more than five years from the date of issue.

(b) A local health department may deny recognition of the certification of a pool operator for cause, including failure to comply with the requirements of this rule, or creating or allowing undue health or safety hazards. The local health department shall notify the department of any denials. A denial of recognition of certification is effective in the entire state. The operator may overcome the denial by obtaining a new certification from a certifying authority.

(2) The pool operator must keep written records of all information pertinent to the operation, maintenance and sanitation of each pool facility. Records must be available at the facility and be readily accessible. The pool operator must make records available to the department or the local health department having jurisdiction upon their request. These records must include disinfectant residual in the pool water, pH and temperature of the pool water, pool circulation rate, quantities of chemicals and filter aid used, filter head loss, filter

washing schedule, cleaning and disinfecting schedule for pool decks and dressing rooms, bather load, and other information required by the local health department. The pool operator must keep the records at the facility, for at least two operating seasons.

(3) The public pool owner, in consultation with the qualified operator designated in accordance with 392-302-29(1), shall develop an operation, maintenance and sanitation plan for the pool that will assure that the pool water meets the sanitation and quality standards set forth in this rule. The plan shall be in writing and available for inspection by the local health department. At a minimum the plan shall include the frequency of measurements of pool disinfectant residuals, pH and pool water temperature that will be taken. The plan shall also specify who is responsible to take and record the measurements.

(4) If the public pool water samples required in Section R392-302-27(9) fail bacteriological quality standards as defined in Section R392-302-27(10), the local health department shall require the public pool owner and qualified operator to develop an acceptable plan to correct the problem. The local health department may require more frequent water samples, additional training for the qualified operator and also may require that:

(a) The pool operator shall measure and record the level of disinfectant residuals, pH, and pool water temperature at least four times a day. If oxidation reduction potential technology is used in accordance with this rule, the pool operator may reduce water testing to once per day minimum.

(b) The pool operator shall read flow rate gauges and record the pool circulation rate at least four times a day.

(5) Bather load must be limited if necessary to insure the safety of bathers and pool water quality as required in Section R392-302-27.

(6) A sign must be posted in the immediate vicinity of the pool stating the location of the nearest telephone and emergency telephone numbers which shall include:

(a) Name and phone number of nearest police, fire and rescue unit;

(b) Name and phone number of nearest ambulance service;

(c) Name and phone number of nearest hospital.

(7) If a telephone is not available at poolside, emergency telephone numbers must be provided in a form that can be taken to a telephone.

R392-302-30. Supervision of Bathers.

(1) Access to the pool must be prohibited when the facility is not open for use.

(2) Lifeguard service must be provided at a public pool or a private pool if direct fees are charged, public funds support the operation of the pool, or if the pool is used for public uses including swimming lessons, scuba diving instruction, and aquatic competitions. If a pool is normally exempt from the requirement to provide lifeguard services, but is used for some public uses, then lifeguard services are required during the period of public use. For other pools, lifeguard service must be provided, or signs must be clearly posted indicating that lifeguard service is not provided.

(3) A lifeguard must meet each of the following:

(a) Be trained and certified by the American Red Cross, or an equivalent program as approved by the department in Standard Level First Aid, C.P.R. for professional rescuers, and Life Guarding.

(b) Be on duty at all times when the pool is open to use by bathers, except as provided in Subsection R392-302-30(2).

(c) Have full authority to enforce all rules of safety and sanitation.

(4) A lifeguard may not have any other duties to perform other than the supervision and safety of bathers while he or she is assigned lifeguarding duties.

(5) Where lifeguard service is required, the number of lifeguards must be sufficient to allow for continuous supervision of all bathers, and surveillance over total pool floor areas.

(6) Lifeguards must be relieved in the rotation of lifeguarding responsibilities at least every 15 minutes with a work break of at least 10 minutes every hour to maintain mental alertness and to prevent mental and physical fatigue.

(7) The facility operator and staff are responsible for the enforcement of the following personal hygiene and behavior rules:

(a) A bather using the facility must take a cleansing shower before entering the pool enclosure. A bather leaving the pool to use the toilet must take a second cleansing shower before returning to the pool enclosure.

(b) A person having a communicable disease transmissible by water must be excluded from public pools. A person having any exposed sub-epidermal tissue, including open blisters, cuts, or other lesions may not use a public pool. A person who has or has had diarrhea within the last two weeks caused by an unknown source or from any communicable or fecal-borne disease may not enter any public pool.

(c) Any child under three years old, any child not toilet trained, and anyone who lacks control of defecation shall wear a water resistant swim diaper and waterproof swimwear. Swim diapers and waterproof swimwear shall have waist and leg openings fitted such that they are in contact with the waist or leg around the entire circumference.

(d) Running, boisterous play, or rough play, except supervised water sports, are prohibited.

(e) Easily readable placards embodying the above rules of personal hygiene and behavior must be conspicuously posted in the pool enclosure and in the dressing rooms and offices.

(f) Diapers shall be changed only in restrooms or changing stations and shall not be changed at poolside. The person or persons who change the diaper must wash their hands thoroughly with soap before returning to the pool. The diapered person must undergo a cleansing shower before returning to the pool.

(8) A spa pool must have an easily readable caution sign mounted adjacent to the entrance to the spa or hot tub which contains the following information:

(a) The word "caution" centered at the top of the sign in large, bold letters at least two inches in height.

(b) Elderly persons and those suffering from heart disease, diabetes or high blood pressure should consult a physician before using the spa pool.

(c) Persons suffering from a communicable disease transmissible via water may not use the spa pool. Persons using prescription medications should consult a physician before using the spa.

(d) Individuals under the influence of alcohol or other impairing chemical substances should not use the spa pool.

(e) Bathers should not use the spa pool alone.

(f) Pregnant women should not use the spa pool without consulting their physicians.

(g) Persons should not spend more than 15 minutes in the spa in any one session.

(h) Children under the age of 14 must be accompanied and supervised by at least one responsible adult over the age of 18 years, when lifeguards are not on duty.

(i) Children under the age of five years are prohibited from bathing in a spa or hot tub.

(j) Running or engaging in unsafe activities or horseplay in or around the spa pool is prohibited.

(9) Water jets and air induction ports on spa pools must be controlled by an automatic timer which limits the duration of their use to 15 minutes per each cycle of operation. The operator shall mount the timer switch in a location which requires the bather to exit the spa before the timer can be reset for another 15 minute cycle or part thereof.

R392-302-31. Special Purpose Pools.

(1) Special purpose pools must meet the requirements of all Sections of R392-302 in addition to those of this Section as they apply to special design features and uses of special purpose pools.

(2) Slide flumes must meet the following requirements for design, materials, construction, and maintenance:

(a) The flumes within enclosed slides must be designed to prevent accumulation of hazardous concentrations of toxic chemical fumes.

(b) All curves, turns, and tunnels within the path of a slide flume must be designed so that body contact with the flume or tunnel does not present an injury hazard. The slide flume must be banked to keep the slider's body safely inside the flume.

(c) The flume must be free of hazards including joints and mechanical attachments separations, splinters, holes, cracks, or abrasive characteristics.

(d) Wall thickness of flumes must be thick enough so that the continuous and combined action of hydrostatic, dynamic, and static loads and normal environmental deterioration will not cause structural failures which could result in injury. The facility operator or owner shall insure that repairs or patchwork maintains original designed levels of safety and structural integrity. The facility operator or owner shall insure that repairs or patchwork is performed in accordance with manufacturer's guidelines.

(e) Multiple-flume slides must have parallel exits or be constructed, so that the projected path of their centerlines do not intersect within a distance of less than 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(f) A slide flume exit must provide safe entry into the splash pool. Design features for safe entry include a water backup, and a deceleration distance adequate to reduce the slider's exit velocity to a safe speed. Other methods may be acceptable if safe exiting from the slide flume is demonstrated to the department.

(3) The design of water slides or vehicle slides must incorporate the following clearances from the flumes:

(a) A distance between the side of a slide flume exit and a splash pool side wall of at least 4 feet, 1.22 meters.

(b) A distance between nearest sides of adjacent slide flume exits must be at least 6 feet, 1.83 meters.

(c) A distance between a slide flume exit and the opposite end of the splash pool, excluding steps, must be at least 20 feet, 6.10 meters.

(d) A vehicle slide must maintain the following clearances:

(e) A distance between the side of the flume exit and the pool side wall of at least 6 feet, 1.83 meters.

(f) A distance between nearest sides of adjacent vehicle slide flume exits of at least 8 feet, 2.44 meters.

(g) A distance between the flume exit and the opposite end of the splash pool, excluding steps, must be long enough to provide clear, unobstructed travel for at least 8 feet, 2.44 meters, beyond the point of forward momentum of the heaviest bather permitted by the engineered design.

(4) Vehicles, including toboggans, sleds, inflatable tubes, and mats must be designed and manufactured of materials which will safeguard the safety of riders.

(5) splash pools must meet the following depth requirements:

(a) The depth of a water slide splash pool at the end of a horizontally oriented slide flume exit must be at least 3 feet, 9.14 centimeters, but may be required to be deeper if the pool design incorporates special features that may increase risks to bathers as determined by the department.

(b) The depth must be maintained in front of the flume for a distance of at least 20 feet, 6.10 meters, from which point the splash pool floor may have a constant slope upward. Slopes may not be designed or constructed steeper than a 1 to 10 ratio.

(c) The operating water depth of a vehicle slide splash pool, at the flume exit, must be a minimum of 3 feet 6 inches, 1.07 meters. This depth must be maintained to the point at which forward travel of the vehicle ends. From the point at which forward travel ends, the floor may have a constant upward slope to the pool exit at a ratio not to exceed 1 to 10.

(d) The department may waive minimum depth and distance requirements for a splash pool and approve a special exit system if the designer can demonstrate to the department that safe exit from the flume into the splash pool can be assured.

(6) Pump reservoir areas must be accessible for cleaning and maintenance by a 3 foot, 91.44 centimeters, minimum width walkway.

(7) A travel path with a minimum width of 4 feet, 1.22 meters, must be provided between the splash pool deck and the top of the flume.

(8) Stairways serving a slide may not retain standing water. Stairways must have non-slip surfaces and shall conform to the requirements of applicable building codes.

(9) Splash pool overflow reservoirs must have sufficient volume to contain at least two minutes of flow from the splash pool overflow. Splash pool overflow reservoirs must have enough water to insure that the splash pool will maintain a constant water depth.

(10) The circulation and filtration equipment of a special purpose pool must be sized to turn over the entire system's water at least once every hour.

(11) Splash pool overflow reservoirs must circulate water through the water treatment system and return when flume supply service pumps are turned off.

(12) Flume pumps and motors must be sized, as specified by the flume manufacturer, and must meet all National Sanitation Foundation, NSF/ANSI 50-2004, Section 6. Centrifugal Pumps, standards for pool pumps.

(13) Flume supply service pumps must have check valves on all suction lines.

(14) The splash pool and the splash pool overflow reservoir must be designed to prohibit bather entrapment as water flows from the splash pool to the overflow reservoir.

(15) Perimeter overflow gutter systems must meet the requirements of Section R392-302-19, except that gutters are not required directly under slide flumes or along the weirs which separate splash pools and splash pool overflow reservoirs.

(16) A caution sign must be mounted adjacent to the entrance to a water slide that states at least the following warnings:

(a) The word caution centered at the top of the sign in large bold letters at least two inches in height.

(b) No running, standing, kneeling, tumbling, or stopping on flumes or in tunnels.

(c) No head first sliding at any time.

(d) The use of a slide while under the influence of alcohol or impairing drugs is prohibited.

(e) Only one person at a time may travel the slide.

(f) Obey instructions of lifeguards and other staff at all times.

(g) Keep all parts of the body within the flume.

(h) Leave the splash pool promptly after exiting from the slide.

R392-302-32. Hydrotherapy Pools.

(1) Unless the pool is drained, cleaned and sanitized after each individual use, a hydrotherapy pool shall at all times comply with R392-302-27-Disinfection and Quality of Water, R392-302-28-Cleaning of Pools and R392-302-29-Supervision of Pools.

(2) A hydrotherapy pool is exempt from all other

requirements of R392-302, only if use of the hydrotherapy pool is restricted to therapeutic uses and is under the continuous and direct supervision of licensed medical or physiotherapy personnel.

(3) Local health departments may enter and examine the use of hydrotherapy pools to respond to complaints, to assure that use of the pool is being properly supervised, to examine records of testing and sampling, and to take samples to assure that water quality and cleanliness are maintained.

(4) A local health officer may grant an exception to section R392-302-32(1) if the operator of the hydrotherapy pool can demonstrate that the exception will not compromise pool sanitation or the health or safety of users.

R392-302-33. Advisory Committee.

(1) An advisory committee to the Department regarding regulation of public pools is hereby authorized.

(2) The advisory committee shall be appointed by the Executive Director. Representatives from local health departments, pool engineering, construction or maintenance companies and pool owners may be represented on the committee.

(3) Consistent with R380-1, the Executive Director may seek the advice of the advisory committee regarding interpretation of this rule, the granting of exemptions and related matters.

R392-302-34. Cryptosporidiosis Watches and Warnings.

(1) The Executive Director or local health officer may issue cryptosporidiosis watches or cryptosporidiosis warnings as methods of intervention for likely or indicated outbreaks of cryptosporidiosis. The Executive Director or local health officer may issue a cryptosporidiosis watch if there is a heightened likelihood of a cryptosporidiosis outbreak. The Executive Director or local health officer may issue a cryptosporidiosis warning if there have been reports of cryptosporidiosis above the background level reported for the disease. The Executive Director or local health officer shall include the geographic area and pool type covered in the warning and may restrict certain persons from using public pools.

(2) If a cryptosporidiosis watch or a cryptosporidiosis warning has been issued, the operator of any public pool shall post a notice sign that meets the requirements of this section, the standard for "notice" signs established in ANSI Z353.2-2002, which is adopted by reference, and the approval of the local health officer to assure compliance with this section and the ANSI standard. An Adobe Acrobat .pdf version of the sign that meets the requirements of this section and the ANSI standard for 10-foot viewing is available from the Department or the local health department. The notice sign shall be placed so that all patrons are alerted to the cryptosporidium-targeted requirements prior to deciding whether to use the swimming pool. The sign shall be at least 17 inches, 43 centimeters, wide by 11 inches, 28 centimeters, high. The sign may need to be larger, depending on the placement of the sign, to meet the ANSI standard.

(a) Centered immediately below the blue panel shall appear the words "CRYPTO DISEASE PREVENTION" in capital letters.

(b) The body of the notice sign shall be in upper case letters at least 1.0 centimeters high and include the following four bulleted statements in black letters:

-All with diarrhea in the past 2 weeks shall not use the pool.

-All users must shower with soap to remove all fecal material prior to pool entry and after using the toilet or a diaper change.

-All less than 3 yrs or who wear diapers must wear a swim diaper and waterproof swimwear. Diapers may only be changed in restrooms or changing stations.

-Keep pool water out of your mouth.

(3) If a cryptosporidium warning has been issued, each operator of a public pool subject to the warning shall, at a minimum, implement the following cryptosporidium counter measures:

(a) maintain the disinfectant concentration within the range between two ppm (four ppm for bromine) and the concentration listed on the product's Environmental Protection Agency mandated label as the maximum reentry concentration, but in no case more than five ppm (10 ppm for bromine);

(b) maintain the pH between 7.2 and 7.5; and

(c) maintain the cyanuric acid level that meets the requirement of R392-302-27(3), except the maximum level shall be reduced to 30 ppm.

(4)(a) If a cryptosporidium warning has been issued, in addition to the requirements listed in R392-302-34(3), the owner or operator of a public pool shall implement any additional cryptosporidium countermeasures listed in subsection below sufficient to achieve at least a 99.9 percent destruction or removal of cryptosporidium oocysts twice weekly, except as provided in R392-302-34(4)(b).

(b) Hyperchlorination using sodium hypochlorite or calcium hypochlorite to achieve a concentration multiplied by time (CT) value of 15,300 ppm minutes. Table 7 lists examples of chlorine concentrations and time periods that may be used to achieve the required CT value. The operator shall not allow anyone to use the pool if the chlorine concentration exceeds the Environmental Protection Agency maximum reentry concentration listed on the product's label, but in no case if the concentration exceeds five ppm. The operator of any public pool not required to have a lifeguard by R392-302-30(2) shall hyperchlorinate at least once weekly.

(c) A full flow ultraviolet treatment system that meets the requirements of National Sanitation Foundation standard NSF/ANSI 50-2007, which is incorporated by reference. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99.9 percent inactivation of cryptosporidium or the bacteriophage MS2 at the pool design flow rate and during normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(d) An ozone treatment system that achieves a CT value of 7.4 and a flow-through rate at least four times the volume of the pool every three and a half days. The system shall meet the requirements of National Sanitation Foundation standard NSF/ANSI 50-2007, which is incorporated by reference. The owner or operator shall ensure that the system is installed and operated according to the manufacturer's recommendations.

(e) A cryptosporidium oocyst-targeted filter system installed and operated according to the manufacturer's recommendations. The filter shall meet the requirements of R392-302-20. The owner or operator shall obtain from the manufacturer of the system documentation of third-party challenge testing that the system can achieve a single pass 99 percent reduction of particles in the range of 4 to 6 microns or cryptosporidium oocysts at the pool design flow rate and normal operating conditions. The owner or operator shall maintain and make available for inspection the manufacturer's documentation.

(f) A system approved by the local health officer. The health officer's approval of a system for use as an alternative shall be based on the system's documented ability to:

(i) achieve cryptosporidium removal or inactivation to a level at least equivalent to the requirements in R392-302-34(4)(a);

(ii) assure safety for swimmers and pool operators; and

(iii) comply with all other applicable rules and federal

regulations.

Table 7

Chlorine Concentration and Contact Time to Achieve CT = 15,300

Chlorine Concentration	Contact Time
1.0 ppm	15,300 minutes (255 hours)
10 ppm	1,530 minutes (25.5 hours)
20 ppm	765 minutes (12.75 hours)

(5) If the Executive Director or local health officer issues a restriction on the use of public pools by certain persons as part of the cryptosporidium warning the operator shall restrict persons within that segment of the population from using the facility.

(6) If the Executive Director or local health officer determines that a pool is a cryptosporidiosis threat to public health, he may order the pool to close. The owner or operator of the pool may not reopen until the person issuing the order has rescinded it.

KEY: pools, spas, water slides
May 31, 2007 **26-15-2**
Notice of Continuation March 22, 2007

R392. Health, Epidemiology and Laboratory Services, Environmental Services.
R392-700. Indoor Tanning Bed Sanitation.
R392-700-1. Authority and Purpose.

This rule establishes tanning facility standards. It is authorized by Section 26-15-2 and 26-15-13.

R392-700-2. Applicability.

This rule applies to places where consideration is given in exchange for access to a tanning device. This rule does not apply to private, non-commercial use of tanning equipment exclusively for non-commercial use.

R392-700-3. Definitions.

As used in this rule:

(1) "Department" means the Utah Department of Health.

(2) "Operator" means any person who owns, leases, or manages a business operating a tanning facility.

(3) "Patron" mean any person who enters a tanning facility with the intent to use a tanning device.

(4) "Phototherapy Device" means equipment that emits ultraviolet radiation used by a health care professional in the treatment of disease when used at the health care professional's health care office or clinic.

(5)(a) "Tanning device" means any equipment that emits electromagnetic radiation with wavelengths in the air between 200 and 400 nanometers used for tanning of the skin, including:

(i) a sunlamp; and

(ii) a tanning booth or bed.

(b) "Tanning device" does not include a phototherapy device.

(6) "Tanning Facility" means any commercial location, place, area, structure, or business that provides an individual access to a tanning device for the purpose of tanning the individual's skin while in the facility.

(7) "Timing Device" means a device that is capable of ending the emission of ultraviolet radiation from tanning device after a preset period of time.

(8) "Ultraviolet Radiation" means electromagnetic radiation that has a wave length interval of 200 nanometers to 400 nanometers in air.

R392-700-4. Warning Sign Placement.

(1) The operator of a tanning facility shall post a warning sign that meets the requirements of this rule in a conspicuous location that is readily visible to a person about to use a tanning device.

(a) The operator shall place the warning sign so that all patrons are alerted to the hazard and informed before being exposed to UV radiation. At a minimum, the operator shall post the warning sign:

(i) in the line of sight of a person presenting at the reception or sales counter and no more than 10 feet from where a patron checks in or pays for the tanning session; and

(ii) on a vertical surface in the reception area so that the top border of the writing is between five and six feet above the patron floor level at the reception or sales counter area.

R392-700-5. Warning Sign Requirements.

(1) The warning sign required by R392-700-5 shall meet the requirements of this section. An Adobe Acrobat Portable Document Format, .pdf, file that meets the requirements of this section is available from the Department or the local health department.

(2) The sign shall be in a landscape format 11 inches high by 17 inches wide on a white background.

(3) All lettering shall be in Arial font as produced in Adobe Acrobat. In addition, the letters shall be:

(a) black in color

(b) all uppercase

(c) adequately spaced and not crowded

(4) There must be a panel at the top of the sign. The background of the panel shall be safety orange in color and shall:

(a) be 3.3 centimeters, high and 42 centimeters wide, including a black line border that is 0.16 centimeter wide surrounding the safety orange background;

(b) have the word "WARNING" in capital letters that are 80 points in size (approximately two centimeters high); and

(c) have an internationally recognized safety alert symbol that is two centimeters high and placed immediately to the left of the word "WARNING"

(5) The safety alert symbol shall be black with a yellow field.

(6) The word "WARNING" and the symbol shall be vertically and horizontally centered within the orange panel.

(7) Immediately below the orange panel shall appear the words: "ULTRAVIOLET RADIATION" in letters that are 61 points in size (approximately 1.5 centimeters high) and centered between the vertical margins. The vertical space between the "WARNING" panel and the top of the words "ULTRAVIOLET RADIATION" shall be approximately 1.6 centimeters. The vertical space between the bottom of the words "ULTRAVIOLET RADIATION" and the top of the words of the first bulleted statement required in subsection (9) shall be approximately 1.6 centimeters.

(8) Beneath the "ULTRAVIOLET RADIATION" line shall appear the body wording of the sign in letters that are 39 points in size (approximately one centimeter high).

(9) The body of the sign shall be the following five bulleted statements:

-WEAR EYE PROTECTION TO PREVENT BLINDNESS

-TALK TO YOUR DOCTOR IF YOU ARE PREGNANT OR USE ORAL CONTRACEPTIVES

-SOME COSMETICS OR MEDICINES MAY MAKE YOU BURN EASILY - TALK TO YOUR DOCTOR.

-FREQUENT OR LENGTHY EXPOSURE MAY CAUSE SKIN CANCER OR OTHER SEVERE SKIN DAMAGE

-YOU SHOULD WAIT 48 HRS BETWEEN TANNING SESSIONS

(10) The vertical spacing between each of the bulleted statements shall be approximately 1.6 centimeters. The margins to the right and left of the bulleted statements shall be no less than 4.4 centimeters.

(11) The vertical spacing between the last bulleted statement and the bottom margin of the paper shall be no less than two centimeters.

(12) Local health departments may add additional warning requirements that are applicable to all patrons of all tanning facilities.

R392-700-6. Written and Signed Consent.

(1) It is unlawful for any operator of a tanning facility to allow a person younger than 18 years old to use a tanning device, except upon meeting the requirements of 26-15-13. The consent form shall conform to the Utah Department of Health Tanning Consent Form, October 15, 2007, which is incorporated by reference.

(2) Before allowing any patron to use a tanning device, the operator shall upon an patron's initial visit to the tanning facility and annually thereafter:

(a) provide the patron a written paper notice containing the information in subsection (3);

(b) provide the patron an opportunity to read the notice and ask questions;

(c) obtain the patron's dated signature signifying that the patron has read the notice;

(d) give the patron a copy of the notice.

(3) The notice required in subsection (2) shall include the following:

(a) a representative list of potential photosensitizing drugs and agents;

(b) information regarding potential negative health effects related to ultraviolet exposure including:

(i) the increased risk of skin cancer;

(ii) the increased risk of skin thinning and premature aging;

(iii) the possible adverse effect on some viral conditions or medical condition, such as lupus when using a tanning device.

(c) information on how to determine skin sensitivity, and information on how different skin types respond to the tanning facilities different tanning devices;

(d) an explanation of Ultraviolet-A (UVA) and Ultraviolet-B (UVB) light's effect on the body, the need to use proper protective eyewear with both UV-A and UV-B systems, and that closing the eyes is not sufficient to prevent possible eye damage;

(e) information on the capacity of devices, including proper exposure times and intensity;

(f) information on the risk of tanning too frequently and on over exposure;

(g) information that tanning may be inadvisable during pregnancy; and

(h) other relevant medical information as determined by the local health department.

(3) The operator shall retain the signed patron notices at the tanning facility and make them readily available for inspection by the Department and local health department.

(4) The operator shall provide a separate enclosed area for each tanning device that ensures patron safety and privacy.

(5) The operator shall ensure that only one person enters tanning area during a tanning session.

(6) The operator shall not allow an animal, except for a service animal, to be in a tanning area during a tanning session. The operator shall ensure that service animals allowed in tanning areas be provided eye protection from UV exposure.

R392-700-7. Tanning Devices.

(1) A tanning facility may use only commercially available tanning devices manufactured and certified in compliance with 21 CFR 801.4, 21 CFR 1010.2 and 1010.3, and 21 CFR 1040.20.

(a) The operator shall follow all manufacturer safety instructions applicable to each tanning device.

(b) The operator shall not:

(i) operate any tanning device that has an ineffective or inoperable timing device or for which the timing device is missing;

(ii) exceed the manufacturer's maximum recommended exposure time; or

(iii) exceed the exposure time recommended by the manufacturer in compliance with 21 CFR 1040.20(d)(1)(iv).

(3) The operator shall maintain at the tanning facility the manufacturer's operating instructions, exposure recommendations, and safety instructions for each tanning device.

(4) The operator shall centrally install and locate the timing device controls for each tanning device so that a patron may not set or reset the exposure time on any tanning device.

(5) The operator shall control the temperature of the consumer contact surfaces of a tanning device and the surrounding area so that it will not exceed 100 degrees Fahrenheit.

(6) The operator shall maintain the tanning devices in good repair.

(7) The operator shall provide physical barriers to protect patrons from possible injury which may be induced by touching or breaking tanning equipment lamps.

(8) The operator shall provide physical barriers or other methods, such as handrails or floor markings to indicate the proper exposure distance between ultraviolet lamps and the patron's skin.

(9) The operator shall replace defective or burned-out lamps or filters with lamps and filters that are clearly identified by brand and model designation by the replacement lamp by the lamp manufacturer. The operator shall maintain lamp manufacturer's labeling and user instructions at the facility that demonstrate the equivalence of any replacement lamp or filter.

(10) An operator shall not advertise or promote the use of any tanning equipment using wording such as "safe," "safe tanning," "no harmful rays," "no adverse effect," "free from risk," or similar wording or concept.

(11) The operator shall track each patron's usage to ensure that a patron does not use a tanning device more frequently than once each calendar day or in excess of the manufacturer's recommended exposure.

(12) The tanning device shall allow each patron to exit the tanning device without assistance from the operator.

(13) The operator shall assess each patron's skin type and sensitivity and consider the intensity of the radiation output of the tanning devices in the tanning facility when assigning a patron to use a particular tanning device.

R392-700-8. Protective Eye Wear.

Prior to each tanning session, the operator shall offer protective eye wear to each patron, instructions for its use, and notify the patron of possible damage that might occur to the patron if the patron does not wear it. Protective eye wear shall be eye wear that is supplied by the manufacturer for use with the tanning device or that is the equivalent to the protective eye wear supplied by the manufacturer.

R392-700-9. Tanning Physical Facilities.

(1) The operator shall provide a restroom that includes a flushing toilet and a hand-washing sink with hot and cold running water accessible to patrons at each tanning facility. The operator shall ensure that tanning facility floors and walls in the toilet and hand-washing areas are constructed of smooth, non-absorbent material.

(2) The operator shall ensure that all areas of the tanning facility and temporary tanning facility are properly ventilated. The internal ambient air temperature of the facility shall not exceed 85 degrees F.

(3) The operator shall ensure that all rooms of a tanning facility are capable of being illuminated to allow for proper cleaning and sanitizing.

(4) To prevent patron slip injury, the operator shall ensure that the floor adjacent to each tanning device is clean and slip resistant to allow for safe entry and exit from the tanning device.

R392-700-10. Tanning Facility Sanitation.

(1) The operator shall maintain in good repair and in a sanitary condition all portions of the tanning facility, including wall, floors, ceilings, and equipment.

(2) The operator shall clean and sanitize before each use, all:

(a) reusable protective eye wear;

(b) body contact surfaces of the tanning device; and

(c) body contact surfaces of the tanning booth, including all seating surfaces and door knobs.

(3) The operator shall clean the items in subsection (2) using a detergent or other agent able to emulsify oils and hold dirt in suspension using a concentration as indicated by the detergent or other agent manufacturer's use directions included on the product labeling. The operator shall sanitize the items in subsection (2) with a chlorine sanitizer or a quaternary ammonia

compound using a concentration as indicated by the sanitizer or compound manufacturer's use directions included on the product labeling.

(4) If the operator cleans the items in a separate process from sanitizing the items, the operator shall clean the items prior to sanitizing them. The operator may use a single product to both clean and sanitize if that product meets the requirements of subsection (3) for the cleaning and sanitizing of the items in subsection (2).

(5) The operator shall ensure that restroom facilities are maintained in a clean and sanitary condition. The operator shall provide hand soap and single use hand drying towels or a hand drying mechanism for patron use.

(6) The operator shall clean and sanitize towels or other linens after each use.

R392-700-11. Enforcement and Penalties.

A person who violates a provision of this rule that is also a provision of Section 26-15-13 may be subject to a class C misdemeanor. A person who violates a provision of this rule that is not also a provision of Section 26-15-13 is subject to a Class B misdemeanor on the first offense or a Class A misdemeanor on the second offense within one year or a civil penalty on up to $5,000 for each offense as provided in Section 26-23-6.

KEY: tanning beds, salons, sanitation, ultraviolet light safety

May 16, 2008 **26-15-2**
26-15-13

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-5. Reduction in Hospital Payments.
R414-5-1. Introduction and Authority.

This rule describes the Utah Medicaid Program's uniform reduction in hospital inpatient payments. This rule is authorized by Title 26, Chapter 18, Section 7, UCA.

R414-5-2. Hospital Reimbursements.

The Utah Medicaid Program reimburses hospital services based upon diagnosis for urban hospitals and based upon a percent-of-charges for rural hospitals as described in the UTAH STATE PLAN UNDER TITLE XIX OF THE SOCIAL SECURITY ACT MEDICAL ASSISTANCE PROGRAM attachment 4:19A, Section 190.

R414-5-3. Inpatient Hospital Payments Reduced.

For payment claims related to discharges occurring after January 15, 2003, the following reductions will be applied:

(1) For state fiscal year 2003, which ends June 30, 2003, a pro-rata reduction shall be applied to all claims at a percentage that will generate a $4.6 million reduction in the amount that would otherwise be paid to hospitals for claims that apply during the state fiscal year 2003.

(2) For subsequent state fiscal years, the pro-rata reduction will be reduced to a level that will generate a $4.6 million reduction for claims that apply during the subsequent state fiscal year.

(3) The executive director, after consultation with hospital providers, shall set the percentage at the level that is predicted to generate the requisite savings. The executive director may adjust the percentage as necessary, after consultation with hospital providers.

KEY: Medicaid, hospital
May 13, 2003 26-18
Notice of Continuation May 13, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-51. Dental, Orthodontia.
R414-51-1. Introduction and Authority.

(1) The Medicaid Orthodontia Program provides orthodontia services for Medicaid eligible children who have a handicapping malocclusion as a result of birth defects, accident, or abnormal growth patterns, and for Medicaid eligible adults who have a handicapping malocclusion as a result of a recent accident or disease, of such severity that they are unable to masticate, digest, or benefit from their diet.

(2) Orthodontia services are authorized by 42 CFR 440.100(a), 440.225, 441.56(b)(2), 441.57, October, 1997 ed, which are adopted and incorporated by reference.

R414-51-2. Definitions.

In addition to the definitions in R414-1, the following definitions also applies to this rule:

(1) "Adult" means an individual who is 21 years of age or older;

(2) "Child" means an individual who is under 21 years of age;

(3) "Salzmann's Index" means the "Handicapping Malocclusion Assessment Record" by J. A. Salzmann, used for assessment of handicapping malocclusion, as adopted by the Board of Directors of the American Association of Orthodontists and the Council on Dental Health of the American Dental Association. This index provides a universal numerical measurement of the total malocclusion.

R414-51-3. Client Eligibility Requirements.

Orthodontia services are available for Medicaid eligible recipients.

R414-51-4. Program Access Requirements.

(1) Orthodontia services are available to children who meet the requirements of having a handicapping malocclusion identified in an Early and Periodic Screening, Diagnosis and Treatment (EPSDT) exam.

(2) The Department shall determine the medical necessity for orthodontia services for each individual whether child or adult based upon:

(a) the evaluation of the malocclusion using the Salzmann's Index from models of the teeth submitted by the dentist or orthodontist; and

(b) evidence of medical necessity provided by the primary dentist, the orthodontist, or the physician.

(3) The primary care physician, or the physician or dentist who completes the EPSDT screening examination, may contribute information pertaining to the medical necessity for services.

(4) Qualified Providers.

Dentists, oral and maxillofacial surgeons, and orthodontists may provide any part of the orthodontic services for which they are qualified.

R414-51-5. Service Coverage.

(1) Medicaid considers a Salzmann's Index score of 30 or more a level of handicapping malocclusion for which orthodontia is a covered service.

(2) Service coverage includes:

(a) a wax bite and study models of the teeth;

(b) removal of teeth, or other surgical procedures, if necessary to prepare for an orthodontic appliance;

(c) attachment of an orthodontic appliance;

(d) adjustments of an appliance;

(e) removal of an appliance;

(3) Dental surgical procedures which are cosmetic only are not covered services even when proposed in conjunction with orthodontia.

R414-51-6. Limitations.

Orthodontia is not a Medicaid benefit for:

(1) cosmetic or esthetic reasons;

(2) treatment of any temporo-mandibular joint condition or dysfunction;

(3) conditions in which radiographic evidence of bone loss has been documented;

(4) an adult whose handicapping malocclusion resulted from an accident or disease occurring more than one year from the date of request for services.

R414-51-7. Reimbursement.

(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

(3) The Department shall pay dentists in rural areas 120 percent of the Medicaid established dental fee. The Department shall pay dentist in urban areas 120 percent of the Medicaid established dental fee who agree in writing to treat 100 Medicaid eligible patients per year.

KEY: Medicaid, dental, orthodontia
January 28, 2004 26-1-5
Notice of Continuation May 19, 2008 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-52. Optometry Services.
R414-52-1. Introduction and Authority.

The Optometry Program provides optometry services to meet the optometry needs of Medicaid clients. This rule is authorized under Utah Code 26-18-3 and governs the services allowed under 42 CFR 440.60.

R414-52-2. Definitions.

The definitions in the Utah Optometry Practice Act, Title 58, Chapter 16a, apply to this rule.

R414-52-3. Client Eligibility Requirements.

Optometry services are available to categorically and medically needy individuals.

R414-52-4. Service Coverage.

(1) Optometry services include examination, evaluation, diagnosis and treatment of visual deficiency, removal of a foreign body, and the provision of eyeglasses. In addition, Medicaid medical services performed by physicians may also be performed by optometrists under the Utah Optometry Practice Act.

(2) The optometrist must document in the patient record that the eye examination is medically necessary.

R414-52-5. Reimbursement.

(1) Fees for services for which the Department will pay optometrists are established from the physician's fees for CPT codes as described in the State Plan, Attachment 4.19-B, Section D Physicians. A $3 copayment for each pair of eyeglasses is applied to Medicaid recipients who fall under the copayment requirement. Fee schedules were initially established after consultation with provider representatives. Adjustments to the schedule are made in accordance with appropriations and to produce efficient and effective services.

(2) The Department pays the lower of the amount billed and the rate on the schedule. A provider shall not charge the Department a fee that exceeds the provider's usual and customary charges for the provider's private-pay patients.

KEY: Medicaid, optometry
February 1, 2008 26-1-5
Notice of Continuation May 19, 2008 26-18-3

R428. Health, Center for Health Data, Health Care Statistics.
R428-13. Health Data Authority. Audit and Reporting of HMO Performance Measures.
R428-13-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a, Utah Code, and in accordance with the Utah Health Care Performance Measurement Plan.

R428-13-2. Purpose.

This rule establishes a performance measurement data collection and reporting system for health maintenance organizations (HMOs) licensed in the State of Utah and certain health plans.

R428-13-3. Definitions.

These definitions apply to rule R428-13:

(1) "Office" as defined in R428-2-3A.

(2) "Health Maintenance Organization (HMO)" means any person or entity operating in Utah which is licensed under Title 31A, Chapter 8, Utah Code.

(3) "Health plan" means any insurer under a contract with the Utah Department of Health to serve clients under Title XIX or Title XXI of the Social Security Act.

(4) "Utah Health Care Performance Measurement Plan" means the plan for data collection and public reporting of health-related measures, adopted by the Utah Health Data Committee to establish a statewide health performance reporting system.

(5) "NCQA" means the National Committee for Quality Assurance, a not-for-profit organization committed to evaluating and reporting on the quality of managed care plans.

(6) "Performance Measure" means the quantitative, numerical measure of an aspect of the HMO or health plan, or its membership in part or in its entirety, or qualitative, descriptive information on the HMO in its entirety as described in HEDIS.

(7) "HEDIS" means the Health Plan Employer Data and Information Set, a set of standardized performance measures developed by the NCQA.

(8) "HEDIS data" means the complete set of HEDIS measures calculated by HMOs and health plans according to NCQA specifications, including a set of required measures and voluntary measures defined by the department, in consultation with HMOs or health plans.

(9) "Audited HEDIS data" means HEDIS data verified by an NCQA certified audit agency.

(10) "Committee" means Utah Health Data Committee established under the Utah Health Data Authority Act, Title 26, Chapter 33a, Utah Code.

(11) "Covered period" means the calendar year on which the data used for calculation of HEDIS measures is based.

(12) "Submission year" means the year immediately following the covered period.

R428-13-4. Submission of Performance Measures.

(1) Each HMO and health plan shall compile and submit HEDIS data to the Office according to this rule.

(2) By July 1 of each year, all HMOs and health plans shall submit to the Office audited HEDIS data for the preceding calendar year.

(3) Each HMO and health plan shall contract with an independent audit agency certified by the NCQA to verify the HEDIS data prior to the HMO's or health plan's submitting it to the Office.

(4)

(5) Each HMO and health plan may employ the rotation strategy for HEDIS measures developed and updated by NCQA.

(6) If an HMO or health plan presents "Not Reported (NR)" for required measures, it must document why it did not report the required measure.

(7) The auditor shall follow the guidelines and procedures contained in 2008: Volume 5: HEDIS Compliance Audit: Standards, Policies, and Procedures published by NCQA, which is incorporated by reference.

(8) Each HMO and health plan shall cause its contracted audit agency to submit a copy of the audit agency's report by July 1 of the submission year to the Office.

(9) Each HMO and health plan shall cause its contracted audit agency to submit a copy of the audit agency's final report by August 15 of the submission year to the Office. The final report shall incorporate the HMO's or health plan's comments.

R428-13-5. Release of Performance Measures.

(1) The Health Data Committee shall follow NCQA's "HEDIS Compliance Audit: Standards, Policies, and Procedures" to determine the HEDIS Data Set that the Office may include in reports for public release for public use.

(2) The Office shall give HMOs and health plans 35 days to review any report which identifies it by name. The identified HMO or health plan may submit comments and alternative interpretations to the Office.

R428-13-6. Exemptions.

(1) An HMO or health plan that cannot meet the reporting requirements of this rule may request an exemption by January 1 of each submission year by submitting to the Office a written request for an exemption, accompanied by all documentation necessary to establish the HMO's or health plan's inability to report. The exemption request shall be signed by the chief executive officer of the HMO or health plan who shall certify that all information contained in the request is true and correct. An HMO or health plan may request an exemption if the HMO or health plan did not operate in Utah for the reporting year, if the number of covered lives is too low for HEDIS standards, or for other similarly prohibitive circumstances beyond the HMO's or health plan's control.

(2) The Office may request additional information from the HMO and health plan relevant to the exemption or extension request. If the committee denies the exemption, the HMO or health plan may resubmit the request to the Office if it has additional information or analysis bearing on the request.

R428-13-7. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $3,000 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

KEY: health, health planning, health policy
May 16, 2008 26-33a
Notice of Continuation April 21, 2008

R432. Health, Health Systems Improvement, Licensing.
R432-35. Background Screening.
R432-35-1. Authority.

The Utah Code, Section 26-21-9.5, requires that a Bureau of Criminal Identification screening, referred to as BCI, and a child or disabled or elderly adult licensing information system screening be conducted on each person who provides direct care to a patient for the following covered health care facilities:

(1) Home health care agencies;
(2) Hospice agencies;
(3) Nursing Care facilities;
(4) Assisted Living facilities;
(5) Small Health Care facilities; and
(6) End Stage Renal Disease Facilities.

R432-35-2. Purpose.

The purpose of this rule is to define the circumstances under which a person who has been convicted of or charged with a criminal offense or who has a juvenile court substantiated or DHS supported finding report of severe child abuse or neglect or DHS substantiated finding of disabled or elder abuse or neglect, may provide direct care to a patient in a covered health care facility, taking into account the nature of the criminal offense and its relation to patient care.

R432-35-3. Definitions.

Terms used in this rule are defined in Title 26, Chapter 21. In addition:

(1) "Covered Individual" means all proposed employees who provide direct patient care in a covered health care facility, including volunteers, existing employees, persons contracted to perform direct care and, for residential settings, all individuals residing in the home where an assisted living or small health care program is to be licensed, who are 18 years old and over.

(2) "Department" means the Utah Department of Health.

(3) "Substantiated" means a Department of Human Service finding, at the completion of an investigation by the Department of Human Services, that there is a reasonable basis to conclude that one or more of the following types of elder or disabled adult abuse or neglect has occurred:

(a) physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness;
(f) chronic or severe neglect; or
(g) financial exploitation.

(4) "Supported" means a DHS finding, at the completion of an investigation that there is a reasonable basis to conclude that one or more of the following types of severe abuse or neglect has occurred to a child:

(a) severe or chronic physical abuse;
(b) sexual abuse;
(c) sexual exploitation;
(d) abandonment;
(e) medical neglect resulting in death, disability, or serious illness; or
(f) chronic or severe emotional abuse.

(5) "Unsupervised Contact" means contact with residents or patients that provides the unsupervised person opportunity and probability for personal communication or touch or for access to personal funds and property when not under the direct supervision of a health care provider or employee.

(6) "Volunteer" means an individual who is not directly compensated for providing care, including family members of patients or residents enrolled in the program, whose duties assigned by a health care provider or employee include unsupervised contact in a health care facility on a regularly scheduled basis of one or more times per month.

R432-35-4. Bureau of Criminal Identification.

(1) The Utah Code, Section 26-21-9.5, requires that a BCI be conducted on covered individuals requesting to be licensed, to renew a license, or to be employed or volunteer in a covered health care facility.

(a) The health care facility shall submit applicant information within ten days of initially hiring an individual, include fees and releases to the Department to allow the Department to perform a criminal background screening.

(b) If the BCI indicates that the covered individual has a criminal record that indicates there is a conviction for a felony or misdemeanor the Department shall review the criminal convictions to determine whether to approve the covered individual for licensing or employment.

(c) If a covered individual applicant has not had residency in Utah for the last five years, the covered individual shall submit fingerprints for an FBI national criminal history record check.

(2) The Department shall review any criminal convictions, consistent with R432-35, to determine if action should be taken to protect the health and safety of patients and residents receiving health care services in the covered health care facility.

(3) If the Department takes an action adverse to any covered individual, based upon the criminal background screening, the Department shall send a Notice of Agency Action to the health care provider and the covered individual explaining the action and the right of appeal.

R432-35-5. Exclusion from Direct Patient Care Due to Criminal Convictions or Pending Charges.

(1) As required by Utah Code Ann. Subsection 26-21-9.5(6), if a covered individual has been convicted of a felony or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide direct patient care or volunteer. If such a covered individual resides in a home where health care is provided, the Department may revoke an existing license or and refuse to permit health care services in the home until the Department is reasonably convinced that the covered individual no longer resides in the home or that the individual will not have unsupervised contact with any child or disabled or elderly adult in care at the home.

(2) As allowed by Utah Code Ann. Subsection 26-21-9.5(6), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing direct patient care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code;

(d) any class B or C conviction under Chapter 9, Title 76, Offenses Against Public Order and Decency, Utah Criminal Code, except for 76-9-301.8, Bestiality; 76-9-702, Lewdness; and 76-9-702.5, Lewdness Involving Child; and

(e) any class B or C conviction under Chapter 10, Title 76, Offenses Against Public Health, Welfare, Safety and Morals, Utah Criminal Code, except for 76-10-1201 to 1229.5, Pornographic and Harmful Materials and Performances; 76-10-1301 to 1314, Prostitution; and 76-10-2301, Contributing to the Delinquency of a Minor.

(3) The Executive Director may exclude, on a case-by-case basis, other misdemeanors not covered under paragraph (2) of this section if the misdemeanor did not involve violence against a child or a family member or unauthorized sexual conduct with

a child or disabled adult. The following factors will be used in deciding under what circumstance, if any, the covered individual will be allowed to provide direct patient care or to volunteer in a covered health care facility:

(a) Types and number of offenses;

(b) Passage of time since the offense was committed; offenses more than five years old do not bar approval or a license, certificate or employment;

(c) Circumstances surrounding the commission of the offense;

(d) Intervening circumstances since the commission of the offense; and

(e) Relationship of the facts under subsections (a) through (d) of this section to the individual's suitability to work with children and disabled and elderly adults.

(4) The Department shall rely on the criminal background screening and search of court records as conclusive evidence of the conviction and the Department may revoke or deny a license and employment based on that evidence.

(5) If the Department denies a covered individual a license or employment based upon the criminal background screening and the covered individual disagrees with the information provided by the Criminal Investigations and Technical Services Division or court record, the covered individual may challenge the information as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All covered health care facilities must report all felony and misdemeanor arrests, charges or convictions of covered individuals to the Department within 48 hours of discovery.

R432-35-6. Licensing Information System.

(1) Pursuant to Utah Code 26-21-9.5(3) the Department shall screen all covered individuals for a history of substantiated abuse or neglect of a disabled or elder adult or a supported finding of severe abuse or neglect of a child, from the licensing information system maintained by the Utah Department of Human Services (DHS).

(2) If a covered individual appears on the licensing information system, the Department shall review the date of the supported or substantiated finding, type of substantiation, written documentation, and the legal status of the covered individual.

(3) If the Department determines there exists credible evidence that the covered individual poses a threat to the safety and health of children or disabled or elder adults being served in a covered health care facility, the Department shall not grant or renew a license, or employment.

(4) If the Department denies or revokes a license or employment based upon the licensing information system, the Department shall send a Notice of Agency Action to the licensee and the covered individual.

(5) If the covered individual disagrees with the record of substantiation of elder or disabled adult abuse or supported finding of severe child abuse or neglect , he must pursue an appeal with the DHS or the juvenile court. If the covered individual agrees with the substantiated or supported finding of abuse or neglect that was the basis of the Department's denial or revocation, but disagrees with the Department's denial or revocation, the covered individual may request a hearing with the Department.

(a) Upon request, the Department may permit the covered individual to be employed under supervision until a decision is reached and if the applicant can demonstrate that the work arrangement does not pose a threat to the safety and health of children or disabled or elder adults being served in the licensed health care facility.

(b) If a covered individual appeals the record of substantiation or supported finding, the Department may hold the license or employment denial in abeyance until DHS or the juvenile court renders a decision,.

(6) If the DHS determines a covered individual has a substantiated or supported finding of abuse, or neglect after the Department issues a license, or grants employment, the licensee and covered individual has five working days to notify the Department. Failure to notify the Department may result in revocation of the license.

R432-35-7. Covered Individuals with Arrests or Pending Criminal Charges.

(1) If the Department determines there exists credible evidence that a covered individual has been arrested or charged with a felony or a misdemeanor that would not be excluded under R432-5(2), the Department may act to protect the health and safety of patients and residents in covered health care facilities that the individual may have contact with. The Department may revoke or suspend any license or employment if necessary to protect the health and safety of patients and residents in care.

(2) Upon request, the Department may permit the covered individual to be employed under supervision until the felony or misdemeanor charge is resolved, if the facility can demonstrate that the individual can work without posing a threat to the safety and health of the resident or patient being served in the licensed health care facility.

(3) If the Department denies or revokes a license, or restricts employment based upon the arrest or felony or misdemeanor charge, the Department shall send a Notice of Agency Action to the licensee and the covered individual notifying them that they may request a hearing with the Department.

(4) The Department may hold the license or employment denial in abeyance until the arrest or felony or misdemeanor charge is resolved.

R432-35-8. Penalties.

The department may impose civil monetary penalties in accordance with Title 63, Chapter 46b, Administrative Procedures Act, if there has been a failure to comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as follows:

(1) if significant problems exist that are likely to lead to the harm of an individual resident, the department may impose a civil penalty of $50 to $1,000 per day; and

(2) if significant problems exist that result in actual harm to a resident, the department may impose a civil penalty of $1,050 to $5,000 per day.

KEY: health care facilities
March 13, 2003 **26-21-9.5**
Notice of Continuation May 27, 2008

R495. Human Services, Administration.
R495-810. Government Records Access and Management Act.
R495-810-1. Access to Department of Human Services Records.

A. Authority. This rule is authorized by Section 63G-2-204(2) and Section 62A-1-111.

B. Definitions. Words used in this rule are defined in Section 63G-2-103.

C. Requests for Access. Requests for records shall be submitted to any Department of Human Services office. If the record requested is maintained in that office, that office's designated GRAMA Officer will respond to the request. If the record is not maintained in the office where the request is filed, the request will be sent immediately to the appropriate Department of Human Services office.

R495-810-2. Fee Schedule for Records Copies.

A. Fee Rates.

1. Fees for copies are based on the number of records to be copied and are as follows:

a. paper: $.25 per side of sheet;

b. audio tape: $5.00 per tape; and

c. video tape: $15.00 per tape.

2. For records which require compiling and reporting in another format, a fee of $25.00 per hour may be charged, or $50.00 per hour if the request requires programmer/analyst assistance, however no charge may be made for the first quarter hour of staff time.

3. Mailing. The fee for mailing is the actual cost of postage.

B. Payment Waiver.

1. The Department of Human Services shall fulfill a record request without charge in accordance with Section 63G-2-203(4).

2. The Department shall require payment of future estimated fees before beginning to process a request when fees are expected to exceed $50 or the requester has not paid fees from previous requests.

R495-810-3. Records Modification and Clarification.

A. Hearings. Administrative Hearings regarding denied requests to amend records shall be conducted informally in accordance with Administrative Rule 497-100.

KEY: government documents
December 11, 2007 63G-2-204
Notice of Continuation February 5, 2007

R495. Human Services, Administration.
R495-878. Department of Human Services Civil Rights Complaint Procedure.
R495-878-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 62A-1-111, Section 63G-3-201(2) of the State Administrative Rulemaking Act and the Federal Civil Rights statutes and regulations cited below. The Department of Human Services, (Department) adopts, defines, and publishes within this rule complaint procedures that incorporate due process standards and that provide for the prompt and equitable resolution of complaints filed in accordance with any of the following:

(1) Title VI of the Civil Rights Act of 1964, Pub.L. 88-352, 42 U.S.C.A., Section 2000d-1 et seq. (Title VI), and its implementing regulation, Title 45 Code of Federal Regulations (CFR), Part 80, Section 80.4(b)(2);

(2) Section 504 of the Rehabilitation Act of 1973, Pub.L. 93-112, Pub.L. 93-516, Pub.L. 95-602, and Pub.L. 102-569, 29 U.S.C. 794 et seq., and its implementing regulation, Title 45 CFR Part 84, Section 84.7(b); and,

(3) Title II of the Americans with Disabilities Act (ADA), 42 U.S.C. 12131-12134 and its implementing regulation, Title 28 CFR Part 35, Section 35.107.

"Title VI prohibits discrimination on the ground of race, color, or national origin; Section 504 prohibits discrimination on the basis of handicap; and the ADA prohibits discrimination on the basis of disability."

B. The Americans with Disabilities Act mandates that no qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of, this Department, or be subjected to discrimination by this Department including discrimination in employment matters.

R495-878-2. Definitions.

A. The Civil Rights "Coordinator" (ADA, Section 504, and Title VI) for the Department of Human Services is the Director of the Office of Administrative Support. The Coordinator has responsibility for investigating and providing prompt and equitable resolution of complaints filed by persons alleging discrimination in the receipt of services due to disabilities, race, color, or national origin.

B. The "State ADA Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of the Attorney General.

C. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. (Impairment is defined in 29 CFR 163A2.)

D. "Handicapped Person" under Section 504 means any individual who (i) has a physical or mental impairment which substantially limits one or more major life activities, (ii) has a record of such an impairment, or (iii) is regarded as having such an impairment.

E. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(2) With respect to other services and activities, an individual with a disability (a handicapped person) who with or without reasonable modification to rules, policies, or practices, the removal of architectural, communication or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity.

G. "Qualified Individual with a disability" (hereinafter individual) means a person who has a disability which limits one of his or her major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department of Human Services or who would otherwise be an individual with a disability who satisfies the requisite skill, experience, education and other job-related requirements of the employment position.

R495-878-3. Filing of Complaints.

A. An individual shall file the complaint in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

B. The complaint may be filed with any division, office or regional office of the Department or directly with the Coordinator, Civil Rights, Office of Administrative Support, who has been designated as the Coordinator for the Department. Complaints filed locally and not resolved within five (5) working days are to be forwarded to the Coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

Coordinator, Civil Rights
Office of Administrative Support
PO Box 45500
120 North 200 West, Room 331
Salt Lake City, Utah 84145-0500

C. Each complaint shall:

(1) include the individual's name and address;

(2) include the nature and extent of the individual's disability; (if ADA or Section 504)

(3) describe the Department's alleged discrimination action in sufficient detail to inform the Department of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

(5) be signed by the individual or by his or her legal representative.

D. Complaints filed on behalf of classes or third parties shall describe or identify by name, if possible, the alleged victims of discrimination.

E. With or without exhausting DHS procedures, complainants may also file complaints alleging discrimination in employment and in the delivery of services with:

Office For Civil Rights,
U.S. Department of Health and Human Services
Federal Office Building
1961 Stout Street
Denver, Colorado 80295-3538

R495-878-4. Investigation of Complaint.

A. The Coordinator shall conduct an investigation of each complaint received. The Office of Human Resource (OHR) shall assume lead responsibility in conducting investigations for complaints from employees alleging discrimination under Title I of the ADA. OHR investigations will be submitted to the Coordinator to issue a decision. The Office of Administrative Support shall assume lead responsibility in conducting all other civil rights investigations under the sections of the Acts referenced in Part I of this rule. Investigations shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 878-3. C of this rule if it is not made available by the individual.

B. When conducting the investigation, the Coordinator may seek assistance from other divisions/offices within the

Department and the Office of the Attorney General in determining what action, if any, shall be taken on the complaint. The Coordinator shall consult with the State ADA Coordinating Committee before making any decision that would involve:

(1) an expenditure of funds which is not absorbable within the agency or Department's budget and would require appropriation authority;

(2) facility modification beyond the Department's capability due to the constraint in item (1) above; or

(3) reclassification or reallocation in merit system grade.

R495-878-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the Coordinator 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.

B. If the Coordinator is unable to reach a decision within the 15 working day period, written notice (or notice in another acceptable format) will be provided to the complainant explaining the delay and the amount of additional time needed.

R495-878-6. Appeals.

A. The individual may appeal the decision of the Coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Executive Director of the Department of Human Services.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Executive Director or appointed designee.

D. The appeal shall describe in sufficient detail why the Coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Division Director may also appeal a decision by the Coordinator when the decision is perceived to negatively affect Division operation.

F. The Executive Director or appointed designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the Coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted, if necessary, to clarify questions of fact before making any decision that would require:

(1) an expenditure of funds which is not absorbable within the agency or Department's budget and would require appropriation authority:

(2) facility modifications beyond the Department's capability due to the constraint in item (1) above; or

(3) reclassification or reallocation in merit system grade.

G. The decision shall be issued within fifteen working days after receiving the appeal and shall be in writing or in another accessible format suitable to the individual.

H. If the Executive Director is unable to reach a decision within the fifteen day working period, he shall notify the individual in writing or in another accessible format suitable to the individual why the decision is delayed and the additional amount of time needed to reach a decision.

R495-878-7. 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 63G-2-305 until the Coordinator, Executive Director or their designees issue the decision at which time any portions of the record which may pertain to the individual's medical conditions shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the Coordinator, Executive Director or designees shall be classified as public information.

R495-878-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section (67-19-32); the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 Edition); the Federal Rehabilitation Act procedures (29 U.S. C. Section 794); or any other Utah State or Federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, Americans with Disabilities Act 1992, Rehabilitation Act 1973, Civil Rights Act 1964
1993 62A-1-111
Notice of Continuation February 5, 2007

R495. Human Services, Administration.
R495-881. Health Insurance Portability and Accountability Act (HIPAA) Privacy Rule Implementation.
R495-881-1. Authority and Purpose.

(1) This rule implements provisions required by 45 CFR Part 164, subpart E, dealing with the treatment of certain individually identifiable health information held by the Department of Human Services.

(2) This rule is authorized by Utah Code Sections 26-1-5 and 26-1-17.

R495-881-2. Definitions.

As used in this rule:

(1) "Covered entity" means a program within the Department responsible for carrying out a covered function as that term is used in 45 CFR 164.501.

(2) "HIPAA" means the federal Health Insurance Portability and Accountability Act of 1997 and its implementing regulations.

(3) "Individual" means a natural person. In the case of a individual without legal capacity or a deceased person, the personal representative of the individual.

R495-881-3. General Compliance.

(1) This rule applies only to those functions of the Department that are covered functions as that term is used in 45 CFR Part 164.

(2) Covered entities shall comply with the privacy requirements of 45 CFR Part 164, Subpart E in dealing with individually identifiable health information and the subjects of that information.

R495-881-4. Changes to Rule.

The Department reserves the right to alter this rule and its notices of privacy practices required by HIPAA.

R495-881-5. Sanctions, Retaliation.

(1) An employee of a covered entity may be disciplined for failure to comply with the HIPAA requirements found in 45 CFR Part 164, Subpart E. Discipline may include termination and civil or criminal prosecution.

(2) An employee of a covered entity may not intimidate, threaten, coerce, discriminate against, or take other retaliatory action against any person for exercising any right established by HIPAA or for opposing in good faith any act or practice made unlawful by HIPAA.

R495-881-6. Waiver of Rights Prohibited.

A covered entity may not require individuals to waive their rights under 45 CFR 160.306 or 45 CFR Part 164, Subpart E as a condition of the provision of treatment, payment, health plan enrollment, or eligibility for benefits.

R495-881-7. Complaints.

(1) An individual may seek a review of a covered entity's policies and procedures or its compliance with such policies and procedures through informal contact with the covered entity.

(2) An individual may file a formal complaint concerning a covered entity's policies and procedures implementing 45 CFR Part 164, Subpart E or its compliance with such policies and procedures or the requirements of 45 CFR Part 164, Subpart E by filing a complaint with the Office of the Executive Director of the Department requesting an agency action meeting the requirements of the Utah Administrative Procedures Act or with the Office of Civil Rights, U.S. Department of Health and Human Services.

R495-881-8. Right to Request Privacy Protection.

(1) An individual may request restrictions on use and disclosure of protected health information as permitted in 45 CFR 164.522 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, documentation of any restrictions, alternate communication methods, and conditions on providing confidential communications shall be in accordance with 45 CFR 164.522.

R495-881-9. Individual Access to Protected Health Information.

(1) An individual may request access to protected health information as permitted in 45 CFR 164.524 by submitting a written request to the designated privacy officer for the covered entity.

(2) The right to access, decision whether to grant access, review of denials, timeliness of responses, form of access, time and manner of access, documentation and other required responses shall be in accordance with 45 CFR 164.524.

R495-881-10. Amendment of Protected Health Information.

(1) An individual may request amendment to protected health information about that individual that the individual believes is incorrect as permitted in 45 CFR 164.526 by submitting a written request to the designated privacy officer for the covered entity.

(2) The decision whether to grant the request, the time frames for action by the covered entity, amendment of the record, requirements for denial, and acting on notices of amendment from third parties shall be in accordance with 45 CFR 164.526.

R495-881-11. Accounting for Disclosures.

(1) An individual may request an accounting of disclosures of protected health information as permitted in 45 CFR 164.528 by submitting a written request to the designated privacy officer for the covered entity.

(2) The content of the accounting and the provision of the accounting, shall be in accordance with 45 CFR 164.528.

KEY: HIPAA, privacy

June 24, 2003	**26-1-5**
Notice of Continuation May 27, 2008	**26-1-17**

R510. Human Services, Aging and Adult Services.
R510-110. Policy Regarding Contractual Involvements of Area Agencies on Aging for Private Eldercare and Case Management Services.
R510-110-1. Definitions.

A. Eldercare: a service provided by a corporation on behalf of its employees who have caregiver responsibilities for elderly relatives. The service includes information and referral, but may extend to other types of services and programs, as determined by the corporation.

B. Case Management: a service with several components which collectively make up case management. These components include a combination of some or all of the following:

(1) Intake and Screening: an initial contact with the AAA from the company requesting case management services.

(2) Assessment: a face-to-face evaluation utilizing a standardized Division assessment tool. The assessment provides some or all of the following information regarding the individual:

(a) functional level, including ADL and IADL status;
(b) cognitive status;
(c) health status;
(d) current living arrangement; and
(e) use of formal and informal support systems.

(3) Care Planning: a determination of the appropriate and available mix of formal and informal services and support systems required to meet the individual's long-term care needs. A care plan is then developed.

(4) Care Plan Implementation: assessment and coordination of the appropriate services. It also includes assisting the individual to make the necessary financial arrangements as required.

(5) Continued Care Management: monitoring, reassessment, and termination components of case management. More specifically this includes:

(a) monitoring the service delivery, quality of care provided, and status of the individual;

(b) reassessing the individual's cognitive status, health status, and functional level as they relate to the care provided, and making appropriate changes as needed; and

(c) closing the case once an individual no longer requires or is eligible for case management.

C. Entrepreneurial Activities of AAAs include the manufacturing, processing, selling, offering for sale, rental, leasing, delivering, dispersal or advertising of goods or services.

R510-110-2. Purpose.

A. A basic mission of AAAs under the (OAA) is to foster the development of comprehensive and coordinated systems of services for all older persons. Activities such as eldercare and case management and other entrepreneurial endeavors, which are intended to enhance the scope and quality of the system of services available to older persons in a Planning and Service Area (PSA), are consistent with the purpose of an AAA. As a result, the Division encourages the Utah AAAs to engage in appropriate relations with private corporations in the development and implementation of eldercare programs, case management, and related activities. Utah AAAs may engage in these activities provided that those activities conform to the provision of this policy issuance.

B. The Division recognizes that an AAA, in lieu of a direct contract with a corporation, insurance company, or brokering organization may elect to provide the services directly or to join with other AAAs in those contracts. These arrangements are permissible, provided that the provisions of this policy are followed.

R510-110-3. General Provisions.

A. An AAA which engages in corporate eldercare and private case management services:

(1) shall assure that its statutory duties are maintained as prescribed in the OAA, Title III: Grants for State and Community Programs on Aging, as amended, to focus on the needs of older persons in greatest need, with particular attention to low-income minority persons; and to engage only in activities which are consistent with its statutory mission as prescribed in the OAA as amended, related federal rules and regulations, and related state policy;

(2) shall assure that activities specified under the Area plan and subsequent amendments, as approved by the Division, will not be reduced as a result of activities engaged in under this policy;

(3) shall not use Title III, Title XIX, SSBG or state funds to supplement third-party payments made by a corporation under a contract covered by this policy;

(4) shall assure that any third-party payment under a private contract fully covers the cost of services provided, including administrative and overhead costs, unless a public/private partnership is established whereby the state or federal governments or other funding source agrees to subsidize the costs of private case management or older care;

(5) shall account for private corporate contract revenues and expenditures separately from federal and state funds awarded under the Area Plan contract;

(6) shall include in their Area Plan on Aging and amendments thereto an explanation describing their relationships with private corporations and services rendered to older persons as a consequence of those agreements or contracts. These AAAs, as part of their Area Plans, shall also sign a statement of assurance of compliance with the provisions of this policy.

B. The provision of IVA(2), above, does not constrain the AAA from utilizing OAA Title III Part B: Supportive Services and Senior Centers funds to develop new resources and coordinate services to develop corporate eldercare and private case management services systems in its PSA. This complies with the statutory mission of AAAs of fostering the development of comprehensive and coordinated systems of services for all older persons, which includes all types of services and resources, both public and private, which are available to serve older persons.

C. AAA offices may engage in entrepreneurial activities if this is in response to a demonstrated need and the funds raised by these activities are used for the following purposes:

(1) to further extend services and opportunities for senior citizens, or

(2) to initiate services and opportunities for seniors, provided that these services or opportunities are compatible with the AAA functions and goals.

R510-110-4. Requirements for Contracts Between AAAs and Corporations, Insurance Companies, and Related Organizations.

A. General Provisions:

(1) An AAA cannot execute an agreement or contract that demands exclusivity; an AAA must be free to negotiate other similar agreements or contracts with other companies.

(2) An AAA cannot enter into an agreement or contract that obligates it to be identified with or to promote the company or its products or places it in a conflict of interest with its public mission.

(3) A contract must state that the AAA has the right to refuse services to a company or its employees or clients in the event that there is a potential conflict of interest for the AAA, as identified by the AAA or the Division.

(4) A contract must provide that an AAA has the right to reveal its findings, plans, and recommendations to the client,

regardless of the company's final decision regarding client eligibility and services provided.

(5) A contract must provide that all information as to personal facts and circumstances obtained by the AAA shall be treated as privileged communications, shall be held confidential and shall not be divulged without the written consent of the individual receiving the services, his attorney, or his legal guardian, except as is required by the corporation, insurance company, or brokering organization, or as may be required by the Division for the purposes of monitoring for compliance with the provisions of this policy, or as directed by the court. However, nothing prohibits the disclosure of information in summary, statistical, or other form which does not identify particular individuals.

(6) A contract must hold the AAA and the Division, where it is a party to the contract, harmless and defend them in any actions brought against them on the basis of companies' policies or decisions regarding benefits and services.

(7) Provisions of the contract may not require the withholding of information or otherwise limit the ability of the AAA to judge or act in the public interest; or restrict the ability of the Division to exercise appropriate oversight of the AAA in its fulfillment of its public mission and responsibilities.

B. Specific Provisions Regarding Long-Term Care Insurance Case Management Contracts: In contracts covering long-term care insurance case management services, companies must assure that:

(1) they are financially stable, are in good standing, and are in compliance with all statutes and rules governing insurance companies in the state of Utah;

(2) their long-term care insurance policies comply with the Utah insurance laws.

R510-110-5. Monitoring by the State Division of Aging and Adult Services.

the Division through its program monitoring activities, including financial audits, shall periodically assess AAA compliance through the following actions:

A. Review and approval of the AAA Area Plan and amendments, to be done annually and more frequently for modifications as submitted. The Division office will review:

(1) explanation describing AAA relationship with private corporations;

(2) signed statement of assurance of compliance with this policy; and

(3) related data in program and service costs in Area Plan.

B. Annual review of financial audits. The Division will review:

(1) adequacy of AAA financial control system;

(2) adequacy of AAA financial system to maintain separate accounting for different funds, including private contracts; and

(3) adequacy of AAA support documents to justify costs to each funding source.

C. Field visits and assessments of AAA activities: the Division monitoring and assessment will include a review for compliance with policy contained herein, including contract requirements.

D. When a finding shows the AAA to be out of compliance with the provisions of this policy or contract requirements, the Division may impose one or more of the following: 1) corrective actions; 2) special conditions included in the Division/AAA Contract; 3) withhold funds; 4) withhold or deny approval of the Area Plan. Process for appeal of these actions is outlined in Section 63G-6-801 through 63G-6-820, Utah Procurement Code.

KEY: eldercare
1991 **62A-3-104**
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-200. Long-Term Care Ombudsman Program Policy.
R510-200-1. Purpose.

A. The Long-term Care Ombudsman (LTCO) Program is created for the purpose of promoting, advocating, and ensuring the adequacy of care received, and the quality of life experienced by elderly residents of long-term care facilities within the State.

B. Operation of the LTCO Program is a joint responsibility of the Division and local AAAs. Authority to administer the LTCO Program is derived from the Older Americans Act (OAA) Title VII: Allotments for Vulnerable Elder Rights Protection Activities and Section 62a-3-201 et seq.

C. The Division will establish a State Office of LTCO.

D. The State LTCO is responsible for:

(1) oversight of the statewide LTCO program;

(2) providing training to local LTCO staff and volunteers;

(3) provision of public information regarding the LTCO program;

(4) working with federal agencies, the State Legislature, other units of state government and other agencies to obtain funding and other resources;

(5) developing cooperative relationships among agencies involved in long-term care;

(6) resolving conflicts among agencies regarding long-term care;

(7) assuring consistent, statewide reporting of LTCO program activities:

(8) monitoring local LTCO programs;

(9) providing technical assistance to local LTCO programs;

(10) maintaining close communication and cooperation in the LTCO statewide network;

(11) recommending rules governing implementation of the LTCO program; and

(12) providing overall leadership for the Utah LTCO program.

E. The Division may employ Regional Ombudsmen to assist the State LTCO in meeting his or her responsibilities. In addition to assisting the State LTCO, Regional Ombudsmen are responsible to:

(1) Spend a majority of their time providing ombudsman services, including but not limited to, investigating and resolving complaints when local ombudsmen transfer a case, providing services to assist elderly residents of long-term care facilities, informing and educating elderly residents about their rights, providing administrative and technical assistance to local ombudsmen and volunteers, providing systemic advocacy, providing training to long-term care facilities, and assisting in the development of family and resident councils;

(2) Provide monitoring, oversight, assistance and leadership to local ombudsmen and volunteers in their region;

(3) Ensure that all ombudsmen in their region adhere to established policy and procedure; and

(4) Improve consistency and quality of Ombudsmen services in their region.

F. AAAs are responsible for daily operation of the program, either directly or by contract, as defined in these rules.

G. The Division, State LTCO and AAAs must work together to protect elderly residents, promote quality care in long term care facilities, and promote the LTCO program.

R510-200-2. Definitions.

A. "AAA" means area agency on aging as designated by the Division of Aging and Adult Services.

B. "APS" means adult protective services.

C. The Division means the Division of Aging and Adult Services within the Utah Department of Human Services.

D. "Elderly resident" means an adult 60 years of age or older who resides in a long-term care facility.

E. Long-term ombudsman is a person, operating within the guidelines of the Older American Act and the policies of the Division, who advocates for elderly residents of long-term care facilities to ensure the quality and adequacy of care received.

F. "Local LTCO" means the local program and personnel designated by the Division, through each AAA, to implement the (LTCO) Program within a defined geographic area.

G. "Responsible Agency" means the agency responsible to investigate or provide services on a particular case.

H. "State LTCO" means long-term care ombudsman personnel within the Division.

I. "Long-Term Care Facility" means any skilled nursing facility, intermediate care facility, nursing home, assisted living facility, adult foster care home, or any living arrangement in the community through which room and personal care services are provided for elderly residents.

R510-200-3. Local LTCO Program Administrative Standards.

A. AAAs shall operate the LTCO Program in accordance with the following standards:

(1) Supervision: All local LTCO shall have an identified supervisor. The person supervising the ombudsman shall meet all requirements for a supervisor as specified by the AAA and shall have at least a general knowledge of long-term care facilities.

B. Staffing: Each AAA shall recommend for certification one or more paid or volunteer staff members to serve as local LTCO.

(a) Persons assigned this responsibility shall have either education or experience in one or more of the following areas: gerontology, long-term care, health care, legal or human service programs, advocacy, complaint and dispute resolution, mediation or investigating.

(b) Assigned individuals shall be certified by the State LTCO within six months after assuming a local LTCO role.

B. The AAA shall have primary responsibility to provide for certified back-up to the local LTCO. AAAs may enter into cooperative agreements with other AAAs to provide for LTCO back-up. In emergency situations, AAAs may request back-up support from the State LTCO.

C. Local ombudsmen shall have no conflict of interest which would interfere with performing the function of this position, including:

(1) direct involvement in the licensing or certification of a long-term care facility or of a provider of a long-term care service;

(2) ownership or investment interest, represented by equity, debt, or other financial relationship in a long-term care facility or a long-term care service;

(3) employment by, or participation in the management of, a long-term care facility;

(4) receiving, or having the right to receive, directly or indirectly, remuneration in cash or in kind under a compensation arrangement with an owner or operator of a long-term care facility.

D. AAAs shall establish, and specify in writing, mechanisms to identify and remove conflicts of interest and to identify and eliminate relationships described in paragraph 3 including mechanisms such as:

(1) methods by which the AAA will examine individuals and immediate family members to identify conflicts; and

(2) actions the AAA will require individuals and family members to take in order to remove those conflicts.

E. Local LTCO shall have the ability to act in the best interests of residents of long-term care facilities, including taking public positions on policies or actions which affect residents. Local LTCO shall not be constrained by the local

AAA or governing body from taking a stand in good-faith performance of their job.

(1) AAAs shall have on file a written description outlining the working relationship between the AAA and the ombudsman which spells out arrangements for assuring this ability.

(2) Grievance Procedure

(a) AAAs shall establish a grievance procedure to accept and hear complaints regarding an ombudsman's actions. The procedure shall allow for a final appeal to the Utah State Department of Human Services Office of Administrative Hearings.

(3) Records System

(a) AAAs shall maintain a records classification and retention program in accordance with Sections 63G-2-301 and 63A-2-901 and PL 89-73 42 USC 300-1 et seq.

R510-200-4. Local LTCO Classifications and Duties.

A. Ombudsman

An Ombudsman, who may be either a paid staff member or volunteer, may perform the following duties:

(1) investigate complaints and develop an action plan to resolve the complaint;

(2) provide supervision over the implementation of the action plan and any follow-up determined necessary;

(3) review complaints to set complaint response priorities;

(4) assign complaints to staff and volunteers;

(5) provide case consultation to long-term care facility staff; and

(6) perform duties of an assistant ombudsman.

B. Assistant Ombudsman

(1) An Assistant Ombudsman, who may be either a paid staff member or volunteer, may:

(a) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(b) observe actions and quality of care in long-term care facilities;

(c) perform complaint intake;

(d) provide residents, families, and the general public with information about the LTCO program and resident rights;

(e) provide public presentations;

(f) assist with resolution and follow-up on complaints while under the supervision of a Certified Ombudsman; and

(g) provide technical assistance to the general public and long-term care facility staff.

C. Ombudsman Program Director

(1) An Ombudsman Program Director, who may be the AAA director or his designee, may perform the duties of an Ombudsman, if certified as such, and shall:

(a) provide overall administration of the local ombudsman program;

(b) provide overall supervision of LTCO paid and volunteer staff;

(c) conduct quality assurance and complaint case record reviews;

(d) oversee the screening, hiring, and dismissal of LTCO staff and volunteers; and

(e) assess the need for regulatory changes to improve the quality of care and life for long-term care facility residents and advocate for the passage of those changes.

D. Non-certified Staff or Volunteers

Non-certified staff or volunteers may perform the following functions:

(a) complaint intake;

(b) provide public information and presentations regarding the LTCO program, long-term care in general, and other topics on which they may have expertise, as determined by the AAA;

(c) provide outreach to residents, families, facilities, and other entities concerned about long-term care;

(d) visit long-term care facilities and residents; and

(e) any other activity which does not expressly require certification and for which the AAA has determined the individual competent to engage in on behalf of the AAA or LTCO program.

R510-200-5. Certification Curriculum and Training Hours.

A. Assistant Ombudsman: Prior to applying for certification as an Assistant Ombudsman, an individual shall complete a minimum of 18 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall cover the following areas:

(1) An introduction to the LTCO Program, including a discussion of the scope of work of the LTCO.

(2) An overview of the long-term care system, including a discussion of:

(a) the types of long-term care facilities and providers, their organization and operations;

(b) federal and state regulations applicable to long-term care facilities and providers, with an emphasis on resident rights;

(c) long-term care resident profiles and methods of payment for long-term care services;

(d) the aging process and attitudes of aging; and

(e) the Aging Network and the relationship between the AAAs, the State LTCO, and various regulatory agencies.

(3) Ombudsman skills, including:

(a) interpersonal communication, observation, and interviewing;

(b) building working relationships with providers; and

(c) complaint handling, with an emphasis on intake.

(4) An overview of complaint resolution skills, with an emphasis on advocacy, negotiating, empowering residents, and follow-up activities.

(5) LTCO Program policies and procedures, including:

(a) confidentiality;

(b) access to facilities and residents;

(c) complaint investigation and resolution;

(d) reporting; and

(e) ethics.

(6) Case record documentation.

(7) Mediation and negotiation between residents.

(8) Any additional topics deemed appropriate by the State LTCO in consultation with the Division, AAAs, long-term care regulatory agencies and local LTCO Program Directors.

B. Ombudsman: Prior to applying for certification as a local Ombudsman, an individual shall complete a minimum of 30 hours of required initial training and pass the post-test with a minimum score of 70%. This training shall include all training described in Section A plus an additional 12 hours of training covering the following areas:

(1) a more in-depth review of the content areas covered for candidates for certification as ombudsman representatives, including written exercises, case studies, role plays, research exercises, and analysis of systemic issues;

(2) development of a complaint resolution action plan;

(3) legal, administrative, and other remedies;

(4) actions regarding public disclosure of actions or inactions which affect residents of long-term care facilities, including appropriateness, confidentiality of certain information, and how to work with the media;

(5) review of client records;

(6) alternative dispute resolution options for use in complaint handling; and

(7) advocacy skills.

C. Post-tests: The post-tests referred to in Sections A and B shall be developed by the State LTCO and shall be structured in sections to correspond to major training topics. If an applicant does not receive a score of at least 70% on a post-test they shall be eligible to retake the test one time within 30 days.

If they do not receive a minimum score of at least 70% on the retake test, they will need to complete the training pertaining to the test sections on which they did not receive a passing score. Upon completion, they will be allowed to take the test one additional time. If a passing score is not obtained, the applicant will be deemed by the State LTCO to not be appropriate for certification as an Assistant Ombudsman or Ombudsman.

D. Ongoing Training: To maintain certification, an assistant ombudsman must complete a minimum of 12 hours of training annually; an ombudsman must complete a minimum of 24 hours of training annually.

(1) The State LTCO will provide for at least 48 hours of LTCO specific training per year. Training shall be scheduled at various times throughout the year and in various locations throughout the State.

(2) During the first year in which a person functions as an assistant ombudsman or ombudsman the required initial training will count toward the annual training requirement;

(3) Relevant training offered in the community can serve to meet annual training requirements in lieu of state-sponsored LTCO training on an hour-for-hour basis. Documentation of attendance at a training, including a copy of the training agenda, shall be submitted to the State LTCO for approval.

R510-200-6. Registration and Certification of Ombudsmen and Assistant Ombudsmen.

A. Central Registry

(1) The State LTCO shall maintain a central registry of all local ombudsmen and assistant ombudsmen. The registry shall retain the following information on each:

(a) the ombudsman's or assistant ombudsman's name, address, and telephone number;

(b) a summary of the ombudsman's or assistant ombudsman's qualifications;

(c) the ombudsman's or assistant ombudsman's classification;

(d) the AAA with which the ombudsman or assistant ombudsman is associated;

(e) the most recent date of certification;

(f) a position description which contains any prohibitions applicable to the ombudsman or assistant ombudsman. Prohibitions may include limitation on the duties that may be performed, limitations on the providers the ombudsman or assistant ombudsman may investigate or attempt complaint resolution with, or any limitations due to a conflict of interest; and

(g) information pertaining to any decertification actions and the results of those actions.

(2) Local ombudsman and assistant ombudsman shall register with the State LTCO through the AAA within 30 days of accepting assignment as a local ombudsman or assistant ombudsman.

R510-200-7. Decertification of Ombudsmen and Assistant Ombudsmen.

Decertification of an ombudsman or assistant ombudsman may occur through voluntary resignation or decertification by the State LTCO or AAA or sponsoring agency which employs him. A person who has been decertified may not be assigned to ombudsman duties.

A. Involuntary Decertification With Cause:

(1) No ombudsman or assistant ombudsman shall be recommended for involuntary decertification without cause. Cause may include:

(a) failure to follow policies and procedures that conform to the LTCO statute and rules;

(b) performing a function not recognized or sanctioned by the LTCO Program;

(c) failure to meet the required qualifications for certification;

(d) failure to meet continuing education requirements;

(e) intentional failure to reveal a conflict of interest; or

(f) misrepresentation of the ombudsman's or assistant ombudsman's category of certification or the duties he is certified to perform.

(2) The State LTCO and AAAs shall establish, for their respective programs, policies and procedures for recommending decertification. Those policies and procedures shall require that the State LTCO or AAA attempt to help the LTCO or Assistant LTCO attain satisfactory job performance through professional development, supervision, or other remedial actions prior to recommending decertification.

(3) AAAs recommending decertification shall state their reasons in writing and shall provide any relevant documentation to support the recommendation to the State LTCO. Notice of the recommendation for decertification and the basis for the recommendation shall be provided to the local ombudsman or assistant ombudsman at the same time that information is submitted to the State LTCO.

(4) The State LTCO shall review the recommendation and provide written notification of his decision to the AAA and the local ombudsman or assistant ombudsman within ten working days. The AAA or local ombudsman or assistant ombudsman may appeal the State LTCO's decision in accordance with the Department of Human Services Rule R497-100.

(5) When the State LTCO initiates a decertification action against a local ombudsman or assistant ombudsman, the State LTCO shall provide written notification to the AAA and the local ombudsman or assistant ombudsman. The AAA or the local ombudsman or assistant ombudsman may appeal the decision in accordance with the Department of Human Services Rule R497-100.

(6) Upon completion of the decertification actions, the State LTCO shall record the actions and results in the central registry.

B. Voluntary Decertification Without Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns due to personal reasons which would not otherwise affect certification, they shall surrender their LTCO identification card to the AAA. The AAA shall notify the State LTCO of the voluntary decertification. The State LTCO shall record the date of voluntary decertification in the central registry.

C. Voluntary Decertification With Cause:

When a local ombudsman or assistant ombudsman voluntarily resigns for reasons which would otherwise warrant involuntary decertification, they shall surrender their LTCO identification card to the AAA within seven days. The AAA shall notify the State LTCO of the voluntary decertification with cause and shall notify the local ombudsman or assistant ombudsman of the right to a hearing. The State LTCO shall record the date of voluntary decertification in the central registry.

D. Recertification:

(1) A certified local ombudsman or assistant ombudsman who voluntarily requests decertification may apply to have his certification reinstated when he becomes reemployed or accepted as a LTCO staff or volunteer. Any person seeking recertification shall apply in writing, through the AAA, to the State LTCO. The application shall include the date of the most recent decertification action and a summary of any professional development in or experience with ombudsman skills, long-term care services, problem resolution skills or any related skills the applicant may have received since his decertification.

(2) The State LTCO shall review the application and may require the applicant to receive additional professional development, and take an appropriate examination based upon the length of time since the applicant's most recent certification,

and the experience or professional development the applicant has accumulated in the interim. The State LTCO shall make notify both the AAA and the applicant of the decision within ten working days.

R510-200-8. Operation of the Long-Term Care Ombudsman Program.

A. Intake: The local LTCO Program shall accept and screen referrals from residents, family, facility staff, agency staff and the general community. Ombudsmen and assistant ombudsmen may also serve as the complainant for situations they have personally observed.

(1) If the information indicates that the referral relates to abuse, neglect, or exploitation of a resident, the local LTCO shall refer the complaint to either the local Adult Protective Services (APS) office or local law enforcement. The local LTCO and the APS worker should collaborate on investigating and resolving the complaint whenever possible.

(2) If the information indicates that the referral relates to facilities or operations licensed or certified by the Department of Health Bureau of Medicare/Medicaid Program Certification and Resident Assessment, and the nature of the complaint is other than alleged abuse, neglect or exploitation of a resident, the LTCO shall refer the complaint to the Department of Health. The local LTCO and Department of Health staff should collaborate on investigating and resolving the complaint whenever possible.

(3) Referrals to other agencies shall be made immediately if the situation appears life threatening or, in other situations, within two working days. If a referral is made to another agency, the local LTCO shall complete the intake form, indicating the referral date and entity, and maintain the form as part of the record. The local LTCO shall follow up to see that action was taken by the referral agency.

(4) If the referral involves a resident who is under the age of 60, and the nature of the complaint is limited to impact only on that resident, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section and take no further action. If the referral involves a resident who is under the age of 60 who resides in a facility that has other residents over the age of 60 and the nature of the complaint is such that it impacts those residents, the local LTCO shall refer the complaint as specified in paragraph (1) or (2) of this section as applicable and initiate an investigation.

(5) If the complaint involves residents rights or other issues within the jurisdiction of the LTCO, an investigation shall be initiated to determine if the complaint is valid. Issues within the purview of the LTCO include issues of privacy, confidentiality of information, and other issues relating to the action, inaction, or decisions by providers or representatives of providers of long-term care services, public agencies, or health and human service agencies that may adversely affect the health, safety, welfare, or rights of residents.

B. Investigations:

(1) LTCO investigations shall be initiated within three working days. If the available information indicates serious threat to a resident's life, health or property, the response shall be immediate.

(2) The investigation may involve phone or in-person contacts with the resident and complainant, collateral agency or individual contacts or an on-site investigation. The local LTCO shall:

(a) do a preliminary screening to gather facts and details of the complaint;

(b) categorize the complaint, i.e. resident rights, education, abuse, neglect, technical assistance, etc.;

(c) identify all parties to the complaint;

(d) identify relevant agencies, as required by state and federal statutes;

(e) identify steps already taken by the complainant;

(f) identify information gaps that may require additional research;

(g) determine if an on-site investigation is needed. If it is determined that an on-site investigation is not necessary, the LTCO shall document the reasons in the case file;

(h) determine if the situation is an emergency; and

(i) make verbal or written follow-up with the complainant.

(3) The method and extent of the investigation depends on the circumstances reported. The local LTCO shall complete an intake form on each referral. A complaint consists of the initial referral or any additional contacts regarding the initial referral received during the period that the case is opened. A referral regarding a different matter made during the period the case is opened is considered a new complaint. A referral received after a case is closed is considered a new complaint.

(4) When an on-site investigation is determined to be necessary the local LTCO does not have to give prior notice to the agency or facility in question. The local LTCO may choose to give notice if deemed appropriate. In either case, the ombudsman shall:

(a) upon arrival at the facility or agency, present official identification to the administration or designated person in charge;

(b) identify any factors that may interfere with the investigation;

(c) start the investigatory process to establish as clearly as possible what has happened, why it has happened, who or what is responsible for resolving the complaint, and possible solutions to the problem;

(d) interview the resident, as well as other residents, staff, family, friends and physician as deemed necessary;

(e) make phone calls, on-site observation, review resident records, and make collateral contacts with other agencies and professionals; and

(f) take any other appropriate investigatory actions within the purview of the LTCO Program.

(g) During the course of the investigation, the local LTCO shall look for credible evidence which supports or refutes the complaint. Evidence may be directly observed by the LTCO or indirectly gathered from statements from reliable sources. The State LTCO shall provide consultation and technical assistance regarding the methods used in investigating complaints as requested by the local LTCO.

(h) Ombudsmen shall be provided privacy by the facility or agency during all aspects of the investigative process.

(5) Determining Validity of Complaint

(a) The local LTCO, having gathered evidence regarding the complaint, shall review the evidence to determine whether that evidence supports the allegations made in the complaint. If the local LTCO is uncertain as to whether the complaint is valid, he shall discuss the situation with his supervisor. If further consultation is necessary, contact should be made with the State LTCO, who may suggest additional activities or approaches to the problem. The local LTCO shall gather further evidence from interviews, collateral contacts, and records review, until the body of evidence enables the local LTCO to make a supportable decision regarding validity of the complaint.

(b) Upon determination of the validity of the complaint, the local LTCO shall document the determination and reasons for it in the case file.

(6) Resolution of Complaints

(a) Having determined that the complaint is valid, the local LTCO shall take appropriate steps to resolve the complaint, including:

(i) determining the scope of the problem. Does the problem affect just the residents mentioned in the complaint, or does it affect other residents?

(ii) determining what options exist to resolve the

complaint. For example, can the complaint be resolved immediately, will the resolution require negotiation with the facility management, or has the facility already moved to resolve the situation.

(iii) discussing with the resident which of the options are acceptable to resolve the complaint. Determining an acceptable resolution may require negotiation between the parties to achieve an acceptable resolution to the situation.

(iv) developing with the resident and facility a plan to achieve the agreed-upon resolution. The plan may be very simple or may have several steps and involve other agencies. Once the plan is agreed upon, the local LTCO, facility, resident, and other parties shall take action to implement the plan.

(v) making referrals to other agencies if a referrals are required by the plan.

(a) If during the investigation process the local LTCO determines that the incident or activities should be referred to APS, Health Facility Licensure, or Health Facility Review, the LTCO shall immediately make the referral and involve all appropriate agencies.

(b) The local LTCO who has referred the complaint to another agency shall follow up to obtain final results and record the outcome of the other agency's investigation. If the other agency does not respond or if the response is inadequate, the local LTCO may:

(1) contact the agency; or

(2) contact the State LTCO for technical assistance or help in resolving the problem with the other agency; or

(3) collaborate with another advocacy agency, such as the Legal Center for People with Disabilities, the Senior Citizens Law Center, or the local office of Utah Legal Services to resolve the issue and clarify substantive legal rights of elderly residents; or

(4) track on-going problems with an agency or facility to build a body of credible evidence on which to base further action; or

(5) take any other appropriate action within the LTCO scope of authority, including filing legal action against the other agency if the AAA has the legal resources to bring legal action.

(6) compiling documentation of the validity of the complaint, of the agreed-upon outcome, and the steps taken to carry out the plan. The documentation may be summary in nature, but should clearly indicate the situation and its resolution.

(7) determining at what point the case is appropriately closed.

(8) notifying the complainant, verbally or in writing, that the investigation has been completed and the case is closed.

(7) Records

(a) The local LTCO shall maintain a set of records by resident, containing all required forms and relevant documentation, including:

(i) a completed intake form;

(ii) case recording consisting of: the nature of the complaint; validity of complaint and reasons for the determination; plan for resolution; implementation and outcome of plan; and dates and names of any collateral contacts.

(iii) consent forms; and

(iv) copies of any correspondence or written documents pertaining to the complaint, the investigation, the resolution plan, or implementation of the resolution plan.

(b) The local LTCO shall also maintain information by facility relating to all referrals.

(c) All actions, findings, conclusions, recommendations and follow-up shall be documented on the required state forms.

(8) Consent Forms

(a) In order to access resident files maintained in a facility, the local LTCO must attempt to obtain a signed release from the resident or the resident's legal representative. Signed releases shall be maintained in the case file and a copy shall be given to the facility or agency for inclusion in the residents record.

(b) If the local LTCO is unable to obtain written permission, he may get verbal approval from the resident or the resident's legal representative. The date and method of obtaining the verbal approval, e.g. phone contact with guardian, shall be documented in the case file. LTCO shall attempt to have a third-party witness the verbal consent and document it in the record.

(c) If a request for written or verbal consent is denied by the resident or their legal representative, the local LTCO shall not access the records.

(d) If the request for written or verbal consent is unsuccessful for any reason other than specific denial by the resident or legal representative, the local LTCO may proceed to access the records. The reasons for not obtaining consent shall be documented in the case file.

(9) Access to LTCO Records

(a) Records maintained by the local LTCO shall be available to the LTCO, their supervisor, the LTCO Program Director, the State LTCO, and any duly authorized agent of the AAA or the Division with program oversight responsibility. No other staff shall have access to these records.

(b) Residents have the right to read their LTCO records; however, the name of any complainants shall be withheld.

(c) LTCO records shall be released to other persons if the resident provides written consent. The consent form must be filed in the resident's file.

(d) State and federal auditors may have access to LTCO records as required for administration of the program.

(d) Statistical information and other data regarding the LTCO program which does not identify specific residents or complainants is available for public dissemination.

(10) Reporting Requirements to State LTCO

Local LTCO programs shall report to the State LTCO on the operation of the LTCO program. Reports shall include the data required to complete the State's report to the U.S. Department of Health and Human Services, Administration on Aging. Reports shall be submitted within time frames and in a format which shall be mutually agreed upon by the Division and AAAs.

(11) Legal Issues

(a) Legal representation: The Division is responsible for assuring that adequate legal representation is available for local LTCO Programs. AAAs and their governing authorities shall have the option to provide legal representation for their local LTCO Program. If an AAA, through their governing authority, opts not to provide this representation, the Division shall arrange for the representation through the attorney general or through contract. All AAA requests for legal consultation or representation shall be directed to the State LTCO for action. The Division is responsible to assure that no conflict of interest is present in the provision of legal representation to local LTCO Programs.

(b) Liability: The local LTCO must operate within the scope of the ombudsman job description and this policy. Actions such as transporting a client, acting as a guardian or payee, signing consent forms for survey, medication, restraints, etc., signing medical directives, receiving a client power of attorney, and similar actions are outside the scope of the LTCO responsibilities. In doubtful situations the ombudsman should consult with supervisors, legal counsel or the State LTCO.

(c) Guardianship:If a resident has a legal guardian, the local LTCO must work with the guardian. If the local LTCO identifies problems in the guardianship, they will discuss the situation with the local adult protective services staff to determine the advisability of investigating for abuse, neglect, or exploitation. They may also consult legal counsel or present issues to the court which oversees the guardianship.

(12) Volunteers

Local LTCO programs which use volunteers shall follow AAA policy with respect to applications, screening and approval, reference checks, personnel records, reimbursement, supervision, liability and all other relevant aspects of the volunteer program. In addition, volunteers must meet specific training and certification requirements contained in these rules if they are serving in the capacity of local ombudsman or assistant ombudsman.

(13) Public Education

In addition to receiving and investigating complaints, local LTCO Programs are mandated by federal and state statute to provide public education regarding long-term care issues. This may include activities such as frequent presence in facilities, community advocacy, attendance at family or resident councils, technical assistance and in service to long-term care facilities, community organizations, and public information presentations.

R510-200-9. Determination of the Responsible Agency for Investigating Particular Cases in Long-Term Care Facilities.

A. Pursuant to Utah Code Section 62A-3-106.5, to avoid duplication in responding to a report of alleged abuse, neglect, or financial exploitation in a long-term care facility, the Division hereby establishes procedures to determine whether Adult Protective Services or the Long-Term Care Ombudsman Program will be responsible to investigate or provide services in a particular case and determine whether, and under what circumstances, the agency that is not the responsible agency will provide assistance to the responsible agency in a particular case.

B. The Long-Term Care Ombudsman Program will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of an elderly adult who resides in a long-term care facility in the following cases:

(1) When an allegation of abuse, neglect or exploitation occurs, the Long-Term Care Ombudsman will be the responsible agency in cases other than cases that allege sexual abuse or sexual exploitation;

(2) When an elderly resident of a long-term care facility has allegedly abused, neglected, or financially exploited another resident;

(3) When an employee of a long-term care facility has allegedly abused, neglected, or financially exploited an elderly resident and the facility has terminated the employee;

(4) When the police or local law enforcement have initiated an investigation of alleged abuse, neglect, or financial exploitation.

C. Adult Protective Services will be the responsible agency in responding to a report of alleged abuse, neglect, or exploitation of a vulnerable adult who resides in a long-term care facility in the following cases:

(1) When an allegation of sexual abuse or sexual exploitation of a vulnerable adult is received.

D. The agency that is not the responsible agency will provide assistance to the responsible agency in the following circumstances:

(1) When the responsible agency requests the assistance of the non-responsible agency; or

(2) When the responsible agency is the LTCO and there is evidence that the resident's protective need has not been met.

KEY: elderly, ombudsman, LTCO
October 23, 2006 62A-3-201 to 8
Notice of Continuation August 21, 2007 62A-3-104

R512. Human Services, Child and Family Services.
R512-204. Child Protective Services, New Caseworker Training.
R512-204-1. Purpose and Authority.

A. Pursuant to Section 62A-4a-107, the Division of Child and Family Services (Child and Family Services) mandates that before assuming significant independent casework responsibilities, all caseworkers shall successfully complete the core curriculum training.

B. Section 62A-4a-102 gives the Board of Child and Family Services rulemaking authority.

R512-204-2. Conflict Training.

The child welfare training coordinator for Child and Family Services is charged with the responsibility for ensuring that the core curriculum is inclusive of information about working with families where there is a conflictual relationship born out of divorce proceedings. This training must include information on fraudulent reporting in Child Protective Services investigations. Other training information must be provided that assists the caseworker in using a variety of techniques to develop a complete picture of the family dynamics and how this may impact the information gathered and the conclusions reached at the end of an investigation.

KEY: child welfare, child abuse, caseworker training
May 8, 2008 **62A-4a-105**
62A-4a-107
62A-4a-102

R523. Human Services, Substance Abuse and Mental Health.
R523-22. Utah Standards for Approval of Alcohol and Drug Educational Programs for Court-Referred DUI Offenders.
R523-22-1. Purpose and Statutory Authority.

1. Purpose. These rules prescribe standards for approval of programs and certification of instructors for providing alcohol and drug education to court-referred offenders convicted of a Driving Under the Influence (DUI) violation of Sections 41-6-43, 41-6-44, 41-6-45, and 73-18-12 through 73-18-12.2.

2. Statutory Authority. These standards are promulgated by the Utah Department of Human Services through the Division of Substance Abuse and Mental Health (hereinafter referred to as "Division") as authorized by Sections 41-6-44, 62A-15-103, 62A-15-105, 17-43-201 62A-15-501-503 and 76-5-207.

3. Intent. The objective of the DUI Educational Program is to: (a) eliminate alcohol and other drug-related traffic offenses by helping the offender examine the behavior which resulted in his arrest, (b) assist him in implementing behavior changes to cope with problems associated with alcohol and other drug use, and (c) impress upon him the severity of the DUI offense.

R523-22-2. Definitions as Used in These Standards.

1. "DUI Educational Program" herein referred to as program is an instructional series operated by a licensed substance abuse treatment program which satisfies the standards established by the Division.

2. "DUI" is driving or being in actual physical control of a vehicle while under the influence of alcohol or any drug or the combined influence of alcohol and any drug to a degree, which renders the person incapable of safely driving a vehicle. In these standards, "DUI" shall refer to individuals convicted of violating Sections 41-6-43, 41-6-44, 41-6-45,and 73-18-12 through 73-18-12.2.

3. "Certificate" is a written authorization issued by the Division to indicate that the Program has been found to be in compliance with these Division standards.

4. "Offender" is an individual convicted of violating Section 41-6-43, 41-6-44, 41-6-45, or 73-18-12 through 73-18-12.2.

5. "Screening" is a process using the SASSI (Substance Abuse Subtle Screening Inventory) or other Division approved screening tool in order to identify the need for additional assessment.

6. "Instructor" is a person who has been certified by the Division to instruct in educational programs for court-referred offenders convicted of DUI.

R523-22-3. Certification Requirements for DUI Educational Programs.

1. In order to operate, a DUI Educational Program shall make application to the Division at least 60 days prior to the planned effective date. The Division will provide the application form.

2. Application for certification will require that the program provide, among other things:

a. a brief description and purpose of program, plus explanation of program's relationship with other components of the local DUI system, i.e., Local Substance Abuse Authorities, local courts, police, Probation and Parole, Alcoholics or Narcotics Anonymous, etc.;

b. the geographical area to be served;

c. the ownership and person or group responsible for program operation;

d. the location and time that DUI classes are normally held;

e. a list of instructors employed by the program; and

f. a copy of their substance abuse treatment license.

3. A DUI Educational Program shall also:

a. ensure that offenders receive no less than 16 hours of face-to-face instruction using the Division's approved curriculum with no more than 4 hours of instruction occurring in any calendar day;

b. allow no more than 25 persons, including offenders and others to a class;

c. follow the recommendations of the screening which has been provided;

d. ensure that screenings are conducted by staff from a licensed treatment program who have been trained in administering the screening tool;

e. report the number of offenders completing the DUI Educational Program to the Division;

f. have policies ensuring confidentiality of information maintained on offenders that conform to the requirements in 42 Code of Federal Regulations Chapter 1 Part 2;

g. ensure that instructors follow the Division-approved curriculum;

h. have available for review a copy of the program's charter, constitution, or bylaws;

i. outline the eligibility criteria for admission to the program, including the screening tool used;

j. ensure that all instructors employed by the program have completed the Division required DUI training/certification; and

k. comply with all applicable local, state and federal laws and regulations.

4. An offender's participation in the DUI Educational Program shall not be a substitute for treatment required by the courts.

5. The Division shall issue the program a certificate after determination has been made that the applicant is in compliance with these standards.

6. The Division Director has the authority to grant exceptions to any of the certification requirements.

R523-22-4. On-site Survey of Program.

1. After a review of the application, a site review will be scheduled by a designated representative of the Division. With each initial application and application for renewal the applicant agrees, as a condition of program certification, to permit representative(s) of the, Division, and/or the local substance abuse authority as authorized by the Division to enter and survey the physical facility, program operation, client records and to interview staff for determining compliance with applicable laws.

2. The DUI Educational Program also agrees to allow representatives from the Division and from the local substance abuse authority as authorized by the Division to attend the classes held. Such visits may be announced or unannounced.

3. Review Procedures. Within 30 days after completion of the on-site survey, the Division shall notify the applicant of action taken: approval, denial, or request for further information.

R523-22-5. Instructor Certification.

1. By this rule the Division hereby establishes certification requirements for Instructors, which consist of the following:

a. All instructors employed by any DUI Educational Program shall be certified by the Division prior to instructing the state approved DUI curriculum for any DUI Educational Program.

b. All instructors shall attend and complete the requirements of the instructor training sponsored by the Division.

c. Requirements in A and B above shall be complete and verifiable.

d. The instructor agrees, as a condition of certification, to use only the Division-approved curriculum when conducting a

DUI Educational Program.

e. The instructors must agree to attend all required DUI training sessions sponsored or approved by the Division.

R523-22-6. Recertification of Instructors.

1. An instructor must recertify every twenty-four months by: annually, on a calendar year basis attending and completing the requirements of any Division-sponsored or approved DUI training sessions. The instructor must sign a register at those training sessions which have been set aside for DUI instructor recertification.

2. It is the responsibility of the instructor to notify the Division immediately of any address change.

3. The Division Director or designee has the authority to grant exceptions to any of the certification requirements.

R523-22-7. Corrective Action for a Program or an Instructor.

1. If the Division becomes aware that a DUI education program or an instructor is in violation of these standards, it shall proceed with the following steps:

a. Within 30 days of becoming aware of the violation, the Division shall notify the program or the instructor in writing of the area(s) of noncompliance.

b. Within 30 days of receiving notification of violation, the program or the instructor shall submit a written plan to the Division for achieving compliance.

c. If the written plan is not accepted as satisfactory by the Division within 30 days the program or the instructor shall be notified that they have been suspended until compliance is achieved.

d. A program or an instructor must cease conducting any DUI Educational Program until the suspension is lifted.

e. If the Division does not receive written evidence of compliance within 30 days of notification of suspension, the Division shall revoke the program or instructor's certification.

R523-22-8. Revocation of a Program's or an Instructor's Certification.

1. The Division shall revoke the certification of a program or an instructor for the following reasons:

a. If the program or the instructor fails to provide the Division by certified mail with written evidence of compliance within 30 days of notification of suspension.

b. If the program or the instructor continues to conduct any DUI Educational Program during the period of suspension, or

c. If any program or instructor receives more than two notices of noncompliance with these standards in a one-year period.

2. If any program or instructor's certification is revoked, they may not reapply for recertification for a period of six months.

R523-22-9. Redress Procedures for Programs or Instructors.

1. Any program or instructor whose certification has been revoked may request in writing an informal hearing with the Division Director or his designee within ten days of receiving notice of revocation. Within ten days following the close of the hearing, the Division shall inform the program or the instructor in writing of the decision as required under UCA Section (63G-4-302) and UACA R503-2-1 through R503-2-21.

2. If they so choose, the program or the instructor may appeal in writing the decision of the Division Director by requesting a reconsideration hearing with the Office of Administrative Hearings as provided for under UCA Section (63G-4-302).

KEY: DUI programs, certification of instructors
July 3, 2001 41-6-44

Notice of Continuation June 22, 2007 62A-15-201
17-43-301
73-18-12.1-2

R523. Human Services, Substance Abuse and Mental Health.
R523-23. On-Premise Alcohol Training and Education Seminar Rules of Administration.
R523-23-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the seminar who sells or furnishes alcoholic beverages to the public for on premise consumption in the scope of the person's employment.

(3) These rules include:

(a) certification of providers;

(b) approval of the Seminar curriculum;

(c) the ongoing activities of providers; and

(d) the process for approval, denial, suspension and revocation of provider certification.

R523-23-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "On-premise consumption" means the consumption of alcoholic products by a person within any building, enclosure, room, or designated area which has been legally licensed to allow consumption of alcohol.

(7) "Seminar" means the Alcohol Training and Education Seminar.

(8) "Server" is an employee who actually makes available, serves to, or provides a drink or drinks to a customer for consumption on the premises of the licensee.

(9) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the licensee.

R523-23-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a noncertified provider is void and shall not meet the server training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application, the curriculum and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information. Notification of the action taken shall be forwarded in writing to the applicant.

(5) If an application requires additional information of corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-23-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall submit to the Division the name, social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a server for a period which begins at the completion of the seminar and expires three years from this date. Recertification requires the server to complete a new seminar every three years.

(3) The provider shall issue a certification card to the server. The card shall contain at least the name of the server and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

R523-23-5. Server Responsibilities.

A server is required within 30 days of employment to pass the Seminar.

R523-23-6. Division Responsibilities.

The Division shall maintain the list of servers who have completed the seminar and make this information available to the public for compliance reviews.

R523-23-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least three hours of classroom instruction both for original certification and for any and all recertifications. The contents of an approved curriculum shall include the following components:

(a) Alcohol as a drug and its effect on the body and behavior:

(i) facts about alcohol;

(ii) what alcohol is; and

(iii) alcohol's path through the body.

(b) Factors influencing the effect of alcohol including:

(i) food and digestive factors;

(ii) weight, physical fitness and gender factors;

(iii) psychological factors;

(iv) tolerance; and

(v) alcohol used in combination with other drugs.

(c) Recognizing drinking levels:

(i) explanation of behavioral signs and indications of impairment;

(ii) classification of behavioral signs; and

(iii) defining intoxication.

(d) Recognizing the problem drinker and techniques for servers to help control consumption:

(i) use of classification system;

(ii) use of alcohol facts;

(iii) continuity of service; and

(iv) drink counting.

(e) Overview of state alcohol laws:

(i) Utah liquor distribution and control;

(ii) legal age;

(iii) prohibited sales;

(iv) third party liability and the Dram Shop Law;

(v) legal definition of intoxication; and

(vi) legal responsibilities of servers.

(f) Techniques for dealing with the problem customer including rehearsal and practice of these techniques.
(g) Intervention techniques:
(i) slowing down service;
(ii) offering food or nonalcoholic beverages;
(iii) serving water with drinks;
(iv) not encouraging reorders; and
(v) cutting off service.
(h) Establishing house rules for regulating alcoholic beverages:
(i) management and co-workers' support; and
(ii) dealing with minors; and
(i) Alternative means of transportation and getting the customer home safely:
(i) ask customer to arrange alternative transportation;
(ii) call a taxi for transportation service;
(iii) accommodations for the night; and
(iv) telephone the police.

R523-23-8. Examination.
The examination shall include questions concerning alcohol as a drug and its effect on the body and behavior, recognizing and dealing with the problem drinker, Utah alcohol laws, terminating service, and alternative means of transportation to get the customer safely home. The portion of the exam concerning Utah's alcohol laws shall be uniform questions approved by the Department of Alcoholic Beverage Control or as updated and approved by the Division.

R523-23-9. Alcohol Training and Education Seminar Provider Standards.
(1) The Division may certify an applicant who has a program course that:
(a) does not have a history of liquor law violations or any convictions showing disregard for laws related to being a responsible liquor provider;
(b) identifies all program instructors and instructor trainers and certifies in writing that they have been trained to present the course material and that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the last five years;
(c) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-23-9(1)(b) for all new instructors;
(d) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and
(e) will establish and maintain course completion records.

R523-23-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.
(1) The Division may deny, suspend or revoke certification if:
(a) the provider or applicant violates these rules, as provided in Section 62A-15-401; or
(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or
(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without taking the previously required corrective action.

R523-23-11. Corrective Action.
(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:
(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider; and
(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-12-12. Suspension and Revocation.
(1) The Director or designee may suspend the certification of a provider as follows:
(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.
(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.
(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.
(2) The Director or designee may revoke certification of a provider as follows:
(a) A provider or its authorized instructors continue to provide the seminar while the provider is under a suspended certification.
(b) A provider fails to comply with corrective action while under a suspension.
(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-23-13. Procedure for Denial, Suspension, or Revocation.
(1) If the Division has grounds for action under these rules, referenced rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:
(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.
(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: substance abuse, server training
January 30, 2007 62A-15-401
Notice of Continuation June 22, 2007

R523. Human Services, Substance Abuse and Mental Health.
R523-24. Off Premise Retailer (Clerk, Licensee and Manager) Alcohol Training and Education Seminar Rules of Administration.
R523-24-1. Authority, Intent, and Scope.

(1) These rules are adopted under the authority of Section 62A-15-401 authorizing the Division of Substance Abuse and Mental Health to administer the Alcohol Training and Education Seminar Program.

(2) The intent of statute and rules is to require every person to complete the Seminar who sells or furnishes alcoholic beverages to the public for off premise consumption in the scope of the person's employment with a general food store or similar business.

(3) These rules include:

(a) curriculum content standards,

(b) seminar provider standards,

(c) provider certification process;

(d) the ongoing activities of providers, and

(e) the process for approval, denial, suspension and revocation of provider certification.

R523-24-2. Definitions.

(1) "Approved Curriculum" means a provider's curriculum which has been approved by the Division in accordance with these rules.

(2) "Certification" means written approval from the Division stating a person or company has met the requirements to become a seminar provider.

(3) "Director" means the Director of the Division of Substance Abuse and Mental Health.

(4) "Division" means the Division of Substance Abuse and Mental Health.

(5) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at the premises of a licensee. A manager may also be a supervisor.

(6) "Provider" means an individual or company who has had their curriculum approved and certified by the Division.

(7) "Seminar" means the Off Premise Alcohol Training and Education Seminar.

(8) "Supervisor" means an employee who, under the direction of a manager as defined above if the business establishment employees a manager, or under the direction of the owner or president of the corporation if no manager is hired, directs or has the responsibility to direct, transfer, or assign duties to employees who actually sell or furnish alcoholic beverages to customers for off premise consumption.

(9) "Retail employee" (clerk or supervisor) means any person employed by a general food store or similar business and who is engaged in the sale of or directly supervises the sale of beer to consumers for off premise consumption.

R523-24-3. Provider Certification Application Procedure.

(1) A provider seeking first-time certification shall make application to the Division at least 30 days prior to the first scheduled seminar date. A provider seeking recertification to administer the seminar shall make application to the Division at least 30 days prior to expiration of the current certification.

(2) Any seminar conducted by a non-certified provider shall not meet the retailer training requirements authorized under Section 62A-15-401.

(3) All application forms shall be reviewed by the Division. The Division shall determine if the application is complete and in compliance with Section 62A-15-401 and these rules. If the Division approves the application and curriculum, and determines the provider has met all other requirements, the Division shall certify the provider.

(4) Within 30 days after the Division has taken action, the Division shall officially notify the applicant of the action taken: denial, approval, or request for further information, and notification of the action taken shall be forwarded in writing to the applicant. If an application for recertification requires additional information or corrective action, a provider may continue to conduct seminars for 30 days from the date of notification. If the provider has not resolved the action required with the Division by that date, the provider is no longer certified to provide the seminar and must cease until all actions are approved by the Division.

R523-24-4. Provider Responsibilities.

(1) For each person completing the seminar, the provider shall submit to the Division the name, social security number, expiration date and test results indicating pass or fail, and the required fee, within 30 days of the completion of the seminar.

(2) Each person who has completed the seminar and passed the provider-administered and Division-approved examination shall be approved as a retail employee for a period which begins at the completion of the seminar and expires five years from that date.

(3) The provider shall issue a certification card to the retail employee. The card shall contain at least the name of the retail employee and the expiration date. The provider shall be responsible for issuing any duplicates for lost cards.

R523-24-5. Retail Employee Responsibilities.

(1) A retail employee is required within 30 days of employment by a general food store or similar business to complete and pass the Seminar.

(2) For retail employees who have been certified prior to the implementation of SB 58 Substitute Alcoholic Beverage Amendments - Eliminating Sales to Youth--Knudson 2006, Certification will remain in effect until January, 2008 under the following stipulations:

(a) the provider under which the retailer was trained must submit their curriculum to the Division and obtain certification for the program.

(b) the provider must submit a plan to educate those previously trained about the new administrative penalties outlined in the legislation, and the plan is to be approved by the Division.

R523-24-6. Division Responsibilities.

The Division shall maintain the list of retail employees who have completed the Seminar and provide this information to licensing agencies and licensed general food stores of similar businesses.

R523-24-7. Approved Curriculum.

(1) Each provider must have a curriculum approved by the Division. This curriculum must provide at least sixty minutes of classroom instruction both for original certification and for any and all re-certifications. The contents of an approved curriculum shall include the following components:

(a) alcohol as a drug;

(b) alcohol's effect on the body and behavior including education on the effects of alcohol on the developing youth brain, which information shall be provided by the Division;

(c) recognizing the problem drinker or signs of intoxication;

(d) an overview of state laws related to responsible beverage sale as determined in consultation with the Department of Alcoholic Beverage Control, which information shall be provided by the Division;

(e) statistics identifying the underage drinking problem, which information provided by the Division;

(f) discussion of criminal and administrative penalties for salesclerks and retail stores for selling beer to underage and

intoxicated persons;

(g) strategies commonly used by minors to gain access to alcohol;

(h) process for checking ID, for example the FLAG system: Feel Look, Ask, Give Back);

(i) policies and procedures to prevent beer purchases by intoxicated individuals; and

(j) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play.

R523-24-8. Examination.

The examination shall include questions from each of the curriculum components identified in Section R523-24-7. The examination will be submitted for approval with the rest of the provider application.

R523-24-9. Alcohol Training and Education Seminar Provider Standards.

(1) The Division may certify a provider applicant who:

(a) identifies all program instructors and instructor trainers and certifies in writing that they:

(i) have been trained to present the course material, and

(ii) that they have not been convicted of a felony or of any violation of the laws or ordinances concerning alcoholic beverages, within the past five years;

(b) agrees to notify the Division in writing of any changes in instructors and submit the assurances called for in Subsection R523-24-9(a) for all new instructors;

(c) can show adequate facilities, instructional equipment and materials, personnel, and financial resources to provide a successful program for the length of time the license is in effect; and

(d) will establish and maintain course completion records.

R523-24-10. Grounds For Denial, Corrective Action, Suspension, and Revocation.

(1) The Division may deny, suspend or revoke certification if:

(a) the provider or applicant violates these rules, or

(b) the applicant fails to correctly complete all required steps of the application process as determined by these rules or other rules or statutes referenced in these rules; or

(c) a provider whose certification has been previously denied, suspended or revoked has reapplied without correcting the problem that resulted in the denial, suspension or revocation.

R523-24-11. Corrective Action.

(1) If the Division becomes aware that a provider is in violation of these rules or other rules or statutes referenced in these rules:

(a) within 30 days after becoming aware of the violation, the Division shall identify in writing the specific areas in which the provider is not in compliance and send written notice to the provider.

(b) within 30 days of notification of noncompliance, the provider shall submit a written plan for achieving compliance. The provider may be granted an extension.

R523-24-12. Suspension and Revocation.

(1) The Director or designee may suspend the certification of a provider as follows:

(a) When a provider fails to respond in writing to areas of noncompliance identified in writing by the Division within the defined period. The defined period is 30-days plus any extensions granted by the Division.

(b) When a provider fails to take corrective action as agreed upon in its written response to the Division.

(c) When a provider fails to allow the Division access to information or records necessary to determine the provider's compliance under these rules and referenced rules and statutes.

(2) The Director or designee may revoke certification of a provider as follows:

(a) A provider or its authorized instructors continue to provide the Seminar while the provider is under a suspended certification.

(b) A provider fails to comply with corrective action while under a suspension.

(c) A program has committed a second violation which constitutes grounds for suspension when a previous violation resulted in a suspension during the last 24 months.

R523-24-13. Procedure for Denial, Suspension, or Revocation.

(1) If the Division has grounds for action under these rules, or as required by law, and intends to deny, suspend or revoke certification of a provider, the steps governing the action are as follows:

(a) The Division shall notify the applicant or provider by personal service or by certified mail, return receipt requested, of the action to be taken. The notice shall contain reasons for the action, to include all statutory or rule violations, and a date when the action shall become effective.

(b) The provider may request an informal hearing with the Director within ten calendar days. The request shall be in writing. Within ten days following the close of the hearing, the Director shall inform the provider or applicant in writing as required under Section 63G-4-203. The provider may appeal to the Department of Human Services Office of Administrative Hearing as provided for under Section 63G-4-203.

KEY: off-premise, training, seminars
August 22, 2006 62A-15-401

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-2. Patient Rights.
R525-2-1. Patients and Family Are Informed of Rights.

Patients, and when appropriate, family members are informed of their rights and the means by which these rights are protected and exercised.

R525-2-2. Admission Status.

Patients, and when appropriate, family members have their admission status explained to them and to have the provisions of the law pertaining to their admission.

R525-2-3. Consent Forms.

A written, dated, and signed consent form is obtained from the patient, and when appropriate, the patient's family or legal guardian for participation in research projects and for use or performance of:

A. surgical procedures;
B. electroconvulsive therapy;
C. unusual medications;
D. audiovisual equipment;
E. other procedures where consent is required by law.

R525-2-4. Patient Advocate.

A Hospital Patient Advocate is provided to assist patients and, when appropriate family members, and direct their concerns to the appropriate person/agency.

R525-2-5. Patient May Deny Family Members Access to Treatment Information.

Adult patients, who do not have a court-appointed legal guardian, may exclude family members from their treatment information.

KEY: patient rights
May 25, 1998 **62A-15-606**
Notice of Continuation May 19, 2008

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-3. Medication Treatment of Patients.
R525-3-1. Medication as Part of Treatment.

Utah State Hospital (USH) offers medication as part of treatment for patients.

R525-3-2. Patients May Refuse Medication Treatment.

Patient have the right to refuse medication treatment.

R525-3-3. Clinical Medication Review.

In the event that a patient refuses medication treatment, USH staff shall hold a clinical medication review to determine if medication treatment is required as part of the patient's treatment.

R525-3-4. Patient/Legal Guardian Shall Attend Review.

The patient/legal guardian shall be afforded the opportunity to attend the review and address the issue of medication treatment.

R525-3-5. Medication Review Committee to Render a Decision.

The medication review committee shall render a decision with respect to whether medication is a requirement of treatment and shall inform the patient/legal guardian of that decision.

R525-3-6. The Patient May Appeal the Decision.

The patient/legal guardian shall be afforded the opportunity to appeal any decision and have the case reviewed by the Hospital Clinical Director/designee.

R525-3-7. Hospital Clinical Director/Designee Shall Review the Case.

The Hospital Clinical Director/designee shall review the appeal and render a decision with respect to whether or not the patient is required to take medication as part of their treatment.

R525-3-8. Periodic Reviews.

Patients medicated pursuant to a medication review are periodically evaluated to determine if medication treatment continues to be a requirement of their treatment.

R525-3-9. Medication Treatment of Minors.

Medication treatment of minor children is conducted only in agreement with the child and/or the parent/legal guardian.

R525-3-10. Electroconvulsive Therapy.

Electroconvulsive therapy is provided upon consent of the patient/legal guardian and may be provided by other hospitals that are equipped and staffed to provide safe and effective electroconvulsive therapy and recovery.

KEY: medication treatment
May 25, 1998 **62A-15-606**
Notice of Continuation May 19, 2008

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-4. Visitors.
R525-4-1. Patients May Have Visitors.
At the discretion of patients, family, friends, and appropriate others may visit patients at the Utah State Hospital (USH).

R525-4-2. Clergy and Legal Counsel.
With respect to clergy and/or legal counsel visiting patients, the hospital abides by Subsection 62A-15-641(3).

R525-4-3. Visits May Be Denied or Limited.
A physician may deny or limit a visit for safety, security, and/or therapeutic reasons.

R525-4-4. Visiting Minors.
Persons desiring to visit minors must obtain approval from the parent/legal guardian and the unit clinical staff.

R525-4-5. Visiting Hours Are Posted.
Each treatment unit shall post their visiting hours in an area that is accessible by the public.

R525-4-6. Visitor Slip.
Upon arrival at USH, visitors must obtain a "visitor slip" from the switchboard located in the Heninger Administration Building.

R525-4-7. Visitor Slips Are Presented Upon Arrival at Unit.
The visitor presents the visitor slip and proper identification upon arrival to the unit.

R525-4-8. Visitors Bringing Gifts.
Visitors desiring to bring gift/items are required to obtain clearance from the patient's treatment team prior to bringing the gift/item on the unit.

KEY: visitors
May 25, 1998 **62A-15-606**
Notice of Continuation May 19, 2008

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-5. Background Checks.
R525-5-1. Background Checks Are Completed on All New Employees and Volunteers.

Background checks, which may include fingerprinting and BCI inquiries, are completed on all newly hired employees and volunteers who will be performing volunteer services for an extended period of time.

R525-5-2. Information Is Used for Employment/Volunteer Service Placement.

Background information shall be used to determine appropriateness for employment or volunteer services.

KEY: background checks
May 25, 1998 62A-15-606
Notice of Continuation May 19, 2008

R525. Human Services, Substance Abuse and Mental Health, State Hospital.
R525-7. Complaints/Suggestions/Concerns.
R525-7-1. Patient and Family Members May Register Complaints.

Patients and/or their family members may register a complaint/suggestion/concern about the hospital to any hospital staff member.

R525-7-2. Complaints/Suggestions/Concerns Are Reviewed.

Complaints/suggestions/concerns are reviewed by the Hospital Suggestion Committee and forwarded to the appropriate person/agency for response.

R525-7-3. The Suggestion Committee Shall Respond.

The person submitting the complaint/suggestion/concern shall receive a response from the Suggestion Committee.

R525-7-4. No Reprisal to Person Making Complaint.

Patients, family members, and members of the public may pursue complaints against the hospital without reprisal.

KEY: complaints, suggestions, concerns
May 25, 1998 62A-12-204
Notice of Continuation May 19, 2008

R527. Human Services, Recovery Services.
R527-231. Review and Adjustment of Child Support Order.
R527-231-1. Authority and Purpose.

1. The Department of Human Services is authorized to create rules necessary for the provision of social services by Section 62A-1-111. The Office of Recovery Services is authorized to adopt, amend, and enforce rules as necessary by Section 62A-11-107.

2. The purpose of this rule is to provide details as to when the Office of Recovery Services/Child Support Services (ORS/CSS) may conduct a review of a Child Support Order. It specifies when a review will not be conducted and if a review has terminated, when an order may be reviewed again.

R527-231-2. Review and Adjustment of Child Support Order.

1. If the child is within one year of emancipation, ORS/CSS shall not be required to review the award for potential adjustment.

2. If the location of either parent is unknown, ORS/CSS shall not be required to review the support award for possible adjustment until both parents are located.

3. ORS/CSS shall pursue the setting of statutory child support guideline amounts in review and adjustment proceedings, based on the current and prospective incomes of the parties. If either parent is incarcerated, ORS/CSS shall not be required to review and pursue adjustment of a support award.

4. ORS/CSS shall pursue adjustment of a court order only for child support or medical support provisions. ORS/CSS shall not pursue modification of a court order for custody, visitation, property division or other non-child support related provisions.

5. If the parent requesting the review does not provide the necessary information for ORS/CSS to conduct the review, ORS/CSS shall send notice to the address on record for the requesting and non-requesting parents that the review process will be terminated unless the non-requesting parent requests that the review process continue.

6. If the review process is terminated, ORS/CSS shall not be required to review the order for a period of one year.

KEY: child support

May 15, 2008	**78B-12-210**
Notice of Continuation November 30, 2006	**62A-11-320.5**
	62A-11-320.6

R527. Human Services, Recovery Services.
R527-258. Enforcing Child Support When the Obligor is an Ex-Prisoner or in a Treatment Program.
R527-258-1. Purpose and Authority.

1. The Office of Recovery Services is authorized to create rules necessary for the provision of social services by Section 62A-11-107.

2. The purpose of this rule is to specify the procedures for collection of IV-D child support and arrears payments after the obligor has been released from prison/jail or an in-patient treatment program.

R527-258-2. Non-Collection from Ex-Prisoners.

1. If the obligor is incarcerated and notifies the Office of Recovery Services/Child Support Services (ORS/CSS) or the office is made aware of the release within 30 days of the release date, no collection or enforcement action will be taken to collect the past-due support debt for six months after the incarceration release date.

2. The ORS/CSS will enforce a support order that requires the obligor to provide medical insurance coverage for the children, if appropriate.

R527-258-3. Enforcing Child Support When the Obligor is an Ex-Prisoner.

1. The federal title IV-A past-due support debt which accrued while the obligor was incarcerated may be forgiven if he makes both the full monthly current support payment and the full monthly assessed payment toward the past-due support debt for twelve consecutive months. The twelve consecutive month period begins when the obligor is released and they have contacted the office to make payment arrangements within the allotted 30 days.

2. The office will use the federal income withholding notice and procedures to enforce and collect the current support and an arrears payment, when appropriate. The office will use the federal National Medical Support Notice and procedures to enforce insurance coverage for the children, if appropriate.

a. If the obligor does not make the full payment in each of the first six months, additional collection or enforcement action may be taken.

b. If the obligor makes the full required payment each month for twelve consecutive months, the remaining IV-A support debt that accrued during the most recent period of incarceration shall be forgiven. IV-A debt forgiveness due to incarceration will only occur one time per obligor.

3. If the obligor owes IV-A arrears only, s/he must make twelve consecutive payments to the office based on an assessed amount determined by ORS/CSS.

4. The obligor's arrearage payment shall be reassessed by the office if his/her financial situation changes during the twelve-month period.

R527-258-4. Enforcement of Child Support for Obligors in Treatment Programs.

1. If the obligor is in a licensed mental health or substance abuse treatment program, no collection or enforcement action will be taken to collect the past-due support debt for the duration of the in-patient treatment or up to six months of out-patient treatment.

2. If the obligor is in an in-patient treatment program and notifies ORS/CSS or the office is made aware of the release within 30 days of the release date, no collection or enforcement action will be taken to collect the past-due support debt for six months after the in-patient program release date.

3. The federal title IV-A past-due support debt which accrued while the obligor was in an in-patient treatment program may be forgiven if the full monthly current support payment and the full monthly assessed payment toward the past-due support debt have been made for twelve consecutive months. The twelve consecutive month period begins when the obligor has been released from an in-patient treatment program and s/he has contacted the office to make payment arrangements within the allotted 30 days.

3. If the obligor makes the full required payment each month for twelve consecutive months, up to six months of the remaining IV-A support debt that accrued during the most recent treatment period shall be forgiven. IV-A debt forgiveness due to participation in an in-patient or out-patient treatment program will only occur one time per obligor.

KEY: administrative law, child support
May 14, 2008 78B-12-212
Notice of Continuation August 22, 2007 62A-11-320(1)

R539. Human Services, Services for People with Disabilities.
R539-9. Supported Employment Pilot Program.
R539-9-1. Purpose and Authority.

(1) The purpose of this rule is to provide:

(a) procedures and standards for the determination of eligibility for the Division's pilot program to provide supported employment services for Persons on the Division's Waiting List as specified in R539-2-4.

(2) This rule is authorized by Section 62A-5-103.1

R539-9-2. Definitions.

(1) Terms used in this rule are defined in Section 62A-5-101, and

(2) "Supported Employment" means "competitive work" in integrated work settings or employment in "integrated work" settings where individuals are working toward competitive employment, consistent with the strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice of the individuals, for individuals with the most significant disabilities.

(3) "Competitive Work" means employment in the competitive labor market that is performed on a full-time or part-time basis in an integrated setting; and for which an individual is compensated at or above the minimum wage, but not less than the customary wage and level of benefits paid by the employer for the same or similar work performed by individuals who are not disabled.

(4) "Integrated Work" means job sites where most employees are not disabled, where a client interacts on a regular basis, in the performance of job duties, with employees who are not disabled. If a client is part of a distinct work group of only individuals with disabilities, the work group should consist of no more than eight individuals.

(5) "Extended Services" means on-going support services and other appropriate services, needed to support and maintain an individual with a most significant disability in employment. They are provided singly or in combination and are organized and made available in such a way as to assist an eligible individual in maintaining supported employment. Extended services are based on a determination of the needs of an eligible individual. Extended services may include natural supports, such as volunteers, family members, co-workers, employer, supervisors, students, and Plan for Achieving Self Support or Impairment Related Work Expense.

R539-9-3. Eligibility.

(1) A Person who meets the eligibility requirements listed in Section 62A-5-103.1 may participate in the supported employment pilot program provided that:

(2) the Person agrees to enter services under the conditions listed in Section 62A-5-103.1,

(3) the Person agrees not to use any other Home and Community Based Medicaid Waiver service operated by the Division while participating in the Supported Employment Pilot, (but may use Service Brokering services, if appropriate),

(4) if the person has a Medicaid Card the person may continue to access State Plan, E-Pass and other Medicaid services operated separately from the Division during participation in the pilot,

(5) the person agrees to move off the immediate needs waiting list for supported employment,

(6) the person is found eligible for Division of Rehabilitation Services, Supported Employment funding,

(7) the person agrees to use an approved provider,

(8) the person signs the Supported Employment Pilot Participant Agreement and agrees to follow through with instructions from rehabilitation counselors, services for people with disabilities support coordinators and service brokers and private provider staff,

(9) the person has an Office of Education, Rehabilitation Services, Referral and Services Report form 58 completed, signed by a rehabilitation counselor and a support coordinator,

(10) the person agrees that the person's need for extended supported employment services will be met solely by the provision of supported employment services for the duration of the pilot program, and

(11) the person agrees to provide information needed by the person's employer to obtain the tax incentive through 26 U.S. Code 44, Federal Welfare to Work, Internal Revenue Service, IRS Form 8850 or Section 59-7-608 or Credit for Employers Who Hire Persons with Disabilities, Form TC-40HD.

R539-9-4. Priority.

(1) First priority will be given to Persons on the waiting list for supported employment services who currently receive Division of Rehabilitation Services funding.

(2) Second priority will be given to Persons on the waiting list for supported employment services and no other services.

(3) Third priority will be given to Persons waiting for supported employment and other services.

KEY: disabilities, supported employment
May 22, 2008 62A-5-103.1

R590. Insurance, Administration.
R590-91. Credit Life Insurance and Credit Accident and Health Insurance.
R590-91-1. Purpose and Authority.

The purpose of this rule is to protect the interests of debtors and the public in this State and to ensure a fair and equitable credit insurance market by establishing a system of reasonable rating, policy form, and operating standards for the transaction of credit life insurance and credit accident and health insurance. This rule is promulgated pursuant to Section 31A-2-201.

R590-91-2. Definitions.

As used in this rule:

A. "Credit Accident and Health Insurance" means insurance as defined in Section 31A-22-802.

B. "Credit Insurance" means both credit life insurance and credit accident and health insurance.

C. "Credit Life Insurance" means insurance as defined in Section 31A-22-802.

D. "Indebtedness" means indebtedness as defined in Section 31A-22-802.

E. "Net Indebtedness" means net indebtedness as defined in Section 31A-22-802.

F. "Net Written Premium" means premium as defined in Section 31A-22-802.

G. "Open-End Credit" means credit extended by a creditor under an agreement in which the creditor reasonably contemplates repeated transactions; the creditor imposes a finance charge from time to time on an outstanding unpaid balance; and the amount of credit available to the debtor is self-replenishing as the debtor repays amounts previously drawn.

R590-91-3. Rights and Treatment of Debtors.

A. Multiple Plans of Insurance. If a creditor makes available to the debtor more than one plan of credit life insurance or more than one plan of credit accident and health insurance, the debtor must be informed of the plans applicable to the specific loan transaction.

B. Substitution. If a creditor requires insurance, the debtor shall be given the option of furnishing the required amount of insurance through existing policies of insurance owned or controlled by the debtor or procuring and furnishing the required coverage through any insurer authorized to transact insurance business in this State. If this subsection is applicable, the debtor shall be informed by the creditor of the right to provide alternative coverage before the transaction is completed.

C. Evidence of Coverage.

(1) All credit insurance shall be evidenced by an individual policy, or, in the case of group insurance, by a certificate of insurance.

(a) The individual policy or certificate of insurance shall be delivered to the debtor in accordance with Section 31A-22-806(3) and 70C-6-104. The insurer shall promptly notify the debtor of any delay in providing the insurance.

(b) If the named insurer does not accept the risk, the insurer, if any, shall notify the debtor of the failure to provide the insurance. A substituted insurer, if any, shall deliver the policy or certificate in accordance with Section 31A-22-806(5).

(c) Subsequent certificates are not needed on open-end credit arrangements after the initial indebtedness.

(2) Each individual policy or certificate of insurance shall provide the information required by Section 31A-22-806.

(3) Each policy application must provide the information required by Section 31A-22-806(4)(b) and identify the agent, if any.

D. Claims Processing. All credit insurance claims shall be processed in accordance with Section 31A-26-302.

E. Termination of Group Credit Insurance Policy.

(1) If a debtor is covered by a group credit insurance policy providing for the payment of single premiums to the insurer, then provisions shall be made by the insurer that in the event of termination of the policy for any reason, insurance coverage with respect to any debtor insured under the policy shall be continued for the entire period for which the single premium has been paid.

(2) If a debtor is covered by a group credit insurance policy providing for the payment of premiums to the insurer on a monthly outstanding balance basis, then the policy shall provide that, in the event of termination of such policy, for whatever reason, termination notice shall be given to the insured debtor at least 30 days prior to the effective date of termination, except where replacement of the coverage by the same or another insurer in the same or greater amount takes place without lapse of coverage. The notice required in this paragraph shall be given by the insurer or, at the option of the insurer, by the creditor.

F. Interest on Premium. If the creditor adds identifiable insurance charges or premiums for credit insurance to the indebtedness, and any direct or indirect finance, carrying, credit, or service charge is made to the debtor on the insurance charges or premiums, the creditor must remit and the insurer shall collect the premium within 60 days after it is added to the indebtedness.

G. Renewal or Refinancing of Indebtedness. If the indebtedness is discharged due to renewal or refinancing prior to the scheduled maturity date, the insurance in force shall be terminated before any new insurance may be issued in connection with the renewed or refinanced indebtedness. In all cases of termination prior to scheduled maturity, a refund shall be paid or credited promptly to the debtor as provided in Section 8.

H. Maximum Aggregate Provisions. A provision in an individual policy or certificate that sets a maximum limit on total payments must apply only to that individual policy or certificate.

I. Voluntary Prepayment of Indebtedness. If a debtor prepays his indebtedness other than as a result of his death or through a lump sum accident and health payment:

(1) Any credit life insurance covering indebtedness shall be terminated and an appropriate refund of the credit life insurance premium shall be paid to the debtor in accordance with Section 8; and

(2) Any credit accident and health insurance covering indebtedness shall be terminated and an appropriate refund of the credit accident and health insurance premium shall be paid to the debtor in accordance with Section 8. If a claim under this coverage is in progress at the time of prepayment, the amount of refund may be determined as if the prepayment did not occur until the payment of benefits terminates. No refund need be paid during any period of disability for which credit disability benefits are payable. A refund shall be computed as if prepayment occurred at the end of the disability period.

J. Involuntary Prepayment of Indebtedness. If an indebtedness is prepaid by the proceeds of a credit life insurance policy covering the debtor or by a lump sum payment of a disability claim under a credit insurance policy covering the debtor, then it shall be the responsibility of the insurer to see that the following are paid to the insured debtor if living or to the beneficiary, other than the creditor, named by the debtor or to the debtor's estate:

(1) In the case of prepayment by the proceeds of a credit life insurance policy, or by the proceeds of a lump sum total and permanent disability benefit under credit life coverage, an appropriate refund of the credit accident and health insurance premium in accordance with Section 8;

(2) In the case of prepayment by a lump sum disability claim, an appropriate refund of the credit life insurance premium in accordance with Section 8;

(3) In either case, the amount of the benefits in excess of the amount required to repay the indebtedness after crediting any unearned interest or finance charges.

K. Amounts to be Insured:

(1) Credit life insurance benefits shall be consistent with the premium charge.

The initial amount of credit life insurance may not exceed the total amount payable under the contract of indebtedness. Credit life insurance may provide benefits in amounts which do not exceed, but may be less than, the scheduled amount of indebtedness, including unearned interest or finance charges, or the actual amount of unpaid indebtedness, whichever is greater. Credit life insurance on preauthorized lines of credit not exceeding the commitment period may be written for the preauthorized amount on a nondecreasing or level term plan. The death benefit amount shall be that amount for which premiums are paid. Whenever the amount of insurance exceeds the unpaid indebtedness, that excess is payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

(2) The total amount of indemnity payable by credit accident and health insurance in the event of disability, as defined in the policy, may not exceed, but may be less than the aggregate of the periodic scheduled unpaid installments of the indebtedness. The amount of each periodic indemnity payment may not exceed the total amount payable under the contract of indebtedness divided by the number of periodic installments.

L. Dividends on participating individual policies of credit insurance shall be payable to the individual insureds.

R590-91-4. Policy Forms, Filing and Reserves.

A. Permissible Forms. Credit life insurance and credit accident and health insurance shall be issued only in the forms defined in Section 31A-22-803.

B. Filing Requirements.

(1) All policy forms, certificates of insurance, notices of proposed insurance, applications for insurance, endorsements and riders to be delivered or issued for delivery in this State shall be filed with the commissioner as required by Sections 31A-21-201, 31A-22-807, and 31A-22-808.

(2) An actuarial memorandum, signed and dated, must be included in each rate and form filing. The memorandum must identify the following:

(a) types of coverage: gross, net, decreasing, level, single life, joint life, full term or truncated;

(b) types of loans to be insured: open-end, closed end;

(c) durations of the loans and durations of the coverage. Refer to Section 31A-22-801(2)(a);

(d) methods of premium charge: single premium or monthly outstanding balance;

(e) schedules of premium rates and formulas for each type of coverage;

(f) methods of refund calculation and formulas for each type of coverage; and

(g) reserve bases.

(3) All filings are subject to the general filing requirements of the Utah Submission of Credit Life and Credit Accident and Health Insurance Form and Rate Filings, Rule R590-228. The commissioner may prohibit a form if the benefits provided are not reasonable in relation to the premium charged.

C. The minimum reserve basis for credit life insurance issued to be effective prior to January 1, 2008 shall be the 1980 Commissioner's Standard Ordinary Table (1980 CSO) with interest at 5-1/2% per annum.

D. The minimum reserve basis for active lives on credit accident and health insurance issued to be effective prior to January 1, 2008 shall be the amount of the premium refund available to the insured.

E. The minimum reserve basis for disabled lives on credit accident and health insurance issued to be effective prior to January 1, 2008 shall be the 1987 Commissioner's Group Disability Table (1987 CGDT) with interest at 5-1/2% per annum.

R590-91-5. Reasonableness of Benefits in Relation to Premium.

A. General Standard. Under Section 31A-22-807, benefits provided by credit insurance policies must be reasonable in relation to the premium charged. This requirement is deemed to be satisfied if the premium rate charged develops or may be reasonably expected to develop a loss ratio of not less than 50% for credit life insurance and not less than 55% for credit accident and health insurance.

B. Nonstandard Coverage. If any insurer files for approval of any form providing coverage different from that described in Sections 6 and 7, the insurer shall demonstrate to the satisfaction of the commissioner that the premium rates to be charged for the coverage will develop or may be reasonably expected to develop a loss ratio not less than that contemplated for standard coverage at the premium rates described in these sections.

C. Coverage Without Separate Charge. If no specific charge is made to the debtor for credit insurance, the standards of Subsection A above and the deviation standards of Section 11 are not required to be used. For purposes of this subsection, it will be considered that the debtor is charged a specific amount for insurance if an identifiable charge for insurance is disclosed in the credit or other instrument furnished the debtor which sets out the financial elements of the credit transactions, or if there is a differential in finance, interest, service or other similar charge made to debtors who are in like circumstances, except for their insured or noninsured status. Any such charge which exceeds the premium rate standards set out in Sections 6 and 7 as adjusted pursuant to Section 9 must be filed with the commissioner.

R590-91-6. Credit Life Insurance Prima Facie Rates.

A. Premium Rate. Credit life insurance prima facie premium rates for the insured portion of an indebtedness payable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), and (5) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) Outstanding balance: $0.65 per month per $1,000 of outstanding insured indebtedness if premiums are payable on a monthly outstanding balance basis;

(2) Single Premium Decreasing Term: If premiums are payable on a single premium basis, the following formula shall be used to develop single premium rates from the outstanding balance rate:

$Sp = (N + 1)/20 (Op)$ where Sp is the single term premium per $100 of initial insured indebtedness, N is the credit term in months, and Op is the monthly outstanding balance rate per $1,000 of outstanding insured indebtedness.

(3) Single Premium - Level Term: If premiums are payable on a single premium basis when the benefit provided is level term, the following formula shall be used to develop single premium rates from the outstanding balance rate:

$Sp = N/10 (Op)$ where Sp is the single term premium per $100 of initial insured indebtedness, N is the credit term in months, and Op is the monthly outstanding balance rate per $1,000 of outstanding insured indebtedness.

(4) Joint coverage rate on basis (1), (2), or (3) of Subsection A may be no greater than one hundred and seventy percent (170%) of the specific rate for that type of coverage.

(5) A combination of the appropriate rate for level term and the appropriate rate for decreasing term, with equal decrements, shall be used, if coverage provided is a combination of level term and decreasing term, with equal decrements.

(6) If the benefits provided are other than those described in Subsection A above, rates for these benefits shall be actuarially consistent with the rates provided in Paragraphs (1), (2), and (3).

B. The premium rates in Subsection A shall apply to all policies providing credit life insurance, to be issued either with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No exclusions other than suicide within one year of the incurred indebtedness;

(2) Either no age restrictions or age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors having attained age 66 or over on the maturity date of the indebtedness; and

(3) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

(4) On insurance written in connection with open-end credit plans where the amount of insurance is based on or limited to the outstanding unpaid balance, no provision excluding or denying a claim for death resulting from a preexisting condition except for those conditions for which the insured debtor received medical diagnosis or treatment within six months preceding the effective date of coverage and which caused or substantially contributed to the death of the insured debtor within six months following the effective date of coverage. The effective date of coverage for each part of the insurance attributable to a subsequent advance or increase to the outstanding balance is the date on which the advance or increase is posted to the plan account. Such preexisting condition exclusion shall apply to the initial indebtedness and all subsequent advances on an individual basis, only where evidence of individual insurability has not been required.

R590-91-7. Credit Accident and Health Insurance Prima Facie Rates.

A. Premium Rate. Credit accident and health insurance prima facie premium rates for the insured portion of an indebtedness repayable in equal monthly installments, where the insured portion of the indebtedness decreases uniformly by the amount of the monthly installment paid, shall be as set forth in paragraphs (1) and (2). Paragraphs (3), (4), (5), and (7) refer to prima facie premium rates for other types of benefits either alone or in combination with the type of benefits applicable to (1) and (2).

(1) If premiums are payable on a single-premium basis for the duration of the coverage, the premiums shall be as indicated on the attached chart which is available from the Insurance Department.

(2) If premiums are paid on the basis of a premium rate per month per thousand of outstanding insured indebtedness, these premiums shall be computed according to the following formula, or according to a formula approved by the commissioner which produces rates actuarially equivalent to the single premium rates in Table I:

OPn = 20/n+1 (SPn)

where SPn = Single Premium Rate per $100 of initial insured indebtedness repayable in n equal monthly installments;

OPn = Monthly Outstanding Balance Premium Rate per $1,000;

n = Original payment period, in months.

(3) The actuarial equivalent of paragraphs (1) and (2) shall be used if the coverage provided is a constant maximum indemnity for a given period of time.

(4) An appropriate combination of the premium rate for a constant maximum indemnity for a given period of time and the premium rate for a maximum indemnity which decreases in equal amounts per month shall be used if the coverage provided is a combination of a constant maximum indemnity for a given period of time after which the maximum indemnity begins to decrease in equal amounts per month.

(5) If the benefits provided are other than those described above, rates for the benefits shall be actuarially consistent with rates provided in Paragraphs (1), (2), (3), and (4).

(6) The outstanding balance rate for credit accident and health insurance may be either a term specified rate or may be a single composite term outstanding balance rate applicable to all loans made under an open-end credit plan.

(7)(a) For an open-end credit plan, the monthly rate per $1,000 of outstanding principal balance shall be the rate calculated using the formula in paragraph (2) where n is the number of monthly indemnity payments required to completely extinguish the debt. The rate shall be further reduced to appropriately account for critical period if applicable.

(b) The critical period factors shall be filed with the department and shall not exceed the factors based on the 1968 Credit A and H Two Composite Tables published by the NAIC (Proceedings - 1968 Vol. II).

B. The premium rates in Subsection A shall apply to all policies providing credit accident and health insurance, to be issued with or without evidence of insurability, to be offered to all eligible debtors, and containing:

(1) No provision excluding or denying a claim for disability resulting from preexisting conditions except for those conditions for which the insured debtor received medical advice, diagnosis, or treatment within six months preceding the effective date of the debtor's coverage and which caused loss within the six months following the effective date of coverage.

(2) No other provision which excludes or restricts liability in the event of disability caused in a specified manner except that it may contain provisions excluding or restricting coverage in the event of normal pregnancy and intentionally self-inflicted injuries.

(3) No actively at work test may require that the debtor be employed more than 30 hours per week.

(4) No age restrictions or only age restrictions making ineligible for coverage debtors 65 or over at the time the indebtedness is incurred or debtors who will have attained age 66 or over on the maturity date of the indebtedness.

(5) A daily benefit equal in amount to one-thirtieth of the monthly benefit payable under the policy for the indebtedness.

(6) A definition of disability, which is no more restrictive than one requiring that during the first 12 months of disability the insured shall be unable to perform the principal duties of his occupation at the time the disability occurred, and thereafter unable to perform the principal duties of any occupation for which the insured is reasonably fitted by education, training, or experience. This paragraph may not apply to lump sum disability coverage.

(7) Insurance written in connection with an open-end credit plan may exclude from the classes eligible for insurance classes of debtors determined by age, and provide for the cessation of insurance or reduction in the amount of insurance upon attainment of not less than age 65.

R590-91-8. Refund Formulas.

A. Refund formulas which any insurer desires to use must be filed with and approved by the commissioner prior to use. Refund formulas used must develop refunds which are at least as favorable to the debtor as the following methods which are deemed the minimum requirements for the plans described.

(1) Pro Rata Method. The pro rata unearned gross

premium method shall be deemed to produce the minimum refund amount to be used for level term credit insurance, and for credit insurance coverages under which premiums are collected from the debtor on a basis other than the single premium basis.

Refund = t/n (original gross single premium) where t = the number of remaining months;

n = the original loan term in months.

(2) Rule of 78 method. The Rule of 78 or sum of the digits unearned premium method shall be deemed to produce the minimum refund amount to be used for insurance coverage which reduces in equal amounts per month and for which the premiums are collected on a single premium basis.

Refund = (t(t+1)/n(n+1)) (original gross single premium)

where t = the number of remaining months; n = the original loan term in months.

(3) Combination Methods. An appropriate combination of the pro rata method and the Rule of 78 method or, at the option of the insurer, the pro rata method shall be used for credit life insurance provided as a combination of level and decreasing term coverage and for credit accident and health insurance wherein the insured is covered for a constant maximum indemnity for a given period of time, after which the maximum indemnity begins to decrease in equal amounts per month.

B. For net indebtedness insurance and for other types of insurance and other modes of premium payment, each insurer shall file for approval and include in the policy appropriate formulas and/or factors for refunds, or reference to such formulas and factors that are on file with the commissioner. For net indebtedness, either the actuarial method also known as the U.S. Rule or pure premium method, or an arithmetic average of refunds due under Pro-Rata and Rule of 78 Methods will be acceptable.

C. In the event of termination, no charge for credit insurance may be made for the first 15 days of a loan month and a full month may be charged for 16 days or more of a loan month, unless refunds are made on a pro rata basis for each day within the loan month.

D. If the total of all refunds due a debtor (or joint debtors) is less than $5.00, no refund need be made.

R590-91-9. Experience Reports and Adjustment of Prima Facie Rates.

A. Each insurer doing Credit Insurance business in this state shall annually file with the commissioner and the NAIC Support and Services Office a report of credit life insurance and credit accident and health business written on a calendar year basis. Each insurer shall utilize the Credit Insurance Experience Exhibit as approved by the National Association of Insurance Commissioners. The report shall contain data separately for this state. The filing shall be made in accordance with and no later than the due date in the Instructions to the Annual Statement.

B. Whenever deemed necessary, the commissioner will publish by order, after a hearing, Prima Facie Rates before September 1. The new prima facie rates shall be effective January 1 of the following year.

R590-91-10. Rating Standards - Filing Requirements.

A. Requirement to File the Four Year Loss Ratio Test.

(1) Insurers with more than $250,000 of credit insurance premium earned in Utah in the most recent four year period shall annually file an experience report to determine whether benefits are reasonable in relation to premiums based on the loss ratio test in Section 31A-22-807(4). The loss ratio shall be calculated at the rates actually used in each year. The insurer may also file an adjusted loss ratio report that adjusts premium to the most recent premium rates. The Four Year Loss Ratio Report is due one month after the due date of the experience exhibit required by Section 9.

(2) Insurers whose loss ratios are less than the minimum loss ratio by ten percentage points or more shall file a rating and benefits plan that meets the requirements of Subsection B. Insurers who would be required to decrease rates by more than 10% may phase in decreases in annual 10% increments.

B. Filing Standards.

(1) Insurers filing for a rate deviation, including those required to file under Subsection 1 above, shall submit an actuarial memorandum that shows that the premium rate does not exceed the sum of:

(a) 50% of the prima facie rate or its actuarial equivalent; and

(b) the expected losses.

(2) The calculation of expected losses shall take into account the following:

(a) the actual loss experience to the extent credible;

(b) the degree of underwriting used in marketing the product; and

(c) the relative mortality and morbidity of Utah experience when using national experience or actuarial tables.

R590-91-11. Rating Procedures - Direct Business Only.

A. Use of Rates Higher Than Prima Facie Rates.

An insurer may file for approval and use rates that are higher than prima facie rates if it can be expected that the use of those higher rates will produce a minimum loss ratio that is required by Section 31A-22-807.

B. Use of Rates Lower Than Filed Rates.

An insurer may use a rate that is lower than its filed rate without notice to the commissioner.

R590-91-12. Disclosure to Debtor.

A. When a premium or identifiable charge is payable by a debtor for credit insurance coverage, certain information must be disclosed to the debtor at the time the debtor applies for the insurance. The disclosures shall be made to the principal debtor and copies given to the debtor and retained in accordance with State and Federal law. These disclosures shall be made prominently and in close proximity to the space for the signature indicating the election to obtain the coverage. These disclosures may be made in conjunction with the Federal Truth-in-Lending disclosure, a Notice of Proposed Insurance, the application for insurance, or in the individual insurance policy or certificate. The following items must be included in the disclosure:

(1) the optional nature of the coverage;

(2) the premium or identifiable charge separately listed by type of coverage;

(3) eligibility requirements including health restrictions and at work requirements; and

(4) any age restrictions in regard to eligibility for insurance coverage at the time the indebtedness is incurred or in regard to cessation of coverage due to attainment of age.

B. If at any time during the term of the loan, the insurance is insufficient to pay off the scheduled outstanding balance of the loan, this fact must be clearly and prominently disclosed to the prospective insured on the policy or certificate.

C. All credit insurance policies and certificates shall clearly describe the amount of the benefit and the term of coverage. Whenever the amount of credit life insurance exceeds the unpaid indebtedness, such fact shall be clearly disclosed in the policy or group certificate; and such excess shall be payable to a beneficiary, other than the creditor, named by the debtor or to the debtor's estate.

D. If any policy or certificate has a preexisting condition exclusion, such exclusion shall be clearly and prominently disclosed.

R590-91-13. Unfair Marketing Practices.

The commissioner finds that violations of this rule when engaged in by licensees of the department in connection with

the sale or placement of credit insurance, or as an inducement, are misleading, deceptive, or unfairly induce the purchase of credit insurance and constitute unfair methods of competition and shall be in violation of Unfair marketing practices under Section 31A-23a-402.

R590-91-14. Severability.

If any provision of this rule or its application to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

R590-91-15. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule on the effective date.

KEY: insurance law
May 29, 2008 31A-2-201
Notice of Continuation December 1, 2006

R590. Insurance, Administration.
R590-164. Uniform Health Billing Rule.
R590-164-1. Authority.

This rule is promulgated by the Insurance Commissioner pursuant to Subsection 31A-22-614.5 which authorizes the commissioner to adopt uniform claim forms, billing codes, and compatible systems of electronic billing.

R590-164-2. Purpose.

The purpose of this rule is to designate uniform claim forms, billing codes and compatible electronic data interchange standards for use by health payers and providers.

R590-164-3. Applicability and Scope.

A. This rule applies to health claims, health encounters, and electronic data interchange between payers and providers.

B. Except as otherwise specifically provided, the requirements of this rule apply to payers and providers.

C. This rule does not prohibit a payer from requesting additional information required to determine eligibility of the claim under the terms of the policy or certificate issued to the claimant.

D. This rule does not prohibit a payer or provider from using alternative forms or procedures specified in a written contract between the payer and provider.

E. This rule does not exempt a payer or provider from data reporting requirements under state or federal law or regulation.

R590-164-4. Definitions.

As used in this rule:

A. Uniform Claim Forms are defined as:

(1)(a) "UB-92 HCFA-1450" means the health insurance claim form maintained by HCFA for use by institutional care providers. Currently this form is known as the UB92. This form will not be used after 01/01/2008.

(b) "UB-04" means the health insurance claim form maintained by NUBC for use by institutional care providers.

(2)(a) "Form HCFA-1500 (12-90)" means the health insurance claim form maintained by HCFA for use by health care providers.

(b) "Form CMS 1500 (08-05)" means the health insurance claim form maintained by NUCC for use by health care providers. This form will not be used after 06/01/2008.

(3) "American Dental Association, 1999 Version 2000" means the uniform dental claim form approved by the American Dental Association for use by dentists.

(4) "NCPDP" means the National Council for Prescription Drug Program's Claim Form or its electronic counterpart.

B. Uniform Claim Codes are defined as:

(1) "ASA Codes" means the codes contained in the ASA Relative Value Guide developed and maintained by the American Society of Anesthesiologists to describe anesthesia services and related modifiers.

(2) "CDT Codes" means the current dental terminology prescribed by the American Dental Association.

(3) "CPT Codes" means the current physicians procedural terminology, published by the American Medical Association.

(4) "HCPCS" means HCFA's Common Procedure Coding System, a coding system that describes products, supplies, procedures and health professional services and includes, the American Medical Association's (AMA's) Physician Current Procedural Terminology, codes, alphanumeric codes, and related modifiers. This includes:

(a) "HCPCS Level 1 Codes" which are the AMA's CPT codes and modifiers for professional services and procedures.

(b) "HCPCS Level 2 Codes" which are national alphanumeric codes and modifiers for health care products and supplies, as well as some codes for professional services not included in the AMA's CPT codes.

(5) "ICDCM Codes" means the diagnosis and procedure codes in the International Classification of Diseases, clinical modifications published by the U.S. Department of Health and Human Services.

(6) "NDC" means the National Drug Codes of the Food and Drug Administration.

(7) "UB04 Rate Codes" means the code structure and instructions established for use by the National Uniform Billing Committee.

C. "Electronic Data Interchange Standard" means the:

(1) ASC X12N standard format developed by the Accredited Standards Committee X12N Insurance Subcommittee of the American National Standards Institute and the ASC X12N implementation guides as modified by the Utah Health Information Network (UHIN) Standards Committee;

(2) other standards developed by the UHIN Standards Committee at the request of the commissioner; and

(3) as adopted by the commissioner by rule.

D. "Payer" means an insurer or third party administrator that pays for, or reimburses for the costs of health care expense.

E. "Provider" means any person, partnership, association, corporation or other facility or institution that renders or causes to be rendered health care or professional services, and officers, employees or agents of any of the above acting in the course and scope of their employment.

F. "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services. HCFA is no longer an active division of the Department of Health and Human Services.

G. "UHIN Standards Committee" means the Standards Committee of the Utah Health Information Network.

H. "CMS" means the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services. CMS replaced HCFA.

I. "HIPAA" means the federal Health Insurance Portability and Accountability Act.

J. "NUBC" means the National Uniform Billing Committee.

K. "NUCC" means the National Uniform Claim Committee.

R590-164-5. Paper Claim Transactions.

Payers shall accept and may require the applicable uniform claim forms completed with the uniform claim codes.

R590-164-6. Electronic Data Interchange Transactions.

A. The commissioner shall use the UHIN Standards Committee to develop electronic data interchange standards for use by payers and providers transacting health insurance business electronically. In developing standards for the commissioner, the UHIN Standards Committee shall consult with national standard setting entities including but not limited to Centers for Medicare and Medicaid Services (CMS), the National Uniform Claim Form Committee, ASC X12, NCPDP, and the National Uniform Billing Committee.

B. Standards developed and adopted by the UHIN Standards Committee shall not be required for use by payers and providers, until adopted by the commissioner by rule.

C. Payers shall accept the applicable electronic data if transmitted in accordance with the adopted electronic data interchange standard. Payers may reject electronic data if not transmitted in accordance with the adopted electronic data interchange standard.

D. The following HIPAA+ electronic data interchange standards developed and adopted by the UHIN Standards Committee and adopted by the commissioner are hereby incorporated by reference with this rule and are available for public inspection at the department during normal business hours or at www.insurance.utah.gov/rules/index.htm.

(1) #1 - "Anesthesia v2.0." Purpose: to standardize the transmission of anesthesia data for health care services. This standard does not alter any contractual agreement between providers and payers. Effective date: 07-12-2003.

(2) #2A - "UB92 Form Locator Elements v2.0." Purpose: to clearly describe the use of each form locator in the UB-92 (HCFA 1450) claim billing form and its crosswalk to the HIPAA 837 004010X096A1 Institutional implementation guide. This standard creates a uniform billing method for institutional claims. Effective date: 07-12-2003.

(3) #2B - "HCFA 1500 Box Elements v2.0." Purpose: to clearly describe the standard use of each box (for print images) and its crosswalk to the HIPAA 837 004010X098A1 Professional implementation guide. This standard creates a uniform billing method for professional claims. Effective date: 07/12/03.

(4) #2D - "Dental Form Locator Elements v2.0." Purpose: to clearly describe the standard use of each Form Locator (for print images) and its crosswalk to the HIPAA 837 004010X097A1 Dental implementation guide. This standard creates a uniform billing method for dental claims. Effective date: 12/12/03.

(5) #3 - "837 Health Care Claim Standard v2.1." Purpose: to detail the standard transactions for the transmission of health care claims and encounters and associated transactions in the state of Utah. Effective date: 01/17/03.

(6) #4 - "Provider Remittance Advice v2.0." Purpose: to detail the standard transactions for the transmission of health care remittance advices in the state of Utah. Effective date: 01/17/03.

(7) #8 - "Patient Identification Number v2.0." Purpose: to describe the standard for the patient identification number in Utah. Effective date: 09/11/98.

(8) #9a - "Professional Common Edits". Purpose: to detail common edits used in all professional claims. Effective date: 10/17/97.

(9) #10 - "Facilities Common Edits". Purpose: to detail common edits used in all facility claims. Effective date: 9/10/99.

(10) #11 - "Medicaid Enrollment Standard v2.0." Purpose: to describe the standard for the transmission of a Medicaid enrollment transaction in the state of Utah. Effective date: 04/12/03.

(11) #12 - "HCFA Box 17 / 17A". Purpose: to establish a standard approach to reporting referring provider name and identifier number on the HCFA 1500 claim form. This Standard also provides the cross walk to the ASC X12 837 Professional Claim version 4010A. Effective date: 09/04/04.

(12) #18 - "Acknowledgements v2.3." Purpose: to detail the standard transaction for the reporting of transmission receipt and transaction and/or functional group X12 standard syntactical errors. This standard adopts the use of the ASC X12 997 transaction. Effective date: 07/08/06.

(13) #20 - "Front-End Acknowledgement Standard v2.2." Purpose: to delineate a standardized front-end encounter acknowledgement transaction. This transaction will be used only to report on the status of a claim/encounter at the level of the payers "front end" claim/encounter edits, i.e., before the payer is legally required to keep a history of the claim/encounter. Effective date: 12/02/05.

(14) #26 - "Telehealth v2.1." Purpose: to provide a uniform standard of billing for a health care claim/encounter delivered via telehealth. Two types of telehealth technology have been identified to deliver health care. Effective date: 9/13/03.

(15) #27 - "Metabolic and Dietary Foods v2.1." Purpose: to provide a uniform standard for billing of metabolic dietary products for those providers and payers that use the UB92 and the HCFA 1500 or the electronic equivalent. Effective date: 09/11/04.

(16) #28 - "Home Health v2.1." Purpose: to provide a uniform standard of billing for a home health care claim/encounter. Effective date: 06/12/04.

(17) #30 - "Pain Management". Purpose: to provide a uniform method of submitting a pain management claim/encounter, pre-authorization, and notification. Effective date: 10/19/02.

(18) # 31 - "Eligibility Inquiry and Response Standard v2.3." Purpose: to detail the Standard transactions for the transmission of health care eligibility inquiries and responses in the state of Utah. Effective date: 06/02/07.

(19) #32 - "Benefits Enrollment and Maintenance Standard v2.1." Purpose: to mandate the use of the ASC X12 834 HIPAA addenda transaction for health care benefits enrollment and maintenance transactions. Effective date: 12/06/04.

(20) #34 - "Psychiatric Day Treatment Standard v2.0." Purpose: to provide a uniform standard for submitting a psychiatric day treatment claim/encounter, pre-authorization, and notification. Effective date: 10/09/02.

(21) #35 - "Prior Authorization/Referral Standard v2.0." Purpose: to (1) lay out general recommendations to payers and providers about handling the UHIN Internet based prior authorization/referral (termed the 278) system, (2) set out the minimum data set that providers will submit in the 278 request, and (3) set out the minimum data set that payers will return on the 278 response. Effective date: 10/08/02.

(22) #36 - "Claim Status Inquiry v2.2." Purpose: to detail the Standard transactions for the transmission of health care claim status inquiries and response in the state of Utah. Effective date: 07/08/06.

(23) #37 - "Individual Name v2.0." Purpose: to provide guidance for entering names into any Utah provider, payer or sponsor systems for patients, enrollees, as well as all other people associated with these records. Effective Date: 07/12/03.

(24) #46 - "Required 'Unknown' Values v2.0." Purpose: to provide guidance for the use of common data values that can be used within the HIPAA transactions when a required data element is not known by the provider, payer or sponsor for patients, enrollees, as well as all other people associated with these transactions. These data values should only be used when the data is truly not available or known. These values are not to be used to replace known data. Effective Date: 06/12/04.

(25) #50 - "Coordination of Benefits v2.0." Purpose: to streamline the coordination of benefits process between payers and providers. The over all goal of this standard is to define the data to be exchanged for Coordination of Benefits (COB) and increase effective communications. Effective Date: 07/08/06.

(26) #51 - "National Provider Identifier v2.1." Purpose: to describe the agreed upon requirements surrounding the National Provider Identifier and it's usage for providers and payers in the State of Utah during the transition period of May 23, 2005 through May 22, 2007. Effective Date: 09/01/2007.

(27) #56 - "CMS 1500 Paper Claim Form 2.0." Purpose: to clearly describe the use of each form locator in the CMS 1500 claim billing form and its crosswalk to the HIPAA 837 004010X096A1 Institutional implementation guide. This standard applies to professional providers. Effective Date: 09/01/2007.

(28) #57 - "UB04 Paper Claim Form 2.0." The purpose of this standard is to describe the use of each form locator in the UB04 (CMS1450) claim billing form and its crosswalk to the HIPAA 004010X096A1 Institutional implementation guide. This standard applies to institutional providers. Effective Date: 04/07/2007.

R590-164-7. Separability.

If any provision of this rule or the application to any person

or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances may not be affected.

R590-164-8. Enforcement Date.

The commissioner will begin enforcing the revised portions of this rule 45 days from the rule's effective date.

KEY: insurance law
May 8, 2008 31A-22-614.5
Notice of Continuation March 31, 2005

R590. Insurance, Administration.
R590-167. Individual, Small Employer, and Group Health Benefit Plan Rule.
R590-167-1. Authority, Purpose and Scope.

(1) Authority.

This rule is intended to implement the provisions of Chapter 30, Title 31A, the Individual and Small Employer Health Insurance Act, referred to in this rule as the Act. The commissioner's authority to enforce this rule is provided under Subsections 31A-2-201(3)(a) and 31A-30-106(1)(k).

(2) Purpose.

(a) The general purposes of the Act and this rule are:

(i) to enhance the availability of health insurance coverage to individuals and small employers;

(ii) to regulate and prevent abuse in insurer rating practices and establish limits on differences in rates between health benefit plans;

(iii) to ensure renewability of coverage;

(iv) to establish limitations on the use of preexisting condition exclusions;

(v) to provide for portability; and

(vi) to improve the overall fairness and efficiency of the individual and small employer health insurance market.

(b) The Act and this rule are intended to:

(i) promote broader spreading of risk in the individual and small employer marketplace; and

(ii) regulate rating practices for all health benefit plans sold to individuals and small employers, whether sold directly or through associations or other groupings of individuals and small employers.

(3) Scope.

Carriers that provide health benefit plans to individuals and small employers are intended to be subject to all of the provisions of this rule.

R590-167-2. Definitions.

In addition to the definitions in Sections 31A-1-301 and 31A-30-103, the following definitions shall apply for the purposes of this rule:

(1) "Associate member of an employee organization" means any individual who participates in an employee benefit plan, as defined in 29 U.S.C. Section 1002(1), that is a multi-employer plan, as defined in 29 U.S.C. Section 1002(37A), other than the following:

(a) an individual, or the beneficiary of such individual, who is employed by a participating employer within a bargaining unit covered by at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained; or

(b) an individual who is a present or former employee, or a beneficiary of such employee, of the sponsoring employee organization, of an employer who is or was a party to at least one of the collective bargaining agreements under or pursuant to which the employee benefit plan is established or maintained, or of the employee benefit plan, or of a related plan.

(2) "Change in a Rating Factor" means the cumulative change with respect to such factor considered over a 12 month period. If a covered carrier changes rating factors with respect to more than one case characteristic in a 12 month period, the carrier shall consider the cumulative effect of all such changes in applying the 10% test.

(3) "Change in Rating Method" means:

(a) a change in the number of case characteristics used by a covered carrier to determine premium rates for health benefit plans in a class of business;

(b) a change in the manner or procedures by which insureds are assigned into categories for the purpose of applying a case characteristic to determine premium rates for health benefit plans in a class of business;

(c) a change in the method of allocating expenses among health benefit plans in a class of business; or

(d) a change in a rating factor with respect to any case characteristic if the change would produce a change in premium for any individual or small employer that exceeds 10%.

(4) "New entrant" means an eligible employee, or the dependent of an eligible employee, who becomes part of an employer group after the initial period for enrollment in a health benefit plan.

(5) "Risk characteristic" means the health status, claims experience, duration of coverage, or any similar characteristic related to the health status or experience of an individual, a small employer or of any member of a small employer.

(6) "Risk load" means the percentage above the applicable base premium rate that is charged by a covered carrier to a covered insured to reflect the risk characteristics of the covered individuals.

R590-167-3. Applicability and Scope.

(1) This rule shall apply to any health benefit plan which:

(a) meets one or more of the conditions set forth in Subsections 31A-30-104(1) and (2);

(b) provides coverage to a covered insured located in this state, without regard to whether the policy or certificate was issued in this state; and

(c) is in effect on or after the effective date of this rule.

(2)(a) If a small employer has employees in more than one state, the provisions of the Act and this rule shall apply to a health benefit plan issued to the small employer if:

(i) the majority of eligible employees of such small employer are employed in this state; or

(ii) if no state contains a majority of the eligible employees of the small employer, the primary business location of the small employer is in this state.

(b) In determining whether the laws of this state or another state apply to a health benefit plan issued to a small employer described in Subsection R590-167-3(2)(a), the provisions of the subsection shall be applied as of the date the health benefit plan was issued to the small employer for the period that the health benefit plan remains in effect.

(c) If a health benefit plan is subject to the Act and this rule, the provisions of the Act and this rule shall apply to all individuals covered under the health benefit plan, whether they reside in this state or in another state.

(3) A carrier that is not operating as a covered carrier in this state may not become subject to the provisions of the Act and this rule solely because an individual or a small employer that was issued a health benefit plan in another state by that carrier moves to this state.

R590-167-4. Establishment of Classes of Business.

(1) A covered carrier that establishes more than one class of business pursuant to the provisions of Section 31A-30-105 shall maintain on file for inspection by the commissioner the following information with respect to each class of business so established:

(a) a description of each criterion employed by the carrier, or any of its agents, for determining membership in the class of business;

(b) a statement describing the justification for establishing the class as a separate class of business and documentation that the establishment of the class of business is intended to reflect substantial differences in expected claims experience or administrative costs related to the reasons set forth in Section 31A-30-105; and

(c) a statement disclosing which, if any, health benefit plans are currently available for purchase in the class and any significant limitations related to the purchase of such plans.

(2) A carrier may not directly or indirectly use group size

as a criterion for establishing eligibility for a class of business.

R590-167-5. Transition for Assumptions of Business from Another Carrier.

(1)(a) A covered carrier may not transfer or assume the entire insurance obligation, risk, or both of a health benefit plan covering an individual or a small employer in this state unless:

(i) the transaction has been approved by the commissioner of the state of domicile of the assuming carrier;

(ii) the transaction has been approved by the commissioner of the state of domicile of the ceding carrier; and

(iii) the transaction otherwise meets the requirements of this section.

(b) A carrier domiciled in this state that proposes to assume or cede the entire insurance obligation , risk, or both of one or more health benefit plans covering covered individuals from or to another carrier shall make a filing for approval with the commissioner at least 60 days prior to the date of the proposed assumption. The commissioner may approve the transaction, if the commissioner finds that the transaction is in the best interests of the individuals insured under the health benefit plans to be transferred and is consistent with the purposes of the Act and this rule. The commissioner may not approve the transaction until at least 30 days after the date of the filing; except that, if the carrier is in hazardous financial condition, the commissioner may approve the transaction as soon as the commissioner deems reasonable after the filing.

(c)(i) The filing required under Subsection R590-167-5(1)(b) shall:

(A) describe the class of business, including any eligibility requirements, of the ceding carrier from which the health benefit plans will be ceded;

(B) describe whether the assuming carrier will maintain the assumed health benefit plans as a separate class of business, pursuant to Subsection R590-167-5(3), or will incorporate them into an existing class of business, pursuant to Subsection R590-167-5(4). If the assumed health benefit plans will be incorporated into an existing class of business, the filing shall describe the class of business of the assuming carrier into which the health benefit plans will be incorporated;

(C) describe whether the health benefit plans being assumed are currently available for purchase by individuals or small employers;

(D) describe the potential effect of the assumption, if any, on the benefits provided by the health benefit plans to be assumed;

(E) describe the potential effect of the assumption, if any, on the premiums for the health benefit plans to be assumed;

(F) describe any other potential material effects of the assumption on the coverage provided to the individuals and small employers covered by the health benefit plans to be assumed; and

(G) include any other information required by the commissioner.

(ii) A covered carrier required to make a filing under Subsection R590-167-5(1)(b) shall also make an informational filing with the commissioner of each state in which there are individual or small employer health benefit plans that would be included in the transaction. The informational filing to each state shall be made concurrently with the filing made under Subsection R590-167-5(1)(b) and shall include at least the information specified in Subsection R590-167-5(1)(b)(ii) for the individual or small employer health benefit plans in that state.

(d) A covered carrier may not transfer or assume the entire insurance obligation and/or risk of a health benefit plan covering an individual or a small employer in this state unless it complies with the following provisions:

(i) The carrier has provided notice to the commissioner at least 60 days prior to the date of the proposed assumption. The notice shall contain the information specified in Subsection R590-167-5(1)(c) for the health benefit plans covering individuals and small employers in this state.

(ii) If the assumption of a class of business would result in the assuming covered carrier being out of compliance with the limitations related to premium rates contained in Section 31A-30-106, the assuming carrier shall make a filing with the commissioner pursuant to Subsection 31A-30-105(3) seeking an extended transition period.

(iii) An assuming carrier seeking an extended transition period may not complete the assumption of health benefit plans covering individuals or small employers in this state unless the commissioner grants the extended transition period requested pursuant to Subsection R590-167-5(1)(d)(ii).

(iv) Unless a different period is approved by the commissioner, an extended transition period shall, with respect to an assumed class of business, be for no more than 15 months and, with respect to each individual small employer, shall last only until the anniversary date of such employer's coverage, except that the period with respect to an individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(2)(a) Except as provided in Subsection R590-167-5(2)(b), a covered carrier may not cede or assume the entire insurance obligation, risk, or both for an individual or small employer health benefit plan unless the transaction includes the ceding to the assuming carrier of the entire class of business which includes such health benefit plan.

(b) A covered carrier may cede less than an entire class of business to an assuming carrier if:

(i) one or more individuals or small employers in the class have exercised their right under contract or state law to reject, either directly or by implication, the ceding of their health benefit plans to another carrier. In that instance, the transaction shall include each health benefit plan in the class of business except those health benefit plans for which an individual or a small employer has rejected the proposed cession; or

(ii) after a written request from the transferring carrier, the commissioner determines that the transfer of less than the entire class of business is in the best interests of the individual or small employers insured in that class of business.

(3) Except as provided in Subsection R590-167-5(4), a covered carrier that assumes one or more health benefit plans from another carrier shall maintain such health benefit plans as a separate class of business.

(4) A covered carrier that assumes one or more health benefit plans from another carrier may exceed the limitation contained in Section 31A-30-105 relating to the maximum number of classes of business a carrier may establish, due solely to such assumption for a period of up to 15 months after the date of the assumption, provided that the carrier complies with the following provisions:

(a) Upon assumption of the health benefit plans, such health benefit plans shall be maintained as a separate class of business. During the 15-month period following the assumption, each of the assumed individual or small employer health benefit plans shall be transferred by the assuming covered carrier into a single class of business operated by the assuming covered carrier. The assuming covered carrier shall select the class of business into which the assumed health benefit plans will be transferred in a manner such that the transfer results in the least possible change to the benefits and rating method of the assumed health benefit plans.

(b) The transfers authorized in Subsection R590-167-5(4)(a) shall occur with respect to each individual or small employer on the anniversary date of the individual's or small employer's coverage, except that the period with respect to an

individual small employer may be extended beyond its first anniversary date for a period of up to 12 months if the anniversary date occurs within three months of the date of assumption of the class of business.

(c) A covered carrier making a transfer pursuant to Subsection R590-167-5(4)(a) may alter the benefits of the assumed health benefit plans to conform to the benefits currently offered by the carrier in the class of business into which the health benefit plans have been transferred.

(d) The premium rate for an assumed individual or small employer health benefit plan may not be modified by the assuming covered carrier until the health benefit plan is transferred pursuant to Subsection R590-167-5(4)(a). Upon transfer, the assuming covered carrier shall calculate a new premium rate for the health benefit plan from the rate manual established for the class of business into which the health benefit plan is transferred. In making such calculation, the risk load applied to the health benefit plan shall be no higher than the risk load applicable to such health benefit plan prior to the assumption.

(e) During the 15 month period provided in this subsection, the transfer of individual or small employer health benefit plans from the assumed class of business in accordance with this subsection may not be considered a violation of the first sentence of Subsection 31A-30-106(2).

(5) An assuming carrier may not apply eligibility requirements, including minimum participation and contribution requirements, with respect to an assumed health benefit plan, or with respect to any health benefit plan subsequently offered to an individual or small employer covered by such an assumed health benefit plan, that are more stringent than the requirements applicable to such health benefit plan prior to the assumption.

(6) The commissioner may approve a longer period of transition upon application of a covered carrier. The application shall be made within 60 days after the date of assumption of the class of business and shall clearly state the justification for a longer transition period.

(7) Nothing in this section or in the Act is intended to:

(a) reduce or diminish any legal or contractual obligation or requirement, including any obligation provided in Section 31A-14-213, of the ceding or assuming carrier related to the transaction;

(b) authorize a carrier that is not admitted to transact the business of insurance in this state to offer or insure health benefit plans in this state; or

(c) reduce or diminish the protections related to an assumption reinsurance transaction provided in Section 31A-14-213 or otherwise provided by law.

R590-167-6. Restrictions Relating to Premium Rates.

(1) A covered carrier shall develop a separate rate manual for each class of business. Base premium rates and new business premium rates charged to individuals and small employers by the covered carrier shall be computed solely from the applicable rate manual developed pursuant to this subsection. To the extent that a portion of the premium rates charged by a covered carrier is based on the carrier's discretion, the manual shall specify the criteria and factors considered by the carrier in exercising such discretion.

(2)(a) A covered carrier may not modify the rating method, as defined in Section R590-167-2, used in the rate manual for a class of business until the change has been approved as provided in this subsection. The commissioner may approve a change to a rating method if the commissioner finds that the change is reasonable, actuarially appropriate, and consistent with the purposes of the Act and this rule.

(b) A carrier may modify the rating method for a class of business only after filing an actuarial certification. The filing shall clearly request approval for a change in rating method and contain at least the following information:

(i) the reasons the change in rating method is being requested;

(ii) a complete description of each of the proposed modifications to the rating method;

(iii) a description of how the change in rating method would affect the premium rates currently charged to individuals and small employers in the class of business, including an estimate from a qualified actuary of the number of groups or individuals, and a description of the types of groups or individuals, whose premium rates may change by more than 10% due to the proposed change in rating method, not including general increases in premium rates applicable to all individuals and small employers in a health benefit plan;

(iv) a certification from a qualified actuary that the new rating method would be based on objective and credible data and would be actuarially sound and appropriate; and

(v) a certification from a qualified actuary that the proposed change in rating method would not produce premium rates for individuals and small employers that would be in violation of Sections 31A-30-106 and 31A-30-106.5.

(3) The rate manual developed pursuant to Subsections 31A-30-106(4) and R590-167-6(1) shall specify the case characteristics and rate factors to be applied by the covered carrier in establishing premium rates for the class of business.

(a) A covered carrier may not use case characteristics other than those specified in Subsection 31A-30-106(1)(h) without the prior approval of the commissioner. A covered carrier seeking such an approval shall make a filing with the commissioner for a change in rating method under Subsection R590-167-6(2)(b). Tobacco use is not an allowable case characteristic. Tobacco use is an allowable risk characteristic when utilized in compliance with Section 31A-30-106(1)(b).

(b) A covered carrier shall use the same case characteristics in establishing premium rates for each health benefit plan in a class of business and shall apply them in the same manner in establishing premium rates for each such health benefit plan. Case characteristics shall be applied without regard to the risk characteristics of an individual or small employer.

(c) The rate manual shall clearly illustrate the relationship among the base premium rates charged for each health benefit plan in the class of business. If the new business premium rate is different than the base premium rate for a health benefit plan, the rate manual shall illustrate the difference.

(d) Differences among base premium rates for health benefit plans shall be based solely on the reasonable and objective differences in the design and benefits of the health benefit plans and may not be based in any way on the nature of an individual or small employer that choose or are expected to choose a particular health benefit plan. A covered carrier shall apply case characteristics and rate factors within a class of business in a manner that assures that premium differences among health benefit plans for identical individuals or small employers vary only due to reasonable and objective differences in the design and benefits of the health benefit plans and are not due to the nature of the individuals or small employers that choose or are expected to choose a particular health benefit plan.

(e) The rate manual shall provide for premium rates to be developed in a two step process.

(i) In the first step, a base premium rate shall be developed for the individual or small employer without regard to any risk characteristics.

(ii) In the second step, the resulting base premium rate may be adjusted by a risk load, subject to the provisions of Sections 31A-30-106 and 31A-30-106.5, to reflect the risk characteristics.

(f) Each rate manual developed pursuant to Subsection R590-167-6(1) shall be maintained by the carrier for a period of

six years. Updates and changes to the manual shall be maintained with the manual.

(4)(a) Except as provided in Subsection R590-167-6(4)(b), a premium charged to an individual or small employer for a health benefit plan may not include a separate application fee, underwriting fee, or any other separate fee or charge.

(b) A carrier may charge a separate fee with respect to an individual or small employer health benefit plan, but only one fee with respect to such plan, provided the fee is no more than $5 per month per individual or employee and is applied in a uniform manner to each health benefit plan in a class of business.

(5) If group size is used as a case characteristic by a covered carrier, the highest rate factor associated with a group size classification may not exceed the lowest rate factor associated with such a classification by more than 20% without prior approval of the commissioner.

(6) The restrictions related to changes in premium rates in Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f) shall be applied as follows:

(a) A covered carrier shall revise its rate manual each rating period to reflect changes in base premium rates and changes in new business premium rates.

(b)(i) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate is less than or the same as the percentage change in the base premium rate, the change in the new business premium rate shall be deemed to be the change in the base premium rate for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(ii) If, for any health benefit plan with respect to any rating period, the percentage change in the new business premium rate exceeds the percentage change in the base premium rate, the health benefit plan shall be considered a health benefit plan into which the covered carrier is no longer enrolling new individuals or small employers for the purposes of Subsections 31A-30-106(1)(c) and 31A-30-106(1)(f).

(c) If, for any rating period, the change in the new business premium rate for a health benefit plan differs from the change in the new business premium rate for any other health benefit plan in the same class of business by more than 20%, the carrier shall make a filing with the commissioner containing a complete explanation of how the respective changes in new business premium rates were established and the reason for the difference. The filing shall be made 30 days before the beginning of the rating period.

(d) A covered carrier shall keep on file for a period of at least six years the calculations used to determine the change in base premium rates and new business premium rates for each health benefit plan for each rating period.

(7)(a) Except as provided in Subsection R590-167-6(7)(b), a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, as shown in the rate manual as revised for the rating period, multiplied by:

(ii) one plus the sum of:

(iii) the risk load applicable to the individual or small employer during the previous rating period; and

(iv) 15% prorated for periods of less than one year.

(b) In the case of a health benefit plan into which a covered carrier is no longer enrolling new individuals or small employers, a change in premium rate for an individual or small employer shall produce a revised premium rate that is no more than the following:

(i) the base premium rate for the individual or small employer, given its present composition and as shown in the rate manual in effect for the individual or small employer at the beginning of the previous rating period, multiplied by:

(ii) one plus the lesser of:

(A) the change in the base rate; or

(B) the percentage change in the new business premium for the most similar health benefit plan into which the covered carrier is enrolling new individuals or small employers, multiplied by:

(iii) one plus the sum of:

(A) the risk load applicable to the individual or small employer during the previous rating period; and

(B) 15%, prorated for periods of less than one year.

(c) Notwithstanding the provisions of Subsections R590-167-6(7)(a) and (b), a change in premium rate for an individual or small employer may not produce a revised premium rate that would exceed the limitations on rates provided in Subsection 31A-30-106(1)(b).

(8)(a) A representative of a Taft Hartley trust, including a carrier upon the written request of such a trust, may file in writing with the commissioner a request for the waiver of application of the provisions of Subsection 31A-30-106(1) with respect to such trust.

(b) A request made under Subsection R590-167-6(8)(a) shall identify the provisions for which the trust is seeking the waiver and shall describe, with respect to each provision, the extent to which application of such provision would:

(i) adversely affect the participants and beneficiaries of the trust; and

(ii) require modifications to one or more of the collective bargaining agreements under or pursuant to which the trust was or is established or maintained.

(c) A waiver granted under Subsection 31A-30-104(5) shall not apply to an individual who participates in the trust because the individual is an associate member of an employee organization or the beneficiary of such an individual.

R590-167-7. Application to Reenter State.

(1) A carrier that has been prohibited from writing coverage for individuals or small employers in this state pursuant to Subsection 31A-30-107.3 may not resume offering health benefit plans to individuals or small employers in this state until the carrier has made a petition to the commissioner to be reinstated as a covered carrier and the petition has been approved by the commissioner. In reviewing a petition, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

(2) In the case of a covered carrier doing business in only one established geographic service area of the state, if the covered carrier elects to nonrenew a health benefit plan under Subsections 31A-30-107(3)(e) or 107.1(3)(e), the covered carrier shall be prohibited from offering health benefit plans to individuals or small employers in any part of the service area for a period of five years. In addition, the covered carrier may not offer health benefit plans to individuals or small employers in any other geographic area of the state without the prior approval of the commissioner. In considering whether to grant approval, the commissioner may ask for such information and assurances as the commissioner finds reasonable and appropriate.

R590-167-8. Qualifying Previous Coverage.

A covered carrier shall not deny, exclude, or limit benefits because of a preexisting condition without first ascertaining the existence and source of previous coverage. The covered carrier shall have the responsibility to contact the source of such previous coverage to resolve any questions about the benefits or limitations related to such previous coverage. Previous coverage may be coverage that continues after the issuance of the new health benefit plan. The previous carrier shall fully cooperate in furnishing the needed information required by this section.

R590-167-9. Restrictive Riders.

A restrictive rider, endorsement or other provision that violates the provisions of Subsection 31A-30-107.5 may not remain in force. A covered carrier shall immediately provide written notice to those individuals or small employers whose coverage will be changed pursuant to this section.

R590-167-10. Status of Carriers as Covered Carriers.

(1) Prior to marketing a health benefit plan, a carrier shall make a filing with the commissioner indicating whether the carrier intends to operate as a covered carrier in this state under the terms of the Act and of this rule. Such filing will indicate if the covered carrier intends to market to individuals, small employers or both, and be signed by an officer of the company.

(2) Except as provided by Subsection R590-167-10(3), a carrier may not offer health benefit plans to individuals, small employers, or continue to provide coverage under health benefit plans previously issued to individuals or small employers in this state, unless the filing provided pursuant to Subsection R590-167-10(1) indicates that the carrier intends to operate as a covered carrier in this state.

(3) If a carrier does not intend to operate as a covered carrier in this state, the carrier may continue to provide coverage under health benefit plans previously issued to individuals and small employers in this state only if the carrier complies with the following provisions:

(a) the carrier complies with the requirements of the Act with respect to each of the health benefit plans previously issued to individuals and small employers by the carrier;

(b) the carrier provides coverage to each new entrant to a health benefit plan previously issued to an individual or small employer by the carrier;

(c) the carrier complies with the requirements of Section 31A-30-106 and this rule as they apply to individuals and small employers whose coverage has been terminated by the carrier and to individuals and small employers whose coverage has been limited or restricted by the carrier; and

(d) the carrier files a letter of intent indicating the carrier does not intend to operate as a covered carrier in this state and will maintain the business in compliance with the Act and this rule.

(4) If the filing made pursuant Subsection R590-167-10(3) indicates that a carrier does not intend to operate as a covered carrier in this state, the carrier shall be precluded from operating as a covered carrier in this state, except as provided for in Subsection R590-167-10(3), for a period of five years from the date of the filing. Upon a written request from such a carrier, the commissioner may reduce the period provided for in the previous sentence if the commissioner finds that permitting the carrier to operate as a covered carrier would be in the best interests of the individuals and small employers in the state.

R590-167-11. Actuarial Certification and Additional Filing Requirements.

(1) Actuarial Certification.

(a) An actuarial certification shall be filed annually and meet the requirements of Section 31A-30-106(4)(b) and the following:

(i) the actuarial certification shall be a written statement that meets the requirements of Title 31A Chapter 30, R590-167, and the applicable standards of practice as promulgated by the Actuarial Standards Board;

(ii) the actuary must state that he or she meets the qualifications of Subsection 31A-30-103(1);

(iii) the actuarial certification shall contain the following statement: "I, (name), certify that (name of covered carrier) is in compliance with the provisions of Title 31A Chapter 30, and R590-167, based upon the examination of (name of covered carrier), including review of the appropriate records and of the actuarial assumptions and methods utilized by (name of covered carrier) in establishing premium rates for applicable health benefit plans;" and

(iv) the actuarial certification shall list and describe each written demonstration used by the actuary to establish compliance with Title 31A Chapter 30 and R590-167.

(b) The actuarial certification shall be filed no later than April 1 of each year.

(2) Rating Manual.

(a) For every health benefit plan subject to the Act and this rule, the carrier shall file with the commissioner a copy of the applicable rating manual, for both new business and renewal rates, which includes:

(i) signed certification by an actuary that to the best of the actuary's knowledge and judgment the rate filing is in compliance with the applicable laws and rules of the State of Utah;

(ii) a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual;

(iii) all changes and updates, which includes a complete and detailed description of how the final premium, including any fees, is calculated from the rating manual; and

(iv) a description of the carrier's classes of business as described in Subsection R590-167-4(1).

(b) The rate manual shall be filed:

(i) with an initial product filing; or

(ii) within 30 days prior to use for an existing health benefit plan

(3) Index Premium Rates.

(a) A small employer carrier shall file annually the index premium rate information required by Section 31A-29-117(2). The report shall include:

(i) the small employer index premium rate as of January 1 of the previous year;

(ii) the small employer index premium rate as of January 1 of the current year; and

(iii) the average percentage change in the index premium rate as of January 1 of the current and preceding year.

(b) The information described in Subsection R590-167-11(3)(a) shall be filed no later than February 1 of each year.

R590-167-12. Records.

Records submitted to the commissioner under this rule shall be maintained by the commissioner as protected records under Title 63, Chapter 2, Government Records Access and Management Act.

R590-167-13. 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.

R590-167-14. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-167-15. Severability.

If any provision of this rule or the application of it to any person or circumstance is, for any reason, held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances will not be affected by the invalid provision.

KEY: health insurance
May 20, 2008 **31A-30-106**
Notice of Continuation September 28, 2004

R590. Insurance, Administration.
R590-191. Unfair Life Insurance Claims Settlement Practices Rule.
R590-191-1. Authority.

This rule is promulgated pursuant to Subsections 31A-2-201(1) and 31A-2-201(3)(a) in which the commissioner is empowered to administer and enforce this title and to make rules to implement the provisions of this title. Further authority to provide for timely payment of claims is provided by Subsection 31A-26-301(1). Matters relating to proof and notice of loss are promulgated pursuant to Section 31A-26-301 and Subsection 31A-21-312(5). Authority to promulgate rules defining unfair claims settlement practices or acts is provided in Subsection 31A-26-303(4). The authority to require a timely response to the Insurance Department is provided by Section 31A-2-202(4). Authority to require payment of interest on death proceeds is provided in Section 31A-22-428.

R590-191-2. Purpose.

This rule sets forth minimum standards for the investigation and disposition of life insurance claims arising under policies or certificates issued to residents of the State of Utah. These standards include fair and rapid settlement of claims, protecting claimants under insurance policies from unfair claims settlement practices and promoting the professional competence of those engaged in processing claims. The various provisions of this rule are intended to define procedures and practices which constitute unfair claim settlement practices. This rule is regulatory in nature and is not intended to create a private right of action.

R590-191-3. Definitions.

For the purpose of this rule the Commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

(1) "Beneficiary" means the party entitled to receive the proceeds or benefits occurring under the policy.

(2) "Claim File" means any record either in its original form or as recorded by any process which can accurately and reliably reproduce the original material regarding the claim, its investigation, adjustment and settlement.

(3) "Claim Representative" means any individual, corporation, association, organization, partnership, or other legal entity authorized to represent an insurer with respect to a claim.

(4) "Claimant" means a person making a claim under a policy, including an insured, policyholder, beneficiary, or the claimant's legal representative, including a member of the claimant's immediate family.

(5) "Days" means calendar days.

(6) "Documentation" includes, but is not limited to, all written and electronic communication records, transactions, notes, work papers, claim forms, and explanation of benefits forms relative to the claim.

(7) "Investigation" means all activities of an insurer related to the determination of liabilities under coverages afforded by an insurance policy or insurance contract.

(8) "Notice of Loss" means any notification, whether in writing or other means acceptable under the terms of an insurance policy to an insurer or its representative, by a claimant, which reasonably apprises the insurer of the facts pertinent to a claim.

(9) "Proof of Loss" means written proofs, such as claim forms, medical authorizations or other reasonable evidence of the claim that is ordinarily required of all claimants submitting claims.

R590-191-4. Minimum Standards for Prompt, Fair and Equitable Claim Handling Processes and Communications.

(1) Notice of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312.

(2) Notice of loss may be given to the insurer or its representative unless the insurer clearly directs otherwise in accordance with policy provisions or in a separate written notice mailed or delivered to the claimant.

(3) Subject to policy provisions, a requirement of any notice of loss may be waived by an authorized representative of the insurer.

(4) Insurance policies may not require notice of loss to be given in a manner which is inconsistent with the actual practice of the insurer. For example, if the practice of the insurer is to accept notice of loss by telephone, the policy shall reflect that practice, and not require that the claimant furnish "immediate written notice" of loss.

(5) Within 15 days of receipt of notice of loss from a claimant, the insurer shall provide necessary claim forms, instructions, and reasonable assistance so the claimant can properly comply with company requirements for filing a claim.

(6) Proof of loss to an insurer, if required, shall be considered timely if made according to the terms of the policy, subject to the definitions and provisions of this rule, and the provisions of Section 31A-21-312. Proof of loss requirements may not be unreasonable and should consider all of the circumstances surrounding a given claim.

(7) Within 15 days of receipt of proof of loss from a claimant, the insurer shall:

(a) provide written acknowledgment of the receipt of the proof of loss;

(b) request any necessary additional information from claimant; and

(c) commence any necessary investigation of the claim, including requesting additional information from other parties having documentation or information relating to the claim; or

(d) provide the claim settlement and a written explanation of benefits to the claimant if no additional information or investigation is necessary.

(8) Within 15 days of receipt of any communications relating to a claim which reasonably suggests that a response is expected, the insurer shall substantively respond to such communication.

(9) Within 30 days of receipt of proof of loss from the claimant, the insurer shall complete the investigation of a claim, unless such investigation cannot reasonably be completed within such time. It shall be the burden of the insurer to establish, by adequate records, that the investigation could not be completed within 30 days of its receipt of proof of loss. If the investigation cannot be completed within 30 days, the insurer shall communicate to the claimant a written explanation as to the reasons for the delay and shall continue to so communicate at least every 30 days until the claim is either settled or denied.

(10) Within 15 days of completion of the investigation, the insurer shall either:

(a) provide the claim settlement and a written explanation of benefits to the claimant; or

(b) provide, in writing, a denial of the claim and an explanation to the claimant as to the reasons for the denial.

(11) Closing a claim file without settlement is considered a denial and must be so communicated in writing to the claimant and according to the provisions of the policy.

(12) If recalculation/revisitation of a claim becomes necessary subsequent to either denial or settlement, the insurer shall again comply with the initial claim handling process requirements as described in this section.

(13) Upon receipt of an inquiry from the Insurance Department regarding a claim, every licensee shall furnish a substantive response to the Insurance Department within the time period specified in the inquiry.

R590-191-5. Unfair Claims Settlement Practices.

The commissioner, pursuant to 31A-26-303(4), hereby finds the following acts or failure to perform required acts to be misleading, deceptive, unfairly discriminatory, or overreaching in the settlement of claims:

(1) concealing from or failing to fully disclose to a claimant any benefits, limitations, exclusions, coverages, or other relevant provisions of an insurance policy or insurance contract under which a claim is presented;

(2) denying or threatening the denial of a claim for any reason which is not clearly described in the policy;

(3) refusing to settle claims without conducting a reasonable and complete investigation;

(4) refusing to provide a written basis for the denial of a claim upon demand of the claimant;

(5) failing to provide the claimant with a written explanation of the evidence of any investigation or file materials giving rise to the denial of a claim based on misrepresentation or fraud on an insurance application, when such misrepresentation is the basis for the denial;

(6) compensating employees, agents or contractors of any amounts which are based on savings to the insurer as a result of reducing or denying claims;

(7) making a claim settlement to the claimant not accompanied by a statement or explanation of benefits setting forth the coverage under which the settlement is being made and how the settlement amount was calculated;

(8) failing to settle a claim following receipt of proof of loss when liability is reasonably clear in order to influence other claim settlements under other portions of the insurance policy coverage or under other policies of insurance;

(9) advising a claimant not to obtain the services of an attorney or other advocate or suggesting the claimant will receive less money if an attorney is used to pursue or advise on the merits of a claim;

(10) misleading a claimant as to the applicable statute of limitations;

(11) issuing a check or draft in partial settlement of a loss or a claim under a specified coverage when such check or draft contains language which purports to release the insurer from total liability;

(12)(a) for policies issued prior to May 5, 2008, failing to pay interest at the legal rate, as provided in Title 15 of the Utah Code upon amounts that are overdue under these rules. A claim shall be considered overdue if not settled within 15 days of completion of the investigation; or

(b) for policies issued on or after May 5, 2008, failing to pay interest in accordance with Section 31A-22-428; and

(13) failing to deliver a copy of the insurer's guidelines for prompt investigation of claims to the Insurance Department when requested to do so.

R590-191-6. File and Record Documentation.

Each insurer's claim files for policies or certificates are subject to examination by the commissioner of insurance or by the commissioner's duly appointed designees. To aid in such examination:

(1) The insurer shall maintain accessible and retrievable claim file data for examination. The insurer shall be able to provide the policy number, certificate number if any, duplicate of the policy as issued, date of loss, date notice of loss was received, date proof of loss was received, date any investigation commenced, date the investigation was completed, date of settlement or denial of the claim or date the claim was closed without settlement, documentation as to how the claim was settled and how any payments were calculated, and any other documentation relied upon for claim settlement by the insurer. This data shall be available for all open and closed files for at least the most recent three year period, or, for a Utah domiciled insurer, since the date of the previous examination by the department, whichever is longer.

(2) Detailed documentation shall be contained in each claim file in order to permit reconstruction of the insurer's activities relative to each claim.

(3) Each document within the claim file shall be noted as to date received, date processed or date mailed.

(4) The claim file records must be maintained either in hard copy files, or some other format that has the capability of duplication to hard copy.

R590-191-7. Penalties.

A person found, after an administrative proceeding, to be in violation of this rule, shall be subject to penalties as provided under Section 31A-2-308.

R590-191-8. Enforcement Date.

The commissioner will begin enforcing the provisions of this rule immediately upon the effective date.

R590-191-9. 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 law

May 29, 2008	**31A-2-201**
Notice of Continuation April 26, 2004	**31A-2-204**
	31A-2-308
	31A-21-312
	31A-22-428
	31A-26-301
	31A-26-303

R600. Labor Commission, Administration.
R600-1. Declaratory Orders.
R600-1-1. Purpose.

A. As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules and orders governing or issued by the agency.

B. In order of importance, procedures governing declaratory orders are:

(1) procedures specified in this rule pursuant to Chapter 46b of Title 63, U.C.A.;

(2) the applicable procedures of Chapter 46b of Title 63;

(3) applicable procedures of other governing state and federal law; and

(4) the Utah Rules of Civil Procedure.

R600-1-2. Definitions.

Terms used in this rule are defined in Section 63G-4-103, except and in addition:

A. "Applicability" means a determination if a statute, rule, or order should be applied, and if so, how the law stated should be applied to the facts.

B. "Declaratory Order" means an administrative interpretation or explanation of rights, status, and other legal relations under a statute, rule or order.

C. "Director" means the agency head or governing body with jurisdiction over the Agency's adjudicative proceedings.

R600-1-3. Petition Form and Filing.

A. The petition shall be addressed and delivered to the director, who shall mark the petition with the date of receipt.

B. The petition shall:

(1) be clearly designated as a request for an agency declaratory order;

(2) identify the statute, rule, or order to be reviewed;

(3) describe in detail the situation or circumstances in which applicability is to be reviewed;

(4) describe the reason or need for the applicability review, addressing in particular, why the review should not be considered frivolous;

(5) include an address and telephone number where the petitioner can be contacted during regular work days; and

(6) be signed by the petitioner.

R600-1-4. Reviewability.

The agency shall not issue a declaratory order if the subject matter is:

A. not within the jurisdiction and competence of the agency;

B. frivolous, trivial, irrelevant, or immaterial;

C. likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to the determination of the matter by a declaratory proceeding;

D. one in which the person requesting the declaratory order has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; or

E. otherwise excluded by state or federal law.

R600-1-5. Intervention.

A person may file a petition for intervention in a declaratory proceeding only if they deliver to the director a petition complying with all of the requirements of Section 63G-4-207 within 20 days of the director's receipt of the petition for a declaratory order filed under Section 63G-4-503(4).

R600-1-6. Petition Review and Disposition.

A. The agency will be governed by the provisions of Sections 63G-4-503(6) and (7).

B. Petitions seeking declaratory orders will be designated as informal adjudicative proceedings.

R600-1-7. Administrative Review.

A. Petitioner may seek reconsideration of a declaratory order by petitioning the director under the procedures of Section 63G-4-302.

KEY: labor commission, declaratory orders
1988 34A-1-104
Notice of Continuation April 28, 2008 63G-4-504 et seq.

R602. Labor Commission, Adjudication.
R602-1. General Provisions.
R602-1-1. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R602-1-2. Witness Fees.

Each witness who shall appear before the Commission by its order shall receive from the Commission for his/her attendance fees and mileage as provided for witnesses by the Utah Rules of Civil Procedure. Otherwise, each party is required to subpoena witnesses at their own expense.

R602-1-3. Representatives at Adjudicative Proceedings.

1. Representatives who are not duly admitted and licensed to practice law in Utah shall not be allowed to appear on behalf of a party before the Adjudication Division.

2. Individuals who are parties to an adjudicative proceeding before the Adjudication Division may appear pro se.

3. Corporations who are parties to an adjudicative proceeding before the Adjudication Division shall be represented by legal counsel who are duly admitted to practice law in Utah.

R602-1-4. Filing of Documents.

1. All documents filed with the administrative law judge shall be filed with all other parties to the adjudicative proceeding and shall provide verification of mailing to, or service on, all parties to whom copies of the documents are mailed or personally delivered.

2. Parties shall not file courtesy copies with the Division.

KEY: witness fees, time, administrative procedures, filing deadlines
January 2, 2004 34A-1-302
Notice of Continuation August 15, 2007 63G-4-102 et seq.

R602. Labor Commission, Adjudication.
R602-2. Adjudication of Workers' Compensation and Occupational Disease Claims.
R602-2-1. Pleadings and Discovery.

A. Definitions.

1. "Commission" means the Labor Commission.

2. "Division" means the Division of Adjudication within the Labor Commission.

3. "Application for Hearing" means the request for agency action regarding a workers' compensation claim.

4. "Supporting medical documentation" means a Summary of Medical Record or other medical report or treatment note completed by a physician that indicates the presence or absence of a medical causal connection between benefits sought and the alleged industrial injury.

5. "Authorization to Release Medical Records" is a form authorizing the injured workers' medical providers to provide medical records and other medical information to the commission or a party.

6. "Supporting documents" means supporting medical documentation, list of medical providers, Authorization to Release Medical Records and, when applicable, an Appointment of Counsel Form.

7. "Petitioner" means the person or entity who has filed an Application for Hearing.

8. "Respondent" means the person or entity against whom the Application for Hearing was filed.

9. "Discovery motion" includes a motion to compel or a motion for protective order.

B. Application for Hearing.

1. Whenever a claim for compensation benefits is denied by an employer or insurance carrier, the burden rests with the injured worker, or medical provider, to initiate agency action by filing an Application for Hearing with the Division. Applications for hearing shall include an original, notarized Authorization to Release Medical Records.

2. An employer, insurance carrier, or any other party with standing under the Workers' Compensation Act may obtain a hearing before the Adjudication Division by filing a request for agency action with the Division.

3. All Applications for Hearing shall include any available supporting medical documentation of the claim where there is a dispute over medical issues. Applications for Hearing without supporting documentation and a properly completed Authorization to Release Medical Records may not be mailed to the employer or insurance carrier for answer until the appropriate documents have been provided. In addition to respondent's answer, a respondent may file a motion to dismiss the Application for Hearing where there is no supporting medical documentation filed to demonstrate medical causation when such is at issue between the parties.

4. When an Application for Hearing with appropriate supporting documentation is filed with the Division, the Division shall forthwith mail to the respondents a copy of the Application for Hearing, supporting documents and Notice of Formal Adjudication and Order for Answer.

5. In cases where the injured worker is represented by an attorney, a completed and signed Appointment of Counsel form shall be filed with the Application for Hearing or upon retention of the attorney.

C. Answer.

1. The respondent(s) shall have 30 days from the date of mailing of the Order for Answer, to file a written answer to the Application for Hearing.

2. The answer shall admit or deny liability for the claim and shall state the reasons liability is denied. The answer shall state all affirmative defenses with sufficient accuracy and detail that the petitioner and the Division may be fully informed of the nature and substance of the defenses asserted.

3. All answers shall include a summary of benefits which have been paid to date on the claim, designating such payments by category, i.e. medical expenses, temporary total disability, permanent partial disability, etc.

4. When liability is denied based upon medical issues, copies of all available medical reports sufficient to support the denial of liability shall be filed with the answer.

5. If the answer filed by the respondents fails to sufficiently explain the basis of the denial, fails to include available medical reports or records to support the denial, or contains affirmative defenses without sufficient factual detail to support the affirmative defense, the Division may strike the answer filed and order the respondent to file within 20 days, a new answer which conforms with the requirements of this rule.

6. All answers must state whether the respondent is willing to mediate the claim.

7. Petitioners are allowed to timely amend the Application for Hearing, and respondents are allowed to timely amend the answer, as newly discovered information becomes available that would warrant the amendment. The parties shall not amend their pleadings later than 45 days prior to the scheduled hearing without leave of the Administrative Law Judge.

8. Responses and answers to amended pleadings shall be filed within ten days of service of the amended pleading without further order of the Labor Commission.

D. Default.

1. If a respondent fails to file an answer as provided in Subsection C above, the Division may enter a default against the respondent.

2. If default is entered against a respondent, the Division may conduct any further proceedings necessary to take evidence and determine the issues raised by the Application for Hearing without the participation of the party in default pursuant to Section 63G-4-209(4), Utah Code.

3. A default of a respondent shall not be construed to deprive the Employer's Reinsurance Fund or Uninsured Employers' Fund of any appropriate defenses.

4. The defaulted party may file a motion to set aside the default under the procedures set forth in Section 63G-4-209(3), Utah Code. The Adjudication Division shall set aside defaults upon written and signed stipulation of all parties to the action.

E. Waiver of Hearing.

1. The parties may, with the approval of the administrative law judge, waive their right to a hearing and enter into a stipulated set of facts, which may be submitted to the administrative law judge. The administrative law judge may use the stipulated facts, medical records and evidence in the record to make a final determination of liability or refer the matter to a Medical Panel for consideration of the medical issues pursuant to R602-2-2.

2. Stipulated facts shall include sufficient facts to address all the issues raised in the Application for Hearing and answer.

3. In cases where Medical Panel review is required, the administrative law judge may forward the evidence in the record, including but not limited to, medical records, fact stipulations, radiographs and deposition transcripts, to a medical panel for assistance in resolving the medical issues.

F. Discovery.

1. Upon filing the answer, the respondent and the petitioner may commence discovery. Discovery allowed under this rule may include interrogatories, requests for production of documents, depositions, and medical examinations. Discovery shall not include requests for admissions. Appropriate discovery under this rule shall focus on matters relevant to the claims and defenses at issue in the case. All discovery requests are deemed continuing and shall be promptly supplemented by the responding party as information comes available.

2. Without leave of the administrative law judge, or written stipulation, any party may serve upon any other party

written interrogatories, not exceeding 25 in number, including all discrete subparts, to be answered by the party served. The frequency or extent of use of interrogatories, requests for production of documents, medical examinations and/or depositions shall be limited by the administrative law judge if it is determined that:

a. The discovery sought is unreasonably cumulative or duplicative, or is obtainable from another source that is more convenient, less burdensome, or less expensive;

b. The party seeking discovery has had ample opportunity by discovery in the action to obtain the discovery sought; or

c. The discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the adjudication.

3. Upon reasonable notice, the respondent may require the petitioner to submit to a medical examination by a physician of the respondent's choice.

4. All parties may conduct depositions pursuant to the Utah Rules of Civil Procedure and Section 34A-1-308, Utah Code.

5. Requests for production of documents are allowed, but limited to matters relevant to the claims and defenses at issue in the case, and shall not include requests for documents provided with the petitioner's Application for Hearing, nor the respondents' answer.

6. Parties shall diligently pursue discovery so as not to delay the adjudication of the claim. If a hearing has been scheduled, discovery motions shall be filed no later than 45 days prior to the hearing unless leave of the administrative law judge is obtained.

7. Discovery motions shall contain copies of all relevant documents pertaining to the discovery at issue, such as mailing certificates and follow up requests for discovery. The responding party shall have 10 days from the date the discovery motion is mailed to file a response to the discovery motion.

8. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

9. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

G. Subpoenas.

1. Commission subpoena forms shall be used in all discovery proceedings to compel the attendance of witnesses. All subpoenas shall be signed by the administrative law judge assigned to the case, or the duty judge where the assigned judge is not available. Subpoenas to compel the attendance of witnesses shall be served at least 14 days prior to the hearing consistent with Utah Rule of Civil Procedure 45. Witness fees and mileage shall be paid by the party which subpoenas the witness.

2. A subpoena to produce records shall be served on the holder of the record at least 14 days prior to the date specified in the subpoena as provided in Utah Rule of Civil Procedure 45. All fees associated with the production of documents shall be paid by the party which subpoenas the record.

H. Medical Records Exhibit.

1. The parties are expected to exchange medical records during the discovery period.

2. Petitioner shall submit all relevant medical records contained in his/her possession to the respondent for the preparation of a joint medical records exhibit at least twenty (20) working days prior to the scheduled hearing.

3. The respondent shall prepare a joint medical record exhibit containing all relevant medical records. The medical record exhibit shall include all relevant treatment records that tend to prove or disprove a fact in issue. Hospital nurses' notes, duplicate materials, and other non-relevant materials need not be included in the medical record exhibit.

4. The medical records shall be indexed, paginated, arranged by medical care provider in chronological order and bound.

5. The medical record exhibit prepared by the respondent shall be delivered to the Division and the petitioner or petitioner's counsel at least ten (10) working days prior to the hearing. Late-filed medical records may or may not be admitted at the discretion of the administrative law judge by stipulation or for good cause shown.

6. The administrative law judge may require the respondent to submit an additional copy of the joint medical record exhibit in cases referred to a medical panel.

7. The petitioner is responsible to obtain radiographs and diagnostic films for review by the medical panel. The administrative law judge shall issue subpoenas where necessary to obtain radiology films.

I. Hearing.

1. Notices of hearing shall be mailed to the addresses of record of the parties. The parties shall provide current addresses to the Division for receipt of notices or risk the entry of default and loss of the opportunity to participate at the hearing.

2. Judgment may be entered without a hearing after default is entered or upon stipulation and waiver of a hearing by the parties.

3. No later than 45 days prior to the scheduled hearing, all parties shall file a signed pretrial disclosure form that identifies: (1) fact witnesses the parties actually intend to call at the hearing; (2) expert witnesses the parties actually intend to call at the hearing; (3) language translator the parties intend to use at the hearing; (4) exhibits, including reports, the parties intend to offer in evidence at the hearing; (5) the specific benefits or relief claimed by the petitioner; (6) the specific defenses that the respondent actually intends to litigate; (7) whether, or not, a party anticipates that the case will take more than four hours of hearing time; (8) the job categories or titles the respondents claim the petitioner is capable of performing if the claim is for permanent total disability, and; (9) any other issues that the parties intend to ask the administrative law judge to adjudicate. The administrative law judge may exclude witnesses, exhibits, evidence, claims, or defenses as appropriate of any party who fails to timely file a signed pre-trial disclosure form as set forth above. The parties shall supplement the pre-trial disclosure form with information that newly becomes available after filing the original form. The pre-trial disclosure form does not replace other discovery allowed under these rules.

4. If the petitioner requires the services of language translation during the hearing, the petitioner has the obligation of providing a person who can translate between the petitioner's native language and English during the hearing. If the respondents are dissatisfied with the proposed translator identified by the petitioner, the respondents may provide a qualified translator for the hearing at the respondent's expense.

5. The petitioner shall appear at the hearing prepared to outline the benefits sought, such as the periods for which compensation and medical benefits are sought, the amounts of unpaid medical bills, and a permanent partial disability rating, if applicable. If mileage reimbursement for travel to receive medical care is sought, the petitioner shall bring documentation of mileage, including the dates, the medical provider seen and the total mileage.

6. The respondent shall appear at the hearing prepared to address the merits of the petitioner's claim and provide evidence to support any defenses timely raised.

7. Parties are expected to be prepared to present their evidence on the date the hearing is scheduled. Requests for

continuances may be granted or denied at the discretion of the administrative law judge for good cause shown. Lack of diligence in preparing for the hearing shall not constitute good cause for a continuance.

8. Subject to the continuing jurisdiction of the Labor Commission, the evidentiary record shall be deemed closed at the conclusion of the hearing, and no additional evidence will be accepted without leave of the administrative law judge.

J. Motions-Time to Respond.

Responses to all motions other than discovery motions shall be filed within ten (10) days from the date the motion was filed with the Division. Reply memoranda shall be filed within seven (7) days from the date a response was filed with the Division.

K. Notices.

1. Orders and notices mailed by the Division to the last address of record provided by a party are deemed served on that party.

2. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

L. Form of Decisions.

Decisions of the presiding officer in any adjudicative proceeding shall be issued in accordance with the provisions of Section 63G-4-203 or 63G-4-208, Utah Code.

M. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an Administrative Law Judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Section 63G-4-301 and Section 34A-1-303, Utah Code. Unless a request for review is properly filed, the Administrative Law Judge's Order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. If such a response is filed, the party filing the original request for review may reply within 10 calendar days of the date the response was filed. Thereafter the Administrative Law Judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior Order by a Supplemental Order; or

c. Refer the entire case for review under Section 34A-2-801, Utah Code.

2. If the Administrative Law Judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

N. Procedural Rules.

In formal adjudicative proceedings, the Division shall generally follow the Utah Rules of Civil Procedure regarding discovery and the issuance of subpoenas, except as the Utah Rules of Civil Procedure are modified by the express provisions of Section 34A-2-802, Utah Code or as may be otherwise modified by these rules.

O. Requests for Reconsideration and Petitions for Judicial Review.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provisions of Section 63G-4-302, Utah Code. Any petition for judicial review of final agency action shall be governed by the provisions of Section 63G-4-401, Utah Code.

R602-2-2. Guidelines for Utilization of Medical Panel.

Pursuant to Section 34A-2-601, the Commission adopts the following guidelines in determining the necessity of submitting a case to a medical panel:

A. A panel will be utilized by the Administrative Law Judge where one or more significant medical issues may be involved. Generally a significant medical issue must be shown by conflicting medical reports. Significant medical issues are involved when there are:

1. Conflicting medical opinions related to causation of the injury or disease;

2. Conflicting medical reports of permanent physical impairment which vary more than 5% of the whole person,

3. Conflicting medical opinions as to the temporary total cutoff date which vary more than 90 days;

4. Conflicting medical opinions related to a claim of permanent total disability, and/or

5. Medical expenses in controversy amounting to more than $10,000.

B. A hearing on objections to the panel report may be scheduled if there is a proffer of conflicting medical testimony showing a need to clarify the medical panel report. Where there is a proffer of new written conflicting medical evidence, the Administrative Law Judge may, in lieu of a hearing, re-submit the new evidence to the panel for consideration and clarification.

C. The Administrative Law Judge may authorize an injured worker to be examined by another physician for the purpose of obtaining a further medical examination or evaluation pertaining to the medical issues involved, and to obtain a report addressing these medical issues in all cases where:

1. The treating physician has failed or refused to give an impairment rating, and/or

2. A substantial injustice may occur without such further evaluation.

D. Any expenses of the study and report of a medical panel or medical consultant and of their appearance at a hearing, as well as any expenses for further medical examination or evaluation, as directed by the Administrative Law Judge, shall be paid from the Uninsured Employers' Fund, as directed by Section 34A-2-601.

R602-2-3. Compensation for Medical Panel Services.

Compensation for medical panel services, including records review, examination, report preparation and testimony, shall be $112.50 per half hour for medical panel members and $125 per half hour for the medical panel chair.

R602-2-4. Attorney Fees.

A. Pursuant to Section 34A-1-309, the Commission adopts the following rule to regulate and fix reasonable fees for attorneys representing applicants in workers' compensation or occupational illness claims.

1. This rule applies to all fees awarded after July 1, 2007.

2. Fees awarded prior to the effective date of this rule are determined according to the prior version of this rule in effect on the date of the award.

B. Upon written agreement, when an attorney's services are limited to consultation, document preparation, document review, or review of settlement proposals, the attorney may charge the applicant an hourly fee of not more than $125 for time actually spent in providing such services, up to a maximum of four hours.

1. Commission approval is not required for attorneys fees charged under this subsection B. It is the applicant's responsibility to pay attorneys fees permitted by this subsection B.

2. In all other cases involving payment of applicants' attorneys fees which are not covered by this subsection B., the entire amount of such attorneys fees are subject to subsection C. or D. of this rule.

C. Except for legal services compensated under subsection B. of this rule, all legal services provided to applicants shall be

compensated on a contingent fee basis.

1. For purposes of this subsection C., the following definitions and limitations apply:

a. The term "benefits" includes only death or disability compensation and interest accrued thereon.

b. Benefits are "generated" when paid as a result of legal services rendered after an Appointment of Counsel form is signed by the applicant. A copy of this form must be filed with the Commission by the applicant's attorney.

c. In no case shall an attorney collect fees calculated on more than the first 312 weeks of any and all combinations of workers' compensation benefits.

2. Fees and costs authorized by this subsection shall be deducted from the applicant's benefits and paid directly to the attorney on order of the Commission. A retainer in advance of a Commission approved fee is not allowed.

3. Attorney fees for benefits generated by the attorney's services shall be computed as follows:

a. For all legal services rendered through final Commission action, the fee shall be 25% of weekly benefits generated for the first $25,000, plus 20% of the weekly benefits generated in excess of $25,000 but not exceeding $50,000, plus 10% of the weekly benefits generated in excess of $50,000, to a maximum of $15,250.

b. For legal services rendered in prosecuting or defending an appeal before the Utah Court of Appeals, an attorney's fee shall be awarded amounting to 30% of the benefits in dispute before the Court of Appeals. This amount shall be added to any attorney's fee awarded under subsection C.3.a. for benefits not in dispute before the Court of Appeals. The total amount of fees awarded under subsection C.3.a. and this subsection C.3.b. shall not exceed $22,000;

c. For legal services rendered in prosecuting or defending an appeal before the Utah Supreme Court, an attorney's fee shall be awarded amounting to 35% of the benefits in dispute before the Supreme Court. This amount shall be added to any attorney's fee awarded under subsection C.3.a. and subsection C.3.b. for benefits not in dispute before the Supreme Court. The total amount of fees awarded under subsection C.3.a, subsection C.3.b. and this subsection C.3.c shall not exceed $27,000.

D. The following expenses, fees and costs shall be presumed to be reasonable and necessary and therefore reimbursable in a workers compensation claim:

1. Medical records and opinion costs;
2. Deposition transcription costs;
3. Vocational and Medical Expert Witness fees;
4. Hearing transcription costs;
5. Appellate filing fees; and
6. Appellate briefing expenses.

F. Other reasonable expenses, fees and costs may be awarded as reimbursable as the Commission may in its discretion decides in a particular workers compensation claim.

E. In "medical only" cases in which awards of attorneys' fees are authorized by Subsection 34A-1-309(4), the amount of such fees and costs shall be computed according to the provisions of subsection C and D.

R602-2-5. Settlement Agreements.

A. Statutory authority:

Section 34A-2-420 requires the Commission to review all agreements for the settlement or commutation of claims for workers' compensation or occupational disease benefits and grants the Commission discretion to approve such agreements. The Commission's authority under Section 34A-2-420 applies to all claims arising under the Utah Workers' Compensation Act or Occupational Disease Act, regardless of the date of accident or occupational disease. This rule sets forth the requirements for Commission approval of such agreements.

B. General Considerations:

Settlement agreements may be appropriate in claims of disputed validity or when the parties' interests are served by payment of benefits in a manner different than otherwise prescribed by the workers' compensation laws. However, settlement agreements must also fulfill the underlying purposes of the workers' compensation laws. Once approved by the Commission, settlement agreements are permanently binding on the parties. The Commission will not approve any proposed settlement that is manifestly unjust.

C. Procedure:

1. Parties interested in a present or potential workers' compensation claim, whether or not an application for hearing has been filed, may submit their settlement agreement to the Commission for review and approval. The Commission may delegate its authority to review and approve such agreements.

2. Each settlement agreement shall be in writing, executed by each party and such party's attorney, if any, and shall include a proposed order for Commission approval of the agreement.

3. Each settlement agreement shall set forth the nature of the claim being settled and what claims are in dispute, if any.

4. Each settlement agreement shall contain a statement that each party understands that the agreement is permanent, binding and constitutes full and final settlement of any right the claimant may otherwise have to future benefits, including medical benefits. The Commission may establish an approved form for complying with the foregoing disclosure requirement.

5. Attorneys' fees shall be allowed as provided by Rule R602-2-4. Each settlement agreement shall describe the amount to be paid to claimant's counsel as attorney's fees and costs, the manner in which such amounts are computed and the method of payment thereof.

6. The settlement agreement may provide for payment of benefits through insurance contract or by other third parties if the Commission determines a) such payment provisions are secure and b) such payment provisions do not relieve the parties of their underlying liability for payments required by the agreement.

7. Upon receipt of a proposed settlement agreement meeting the requirements of this rule, the Commission shall review such proposed agreement:

a. As needed, the Commission may contact the parties and others to obtain further information about the proposed settlement;

b. If the Commission determines that a proposed settlement agreement conforms with this rule, the Commission shall approve such agreement and notify the parties in writing.

c. If the Commission determines that a proposed settlement agreement does not comply with this rule, the Commission shall notify the parties in writing of its reasons for rejecting the proposed agreement.

d. The Commission shall retain a record of its action on all settlement agreements submitted to it for approval.

KEY: workers' compensation, administrative procedures, hearings, settlements
February 7, 2008 34A-1-301 et seq.
Notice of Continuation August 15, 2007 63G-4-102 et seq.

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 63G-3-201(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 and owner 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 63G-4-301 of the Utah Administrative Procedures Act and Section 34A-1-303 of the Utah Labor Commission Act.

KEY: workers' compensation, administrative procedures, hearings, settlements

February 7, 2008

34A-1-104(1)
34A-1-301 et seq.
34A-4-304
34A-2-422
63G-3-201(2)
63G-4-102 et seq.

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-1. Antidiscrimination.
R606-1-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-1-2. Definitions.

The following definitions are complementary to the statutory definitions specified in Section 34A-5-102, and shall apply to all rules of R606.

A. "Act" means the Utah Antidiscrimination Act, prohibiting discriminatory or unlawful employment practices.

B. "Charging party" means the person who initiated agency action.

C. "Director" means the Director, Division of Antidiscrimination and Labor.

D. "Division" means the Division of Antidiscrimination and Labor.

E. "Disability" is defined in Section 34A-5-102 and is further defined as follows:

1. Being regarded as having a disability is equivalent to being disabled or having a disability.

2. Having a record of an impairment substantially limiting one or more major life activities is equivalent to being disabled or having a disability.

3. Major life activity means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and employment.

4. An individual will be considered substantially limited in the major life activity of employment or working if the individual is likely to experience difficulty in securing, retaining, or advancing in employment because of a disability.

5. Has a record of such an impairment means has a history of, or has been regarded as having, a mental or physical impairment that substantially limits one or more major life activity.

6. Is regarded as having an impairment means:

a. has a physical or mental impairment that does not substantially limit major life activities but is treated as constituting such a limitation;

b. has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such an impairment; or

c. has none of the impairments listed in the definition of physical or mental impairment above but is treated as having such an impairment.

F. "He, His, Him, or Himself" shall refer to either sex.

G. "Investigator" shall mean the individual designated by the Commission or Director to investigate complaints alleging discriminatory or prohibited employment practices.

H. "Qualified disabled individual" means a disabled individual who with reasonable accommodation can perform the essential functions of the job in question.

I. "Reasonable accommodation": For the purpose of enforcement of these rules and regulations the following criteria will be utilized to determine a reasonable accommodation.

1. An employer shall make reasonable accommodation to the known physical or mental limitations of an otherwise qualified disabled applicant or employee unless the employer can demonstrate that the accommodation would impose an undue hardship on the operation of its program

2. Reasonable accommodation may include:

a. making facilities used by the employees readily accessible to and useable by disabled individuals; and

b. job restructuring, modified work schedules, acquisition or modification of equipment or devices, and other similar actions.

3. In determining pursuant to Rule R606-1-2.J.1 whether an accommodation would impose an undue hardship on the operation of an employer, factors to be considered include:

a. the overall size of the employer's program with respect to number of employees, number and type of facilities, and size of budget;

b. the type of the employer's operation, including the composition and structure of the employer's work force; and

c. the nature and cost of the accommodation needed.

4. An employer may not deny an employment opportunity to a qualified disabled employee or applicant if the basis for the denial is the need to make reasonable accommodation to the physical or mental limitations of the employee or applicant.

5. Each complaint will be handled on a case-by-case basis because of the variable nature of disability and potential accommodation.

J. "Sexual Harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

1. Submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment.

2. Submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.

3. Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive work environment.

R606-1-3. Procedures--Request for Agency Action and Investigation File.

A. CONTENTS OF REQUEST FOR AGENCY ACTION

A request for agency action as specified in Section 34A-5-107, shall be filed at the Division office on a form designated by the Division. The completed form shall include all information required by Section 63G-4-201(3).

B. FILING OF REQUEST FOR AGENCY ACTION

1. A request for agency action must be filed within 180 days after the alleged discriminatory or prohibited employment practice occurred.

2. A request for agency action shall be filed either by personal delivery or regular mail addressed to the Division's office in Salt Lake City, Utah.

3. Investigators and any other persons designated by the Division, shall be available to assist in the drafting and filing of requests for agency action at the Division's office during normal business hours.

C. RESPONSE/ANSWER TO REQUEST FOR AGENCY ACTION

1. The Division shall mail a copy of the request for agency action to the charging party and the respondent/employer within ten working days of the filing of the request for agency action.

2. The respondent must answer the allegations of discrimination or prohibited employment practice set out in the request for agency action in writing within ten working days of receipt of the request for agency action. The response/answer shall be mailed to the Division office.

D. INVESTIGATION

Pursuant to Section 34A-5-104(2)(b) and Section 34A-5-107(3)(b), the Division may, with reasonable notice to the parties, conduct on-site visits, interviews, fact finding conferences, obtain records and other information and take such other action as is reasonably necessary to investigate the request for agency action. A party's unjustified failure to cooperate with the Division's reasonable investigative request may result in the Division concluding its investigation based on such other information as is available to the Division.

E. AMENDMENT OF REQUEST FOR AGENCY ACTION

1. All allegations of discrimination or prohibited employment practice set out in the request for agency action may be amended, either by the Division or the charging party

prior to commencement of an evidentiary hearing and the respondent may amend its answer. Amendments made during or after an evidentiary hearing may be made only with the permission of the presiding officer. The Division shall permit liberal amendment of requests for agency action and filing of supplemental requests for agency action in order to accomplish the purpose of the Act.

2. Amendments or a supplemental request for agency action shall be in writing, or on forms furnished by the Division, signed and verified. Copies shall be filed in the same manner as in the case of original requests for agency action.

3. Amendments or a supplemental request for agency action shall be served on the respondent as in the case of an original request for agency action.

4. A request for agency action or a supplemental request for agency action may be withdrawn by the charging party prior to the issuance of a final order.

F. MAILING OF REQUEST FOR AGENCY ACTION

The mailing specified in Section 63G-4-201(3) shall be performed by the Division and the persons known to have a direct interest in the requested agency action as specified in Section 63G-4-201 (3)(b) shall be the charging party and the respondent/employer.

G. CLASSIFICATION OF PROCEEDING FOR PURPOSE OF UTAH ADMINISTRATIVE PROCEDURES ACT

Pursuant to Section 63G-4-202(1), the procedures specified in Section 34A-5-107(1) through (5) are an informal process and are governed by Section 63G-4-203. Any settlement conferences scheduled pursuant to Section 34A-5-107(3) are not adjudicative hearings.

H. PRESIDING OFFICER

For those procedures specified in Section 34A-5-107(1) through (5), the presiding officer shall be the Director or the Director's designee. The presiding officer for the formal hearing referred to in Section 34A-5-(6) through (11) shall be appointed by the Commission.

R606-1-4. Adjudication and Review Pursuant to Section 34A-5-107.

A. After a charge of discrimination has been investigated, the Director shall issue a Determination and Order. Alternatively, the Director may refer the charge to an investigator for further investigation.

B. A party dissatisfied with the Director's Determination and Order may request a de novo evidentiary hearing. The request must be in writing, state the party's reasons for seeking review, and must be received by the Division within 30 days of the date the Director signed the Determination and Order.

1. In computing the foregoing 30-day period, the day on which the Determination and Order are signed by the Director shall not be included. The last day of the 30-day period shall be included unless it is a weekend or legal holiday, in which event the 30-day period runs until the end of the next business day.

2. Unless a timely request for hearing is received by the Division, the Director's Determination and Order is the final Commission Order.

3. If a timely request for hearing is received, the Division will transmit the request to the Division of Adjudication within the Commission for assignment to an Administrative Law Judge. The ALJ will conduct a de novo formal hearing and issue an order in conformity with the requirements of the Utah Administrative Procedures Act.

C. A party may request review of the ALJ's order by complying with the provisions of Section 34A-1-303 and Section 63G-4-301 of the Utah Administrative Procedures Act.

R606-1-5. Designation as Formal Proceedings.

The adjudicative proceedings referred to in Subsections 34A-5-107(6)-(10) are classified as formal proceedings for purposes of the Utah Administrative Procedures Act.

R606-1-6. Declaratory Orders.

A. PURPOSE

As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

B. PETITION FORM AND FILING

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

(a) be clearly designated as a request for an agency Declaratory Order;

(b) identify the statute, rule, or Order to be reviewed;

(c) describe in detail the situation or circumstances in which applicability is to be reviewed;

(d) describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

(e) include an address and telephone where the petitioner can be contacted during regular work days;

(f) declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

(g) be signed by the petitioner.

C. REVIEWABILITY

The agency shall not review a petition for a Declaratory Order that is:

1. not within the jurisdiction and competence of the agency;

2. trivial, irrelevant, or immaterial; or

3. otherwise excluded by state or federal law.

D. PETITION REVIEW AND DISPOSITION

1. The Director shall promptly review and consider the petition and may:

(a) meet with the petitioner;

(b) consult with Legal Counsel; or

(c) take any action consistent with law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an order pursuant to Section 63G-4-503(6).

E. ADMINISTRATIVE REVIEW

Review of a Declaratory Order is per Section 63G-4-302 only.

R606-1-7. Time.

A. An Order is deemed issued on the date on the face of the Order which is the date the presiding officer signs the Order.

B. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

KEY: discrimination, employment, time
April 3, 2001 34A-5-101 et seq.
Notice of Continuation October 13, 2006 63G-4-102 et seq.

R606. Labor Commission, Antidiscrimination and Labor, Antidiscrimination.
R606-2. Pre-Employment Inquiry Guide.
R606-2-1. Authority.

This rule is established pursuant to Section 34A-5-104.

R606-2-2. Guidelines.

Any inquiry is improper which, although not specifically listed below, is designed to elicit information as to Race, Color, Sex, Age, Religion, National Origin, or Disability. The prime consideration for any job is the ability to perform it.

A. NAME

1. Proper Pre-Employment Inquiries:

First, Middle, and Last Name and any other name used for prior employment.

2. Improper Pre-Employment Inquiries:

Inquiry into original name cannot be used for discriminatory purposes. Inquiries concerning specific questions about the name which would indicate applicant's lineage, ancestry, national origin, or descent; or to require prefix to applicant's name, (Mr., Mrs., Miss, Ms.); or to inquire into marital status unless based on legitimate bona fide occupational qualifications or prior employment history are considered improper.

B. ADDRESS

1. Proper Pre-employment Inquiries:

Applicant's place of residence.

2. Improper Pre-employment Inquiries:

Inquiry into foreign addresses which would indicate national origin.

C. BIRTHPLACE

1. Proper Pre-employment Inquiries:

Proof of citizenship may be requested prior to hiring in accordance with the Immigration Reform and Control Act of 1986 (IRCA).

2. Improper Pre-Employment Inquiries:

Inquiry into birthplace of applicant, or birthplace of applicant's parents, spouse, or relatives. Require prior to hiring, birth certificate, naturalization or baptismal record.

D. RACE OR COLOR

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

Any inquiry which would indicate race or color is prohibited.

E. AGE

1. Proper Pre-Employment Inquiries:

Are you under the age of 18? If there is a question as to applicant being of legal working age, proof may be requested in form of work permit.

2. Improper Pre-Employment Inquiries:

Requesting an individual's date of birth prior to employment is prohibited, unless relative to whether the individual is a minor.

F. DISABILITY

1. Proper Pre-Employment Inquiries:

a. an inquiry about ability to perform job-related functions as long as the questions are not phrased in terms of a disability.

b. asking a job applicant to describe or demonstrate, with or without reasonable accommodation, his ability to perform job-related functions.

2. Improper Pre-Employment Inquiries:

a. any inquiry whether an applicant is disabled or about the nature or severity of a disability.

b. any requirement for an applicant to take a medical examination prior to an offer of employment.

G. SEX

1. Proper Pre-Employment Inquiries:

Where a bona fide occupational qualification is reasonably necessary to the normal operation of that business or enterprise.

2. Improper Pre-Employment Inquiries:

Any other inquiry which would indicate sex or related conditions such as pregnancy or plans to have children. Inquiry into sex of applicant.

H. PHOTOGRAPHS

1. Proper Pre-Employment Inquiries:

Photograph may be requested only after hiring and then only for legitimate business purpose.

2. Improper Pre-Employment Inquiries:

Any request for photograph prior to hiring is prohibited.

I. RELIGION-CREED

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

Inquiry into an applicant's religious denomination, religious affiliations, church, parish, pastor, or religious holidays observed prior to hiring is prohibited.

J. RELATIVES

1. Proper Pre-Employment Inquiries:

Inquiry into name and address and relationship of persons to be notified in case of emergency. For a minor it must be a parent or guardian.

2. Improper Pre-Employment Inquiries:

Names and addresses of any relatives other than those listed as proper.

K. ORGANIZATIONS

1. Proper Pre-Employment Inquiries:

Inquiry into organization memberships including professional, scientific and civic groups, but excluding any organization, the name or charter of which indicate the race, religion, color, sex, and national origin of its members.

2. Improper Pre-Employment Inquiries:

Requirement that applicant list all organizations, clubs, societies, and lodges to which he belongs.

Unlawful to inquire into organizations which may indicate race, religion, color, sex, and national origin of their members.

L. NOTICE IN CASE OF EMERGENCY

1. Proper Pre-Employment Inquiries:

Name and address and relationship of "Persons" to be notified in case of accident or emergency.

2. Improper Pre-Employment Inquiries:

Name and address of all others except those listed as proper.

M. REFERENCES

1. Proper Pre-Employment Inquiries:

Persons willing to give references.

2. Improper Pre-Employment Inquiries:

Request of name of applicant's bishop, pastor, or religious leader.

N. MILITARY EXPERIENCE

1. Proper Pre-Employment Inquiries:

Inquiry into applicant's military experience or duties in United States Armed Forces.

2. Improper Pre-Employment Inquiries:

To require copy of military discharge paper or type of discharge, unless such inquiry is based upon a bona fide occupational qualification.

O. EXPERIENCE

1. Proper Pre-Employment Inquiries:

Inquiry into work experience.

2. Improper Pre-Employment Inquires:

Any inquiries into work history which are not work-related.

P. CHARACTER

1. Proper Pre-Employment Inquiries:

Permissible to ask applicant for character references.

2. Improper Pre-Employment Inquiries:

Questions about applicant's sexual preferences or economic status.

Q. NUMBER OF DEPENDENTS

1. Proper Pre-Employment Inquiries:

This information may be requested only after hiring for legitimate purposes.

2. Improper Pre-Employment Inquiries:

Asking an applicant's number of dependents prior to employment is prohibited.

R. COLOR OF HAIR OR EYES

1. Proper Pre-Employment Inquiries:

None. Asking questions regarding hair color and eye color are not job relevant.

S. HEIGHT AND WEIGHT

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

It is unlawful for an employer to set minimum height or weight requirements for hiring unless based on a bona fide occupational qualification.

T. EDUCATION

1. Proper Pre-Employment Inquiries:

Inquiry into what academic, professional, or vocational schools attended.

2. Improper Pre-Employment Inquiries:

It is unlawful to ask specifically the nationality, racial, or religious affiliation of a school attended by the applicant.

U. PRIOR ARREST RECORD

1. Proper Pre-Employment Inquiries:

None. It is not proper to ask about arrest records.

V. CRIMINAL RECORD

1. Proper Pre-Employment Inquiries:

Have you ever been convicted of a felony? It is proper to ask about a felony conviction.

2. Improper Pre-Employment Inquiries:

Inquiry advisable only if job related.

W. ECONOMIC STATUS

1. Proper Pre-Employment Inquiries:

None.

2. Improper Pre-Employment Inquiries:

It is generally prohibited to inquire as to bankruptcy, car ownership, rental or ownership of a house, length of residence at an address, or past garnishment of wages as poor credit ratings have a disparate impact on women and minorities.

KEY: discrimination, employment, time
1994 34A-5-101 et seq.
Notice of Continuation October 13, 2006 63G-4-102 et seq.

R608. Labor Commission, Antidiscrimination and Labor, Fair Housing.
R608-1. Utah Fair Housing Rules.
R608-1-1. Authority and Purpose.

Pursuant to Section 57-21-8(2)(a), the Utah Labor Commission adopts this rule to establish the procedures necessary to implement the Utah Fair Housing Act.

R608-1-2. Definitions.

The following definitions are in addition to the definitions set forth in Section 57-21-2 of the Utah Fair Housing Act

A. "Act" means the Utah Fair Housing Act, Chapter 21, Title 57.

B. "Commissioner" means the Commissioner of the Utah Labor Commission.

C. "Complaint" means an allegation of an unlawful housing practice, filed with the Division in compliance with these rules. "Complaint" includes amended or supplemental complaints.

D. "Court" means the district court in the judicial district of the state of Utah in which the asserted unfair housing practice occurred, or if this court is not in session at that time, then any judge of any court.

E. "Unlawful housing practice" means any discriminatory housing practice prohibited by the Act.

R608-1-3. Reliance on State and Federal Precedent.

The Division and Commission will consider relevant State and Federal precedent in interpreting and applying the Act.

R608-1-4. Computation of Time Limits.

A. A Determination, Order, or Notice required by the Act or this rule is deemed issued on the date on the face of the Determination, Order or Notice.

B. A complaint, response, request for reconsideration, or election is considered to be "filed" on the date it is received by the Division or Commission, whether by mail or by personal delivery. Each such document shall be date stamped by Division staff on the date of receipt.

C. In computing any period of time prescribed or allowed by these rules or by applicable statute:

1. The day of the act, event, finding, or default, or the date an Order is issued, shall not be included;

2. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a state legal holiday, in which event the period runs until the end of the next working day;

3. When the period of time prescribed is less than seven days, intermediate Saturdays, Sundays, and state legal holidays shall be excluded in the computation;

4. No additional time for mailing will be allowed.

R608-1-5. Designation of Proceedings as Informal-Exception.

A. All proceedings pursuant to the Act and this rule are hereby designated as informal adjudicatory proceedings for purposes of the Utah Administrative Procedures Act, Title 63, Chapter 46b, except that proceedings before the Commission's Adjudication Division for de novo review of the Director's Determination and Order are formal proceedings.

B. Court proceedings are subject to the court's rules of procedure.

R608-1-6. Complaints-Filing-Time Limits-Amendment and Withdrawal.

A. Any person aggrieved by an unlawful housing practice may file a complaint with the Division.

1. The complaint must be in the form designated by the Division and verified by the complainant.

2. The complaint shall contain the complainant's concise statement setting forth, to the extent reasonably possible, the following information:

a. The specific basis for complainant's belief that an unlawful housing practice has occurred, with relevant dates, places and the names of any individual participating in the alleged unlawful housing practice;

b. The specific basis for the complainant's belief that the alleged conduct is subject to the Act; and the dates and places of such unlawful housing practices;

c. The specific damages the complainant believes he or she has suffered as a result of the unlawful housing practice.

B. Division staff shall be available during normal business hours to provide reasonable assistance to complainants in completing and filing complaints.

C. Pursuant to Section 57-21-9(1), the complaint must be filed with the Division within 180 days after the alleged unlawful housing practice occurred.

D. The Director shall permit a complaint to be reasonably and fairly amended or supplemented, either by the Division or by the complainant, in order to accomplish the purpose of the Act. Such amendment or supplement may include additional respondents identified in the investigation as persons engaged in the unlawful housing practice on which the complaint is based. Procedures for filing and processing an amended or supplemental complaint shall be the same as for filing an original complaint.

E. With the Director's approval, a complainant may withdraw a complaint at any time by submitting a signed request for withdrawal to the Division.

R608-1-7. Notice Requirements.

A. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the complainant, including:

1. The date the complaint was filed with the Division;

2. A copy of the complaint;

3. The time limits applicable to the complaint and investigation process;

4. A statement of the complainant's rights and obligations under the Act;

5. A statement of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

6. A statement advising the complainant that retaliation against any person, or individual associated with that person, who is filing, testifying, assisting, or participating in an investigation, conciliation or administrative proceeding, is a discriminatory housing practice prohibited by the Act; and

7. A statement, if applicable, that the terms of any rental agreement remain in effect.

B. Within ten days of the filing of a complaint, the Division shall provide notice by registered mail to the respondent, which notice shall include:

1. Identification of the alleged unlawful housing practice on which the complaint is based;

2. The date the complaint was filed with the Division;

3. A copy of the complaint;

4. A statement of time limits applicable to the complaint and investigation process;

5. A statement of the respondent's rights and obligations under the Act, including respondent's obligation to submit a response to the complaint, as required by R608-1-8.

6. A statement informing the respondent of the complainant's right to commence a private civil action in state or federal court, with a statement of applicable time limits for commencing such action;

7. A statement advising the respondent that retaliation against any person, or individual associated with that person,

who is filing a complaint, testifying, assisting, or participating in an investigation, conciliation, or administrative proceeding, is a discriminatory housing practice prohibited by the Act.

R608-1-8. Response to Complaint.

A. A respondent shall file a signed response to the complaint with the Division within 10 days from the date of the notice required by R608-1-7.B.

B. The response must address each allegation contained in the complaint, including any available and relevant data and information regarding respondent's business practices.

C. Division staff shall be available during normal business hours to provide reasonable assistance to respondents in completing and filing responses.

D. Failure to file a response may result in the Division concluding its investigation based on information provided by the complainant and such other information as is reasonably available to the Division. Alternatively, the Commission may use its subpoena powers to compel production of the information required by this rule.

R608-1-9. Investigation-Report.

A. Within 30 days of the filing of a complaint, the Division shall commence proceedings to throughly investigate and, if possible, conciliate the complaint.

B. The Division shall complete its investigation within 100 days after filing of a complaint. If the Division is unable to do, it shall notify the parties in writing of the reason for the delay.

C. The Division may, with reasonable notice to the parties, conduct on-site visits, interviews, and fact-finding conferences, and take such other action as is reasonably necessary to investigate the complaint. Pursuant to Section 57-21-8(2)(c) of the Act, the Commission may issue subpoenas to compel production of necessary evidence. Additionally, a party's unjustified failure to cooperate with the Division's reasonable investigative requests may result in the Division concluding its investigation based on such other information as is available to the Division.

D. The Division shall prepare a final investigative report on each complaint, which shall include:

1. A summary of all contacts with complainants and respondents, including the dates of such contacts;

2. A summary of contacts with witnesses, including the dates of contact; and

3. A summary of pertinent records.

R608-1-10. Determination.

A. On completion of the investigation, the Director shall review the investigative report and determine whether reasonable cause exists to believe that an unlawful housing practice has occurred.

B. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, the Director shall issue a determination dismissing the complaint. The complainant may then take such other action as described in R608-1-12.

C. If the Director finds reasonable cause to believe that an unlawful housing practice has occurred, the Director shall take such further action as described in Rule R608-1-13.

R608-1-11. Conciliation.

A. During the period beginning with the filing of the complaint and ending with the Director's determination, the Division shall, to the extent feasible, engage in conciliation to settle the matter or, in accordance with HUD procedures, enter into an enforcement agreement.

1. Conciliation proceedings are confidential pursuant to Section 57-21-9(7)(a).

2. Any conciliation agreement shall be subject to approval by the Director.

3. Any party can enforce the signed and approved conciliation agreement in court proceedings.

B. Nothing in these rules prevents complainants and respondents from settling a complaint through their own efforts. However, the Division will not dismiss the complaint until the parties' settlement agreement has been submitted to, and approved by, the Director.

R608-1-12. Order of Dismissal-Reconsideration-Right to Private Civil Action.

A. If the Director finds no reasonable cause to believe that an unlawful housing practice has occurred, or is about to occur, the Director shall issue a Determination and Order dismissing the Complaint.

B. The complainant may ask the Director to reconsider such order of dismissal by complying with the requirements of Section 63G-4-302 of the Utah Administrative Procedures Act.

C. The Director shall issue a decision either granting or denying the request for reconsideration.

1. If the Director grants reconsideration, the Director shall reopen the investigation, amend the Director's prior Determination and Order, or take such other necessary action.

2. If the Director denies reconsideration, the Director's Determination and Order is not subject to any additional agency or judicial review. However, the complainant may commence a private civil action pursuant to Section 57-21-12(1).

R608-1-13. Order Finding Unlawful Housing Practice-Appeal-Choice of Forum.

A. If the Director concludes that an unlawful housing practice has occurred, the Division shall informally attempt to eliminate or correct the unlawful housing practice by conducting a conciliation conference pursuant to R608-1-11.

B. If conciliation is unsuccessful, the Director shall issue a determination ordering appropriate relief as authorized by Section 57-21-11. The Director's determination shall be made public unless the Director determines that the matter involves a privacy interest entitled to protection by law, or that disclosure is not required to further the purposes of the Act.

C. A respondent disagreeing with the Director's determination may obtain de novo review by filing a written request for review with the Director within 30 days from the date the Director's determination.

1. If no timely request for de novo review is filed, the Director's determination is the Commission's final order and not subject to additional agency or judicial review.

2. If a timely request for de novo review is filed, the Director shall:

a. Notify the parties of such request for review by regular mail at their last known address of record; and

b. Inform the parties that the review proceeding will be conducted by the Commission's Adjudication Division unless any party elects to have such review conducted in court.

3. Any election for court review must be received by the Director within 20 days of the date of mailing of the Director's notice.

R608-1-14. Representation of Complainants.

A. If a respondent has requested de novo review of the Director's Determination, the Commission shall consider whether the Determination is supported by substantial evidence.

B. If the Commission concludes the Determination is supported by substantial evidence, the Commission shall provide legal representation to support the Determination in the de novo review proceeding.

C. If the Commission concludes the Determination is not supported by substantial evidence, the Commission shall not provide legal representation to support the Determination in the

de novo review proceeding.

D. The Commission shall notify the parties of its conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination within twenty days from the date the respondent files a request for de novo review.

E. The Commission's conclusion regarding the existence or nonexistence of substantial evidence to support the Director's Determination is not subject to further agency or judicial review.

R608-1-15. Procedures For De novo Review.

A. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted by the Commission's Adjudication Division, the following standards apply:

1. The Division shall refer the matter to the Adjudication Division, which shall designate an Administrative Law Judge to serve as presiding officer;

2. The proceeding shall be conducted as a formal agency adjudicative proceeding pursuant to the relevant provisions of the Utah Administrative Procedures Act, Title 63G, Chapter 4;

3. Within 30 days from referral, the Administrative Law Judge shall schedule an evidentiary hearing to be held within 120 days of the referral, unless it is impracticable to do so;

4. Any aggrieved party may intervene in the action;

5. The Commission shall make final administrative disposition of the complaint within one year after the complaint is filed unless it is impracticable to do so. If the agency is unable to make a final administrative disposition within one year, the Commission shall notify the parties in writing of the reason for the delay.

B. If, in accordance with the provisions of these rules, a de novo review proceeding is to be conducted in court, the following standards apply:

1. If, pursuant to Rule R608-1-14, the Commission has concluded the Director's Determination is supported by substantial evidence, the Commission shall commence a court action to support the Determination. Such action shall be commenced within 30 days from the date of the election for court review.

2. If, pursuant to Rule R608-1-14, the Commission has concluded the Determination is not supported by substantial evidence, the Commission shall not commence a court action to support the Determination. In such case, the complainant may commence a civil action in a court of competent jurisdiction as provided by the Act.

R608-1-16. Declaratory Orders.

A. Purpose. As required by Section 63G-4-503, this rule provides the procedures for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and orders governing or issued by the agency.

B. Petition Form and Filing.

1. The petition shall be addressed and delivered to the Director who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. clearly identify the statute, rule, or order to be reviewed;

c. describe in detail the situation or circumstances in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during normal business hours;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

C. Review.

1. the agency shall not review a petition for a Declaratory Order that is:

a. not within the jurisdiction and competency of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

2. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with law that the agency deems necessary to provide adequate review and due consideration of the petition.

3. The Director may issue a Declaratory Order pursuant to Section 63G-4-503(6).

D. Administrative Review.

1. Administrative review of the Director's Declaratory Order shall be conducted pursuant to Section 63G-4-302.

KEY: housing, fair housing, discrimination, time
October 7, 2005 57-21-1 et seq.
Notice of Continuation November 30, 2006 63G-4-102 et seq.

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 63G-4-201 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 63G-4-201, 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 63G-4-201 (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.
63G-4-102 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-2. Employment of Minors.
R610-2-1. Authority.

This rule is enacted under authority of Section 34-23-104.

R610-2-2. Definitions.

A. "Commission" means the Labor Commission.

B. "Complainant" means any person making a claim, or a representative of a minor alleging a violation.

C. "Complaint" means a properly completed Complaint Form filed with the Division by a complainant or a representative of the complainant.

D. "Defendant" means any person or entity against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division responsible for enforcement.

G. "Employer" includes every person, firm, partnership, association, limited liability company, corporation, receiver, or other officer of any of the above mentioned classes, employing any person in this state or who permits any person to perform work, labor, or services.

H. "Employer's immediate family" includes children, step children, brothers, and sisters living in the home of a sole proprietor or partnership, but may not apply to a corporation.

I. "Hazardous occupation" means any occupation defined as hazardous by the United States Department of Labor under 29 U.S.C. 201 et seq. of the Fair Labor Standards Act.

J. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

K. "License" means a document issued by the Division to an employer employing minors in door-to-door sales.

L. "Nonprofit group" means a group recognized under Section 501(c) of the Internal Revenue Code as having nonprofit exempt status.

M. "Presiding Officer" includes those defined by Section 63G-4-103(1)(h)(I).

N. Additional definitions may be found in Section 34-23-103.

R610-2-3. Employment of Minors - General.

A. Every employer must allow the opportunity for a meal period of not less than 30 minutes and not later than five hours after the beginning of a minor employee's workday. If, during the meal period, the employee cannot be completely relieved of all duties and permitted to leave the work station or area, the meal period must be paid as time worked.

B. At least a 10 minute paid rest period for each four hours, or fraction thereof, shall be provided for each minor employee; however, no minor employee shall be required to work over three consecutive hours without a 10 minute rest period.

C. In those unusual situations where the specific provisions of subsections A. or B. cannot be met, the Division may decide whether the general intent of the rules has been met to ensure attainment of reasonable safeguards for a minor's health, safety, and education.

R610-2-4. Employment of Minors Engaged in Door-to-Door Sales, License.

A. The following shall apply for minors in the age range of 12 through 15 who work for income by engaging in sales of cookies, candies, magazines, merchandise coupons, and other similar products by door-to-door methods at locations including residential housing areas, shopping centers, and malls:

1. An employer-employee relationship is determined to exist if minors are paid by time, piece, carton, quantity, task, bonus, or any other basis of calculation;

a. employees shall be paid at least the Utah minimum wage in effect at the time the work is performed and shall include all time from the time of pickup to the time the minor is returned to the minor's home, except for that time utilized as a meal period as specified in R610-2-3.A.;

b. minors engaged in door-to-door sales of goods, products, or services are not independent contractors or outside sales personnel for purposes of payment of minimum wage;

2. Minors cannot be transported further than 30 miles from where they reside;

3. Minors so engaged must work in pairs, as a team, on the same or opposite side of the street while selling in residential housing areas;

4. Minors so engaged must be supervised by an adult supervisor for each crew of ten or fewer minors;

5. Minors must be within the sight or sound of the adult supervisor at least once every hour while selling in residential housing areas;

6. Minors must be returned to their respective homes daily after each day's work by 9:30 p.m.;

7. Minors must be allowed an opportunity to use rest room facilities at least once every three hours;

8. Minors must be allowed to partake of food and drink if they work more than three consecutive hours. This benefit cannot be utilized by the employer to coerce minors into making a set number of sales;

9. The driver of the vehicle that transports minor workers must be licensed by the state to transport minors;

10. Businesses must be licensed in accordance with the respective city or county ordinances in which they are employed;

11. Five days prior to conducting business in Utah, every employer employing minors who operates a door-to-door sales business must obtain a license from the Division. A written application for a license shall be filed with the Division and shall include:

a. the company or business name, address, and telephone number;

b. the name, address, and telephone number of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations;

c. the business or occupation engaged in by the owner, partners, members, principals, officers, and directors for at least two years immediately preceding the filing of the application;

d. the name and address of any supplier of any item to be sold by minors for the door-to-door sales operation;

e. the identity of any out of state affiliation, and the name, address, and telephone number of local contact person;

f. certified results of a criminal history background check by the Utah Bureau of Criminal Identification for the owner, each partner from applicant partnerships, each member of applicant limited liability companies, the principals, officers, and directors of applicant corporations, and of all supervisors and van drivers who have contact with the minor employees; the criminal history background check must be current for the year the license is sought;

g. a recent photograph of the owner, each partner from applicant partnerships, each member of applicant limited liability companies, or the principals, officers, and directors of applicant corporations; and

h. two separate letters of recommendation attesting to the reliability and responsibility of each owner, partner, member,

principal, officer, director, supervisor, and van driver. These letters must be written and signed by persons who are residents of the state of Utah and who have known the owner, partner, member, principal, officer, director, supervisor, or van driver at least one year.

12. For each supervisor or van driver hired subsequent to submission of application for license the business operator shall submit to the Division the certified results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. and letters of recommendation as delineated in Subsection R610-2-4.A.11.h. prior to contact with any minor employee by the supervisor or van driver.

13. Before a license shall be issued pursuant to this rule, the applicant shall deposit with the Commission a bond in the penal sum of $10,000 with two or more sureties. The bond shall be made payable to the Labor Commission and shall be conditioned that the applicant, supervisor, and van driver will comply with the provisions of Title 34, Chapters 23, 28, and 40, and with the provisions of R610-1, R610-2, and R610-3, and shall pay all penalties or damages occasioned by any violation of these provisions in carrying on the business for which the license is issued.

14. The Division may deny or revoke a license when:

a. an applicant, supervisor, or van driver has been adjudged guilty of a violation of any criminal act, other than a minor traffic violation, in any state; or

b. an applicant has been determined by any state or federal agency to be in violation of any labor law within the past five years; or

c. any information provided as a part of the application process is false or misleading; or

d. any applicant fails to complete the licensing process and fails to provide the information requested; or

e. any business operator fails to submit to the Division the name and address of any van driver or supervisor hired along with the results of a criminal history background check as delineated in Subsection R610-2-4.A.11.f. or letters of recommendation as delineated in Subsection R610-2-4.A.11.h. at the time of hiring the van driver or supervisor; or

f. any business operator fails to comply with the provisions of Utah labor law or Labor Rules 610-1, 610-2, or 610-3.

15. Each license issued pursuant to this rule shall expire on December 31 of the year issued.

16. Annually, a completed application for renewal of license form must be completed and submitted to the Division along with all requested documents prior to December 31.

17. A door-to-door sales business shall not publish, print, or otherwise represent that the Commission has approved of any product or service offered by the door-to-door sales business.

B. Any school sponsored group, scout group, or fund raising group selling for the benefit of its organization must provide group members with an identification card, signed by an official of the organization with the organization's official telephone number affixed for verification purposes. Subsections R610-2-4.A.3. through R610-2-4.A.10. shall apply to these groups and the minor participants.

C. Nothing contained in Subsections R610-2-4.A. and R610-2-4.B. shall apply to nonprofit groups where the individual selling for the group is a true volunteer and there is no intention, understanding, expectation, agreement, or representation that the individual selling for the nonprofit group will receive any individual compensation or reimbursement for the sale.

D. Nothing in Subsections R610-2-4.A. and R610-2-4.B. shall prohibit or abridge the right of a minor to deliver, sell, or solicit subscriptions for newspapers or other regularly printed material door-to-door when the minor is a news carrier of the newspaper or other regularly printed material and delivers them to an established readership for consideration.

R610-2-5. Written Authorization.

Minors seeking employment in occupations where authorization is required by the Commission as set forth in Sections 34-23-201 and 34-23-207(4), shall file a written request for authorization. Requests for authorization shall be made in writing and provide the name of the minor, his or her address, telephone number, date of birth, the name and address of the parent or guardian approving of the employment, and specify any related training completed or in progress. The name of the prospective employer, the address and telephone number, the name and title of the employer's representative, the type of business, the specific duties of the minor, and the specific equipment or machinery the minor would be allowed to operate or repair shall also be provided in sufficient detail to allow a decision regarding the request for authorization. The Division shall review all requests for authorization and may issue authorization signed by the Division Director where appropriate, but shall in such cases determine and establish the hours and conditions of labor and employment for such authorization.

R610-2-6. Filing Procedure and Commencement of Agency Action.

For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve an alleged violation of Utah statutes or rules regarding employment of minors is accomplished by the filing of a complaint or by a notice of agency action filed by the Division at its discretion.

A. The alleged violation shall be filed in writing by the complainant or an authorized representative of the complainant on a form provided by the Division. 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 63G-4-201(2). The complaint shall include the complainant's name and address, the defendant's name and address, a brief and concise statement of the complaint or allegation, and the complainant's or his authorized representative's signature.

1. Upon receipt of a complaint, the Division shall enter its receipt and assign a complaint number.

2. The Division may telephone the Defendant and attempt to resolve the complaint.

3. When a rapid resolution is not effected, the Division shall mail a copy of the complaint and a blank answer form together with an accompanying agency cover letter.

4. The Defendant shall have ten working days from the date of the letter to submit an answer to such complaint.

5. The Defendant's answer shall be mailed to the Complainant who may submit an answer within ten working days.

6. Upon receiving a third complaint against an employer within a 12 month period, the Division shall invoke the penalty provision pursuant to Section 34-23-402, and notify the Defendant of the penalty at the time of notice under Subsection A.3.

B. The Division may at its discretion bring an agency action to determine any violation of any statute or rule pertaining to employment of minors, or any appropriate penalties, wages, or other enforcement relief. Commencement of an adjudicative proceeding is accomplished by a notice of agency action filed by the Division.

C. An adjudicative proceeding initiated pursuant to Subsection A. or B. is designated as an informal adjudicative proceeding and shall be conducted informally.

D. An informal adjudicative proceeding may be converted to a formal adjudicative proceeding pursuant to Subsection 63G-4-202(3).

R610-2-7. Default.

The presiding officer may enter an order of default against a party pursuant to Section 63G-4-209.

R610-2-8. Investigation.

For the purpose of determining the validity or invalidity of the filed complaint, the Division pursuant to Section 34-23-401, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the complaint;

C. Examine, copy, inspect, and summarize any relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the complaint;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make any and all relevant inquiries necessary in making a preliminary decision.

R610-2-9. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the complaint, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the complaint and state the findings based on the information contained in the file. When:

1. The complaint has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which must be complied with within ten working days from the date of the document.

2. The complaint has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the complaint is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. Any party may submit a request for review or request an informal hearing; such request must be made in writing and received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D precludes any such review or hearing.

R610-2-10. Order To Cease And Desist and Penalty.

A. A hearing officer may issue an Order To Cease And Desist the act of violation and may include an order of penalty based on the Preliminary Finding issued by the Division.

B. An Order To Cease And Desist the act of violation and an Order Of Penalty may be issued following an investigation and bypassing a Preliminary Finding where:

1. The act of violation is of such magnitude as to clearly exceed the standard of reasonable safeguards for a minor's health, safety, and education pursuant to Section 34-23-101.

2. The employer admits the violation has occurred or is occurring.

3. The employer failed to respond to the allegations of the complaint within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. Attorney fees, in addition to the Order To Cease And Desist and a penalty, if any, shall be allowed in accordance with Section 34-28-13.

D. After issuance of the Order To Cease And Desist, the only agency review available is that specified in Section R610-2-12.

R610-2-11. Hearings.

A. Pursuant to Subsection 63G-4-202(1), the Division may resolve the complaint for violation filed pursuant to Subsection R610-2-6.A., or an agency action commenced pursuant to Subsection R610-2-6.B. by holding an informal hearing subject to the provisions of Section 63G-4-203.

B. Where the Division deems appropriate, or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the complaint advising them of the time, date, and place of the hearing. Notice of hearing shall be mailed to the last known address on the Commission's record and shall constitute proper notice.

D. Any request for continuance or change in the scheduled hearing date or time must be made to the Division at least seven working days prior to the scheduled date and shall state the reason for the request. The hearing officer may grant or deny the request.

E. The hearing officer may at his or her option record any hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63G-4-203, and shall be promptly mailed to each of the parties. Attorney fees in addition to the Order and penalty, if any, may be allowed in all Orders. The Order issued may be:

1. An Order To Cease And Desist any act of violation and may include a penalty pursuant to Section 34-23-401.

2. An Order specifying appropriate penalties, wages or other enforcement relief.

3. An Order For Dismissal terminating proceedings on the complaint or agency action by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in Section R610-2-12.

R610-2-12. Agency Review.

A. After issuance of an Order To Cease And Desist or of a hearing officer's Order, the only agency review available to any party is a request for reconsideration as specified in Section 63G-4-302.

B. Reconsideration shall be based on the contents of the file. No new evidence will be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

R610-2-13. Judicial Review.

Judicial review of an Order To Cease And Desist or of a hearing officer's Order are pursuant to Section 63G-4-402.

R610-2-14. Declaratory Orders.

As required by Section 63G-4-503, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take any action consistent with the law that the agency deems necessary to provide the petition adequate review and due consideration.

2. The Director may issue an Order pursuant to Subsection 63G-4-503(6).

D. Administrative review of the Declaratory Order is per Section 63G-4-302, only.

R610-2-15. Enforcement.

A. Abstracts and docketing of Orders.

1. An abstract of the final Order shall be docketed by the Commission in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract must be noted thereon and entered in the judgment docket.

2. The docketing of such Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of any Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the defendant resides or conducts business shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-2-16. Mailing.

The Division shall send all mailings to the parties and attorneys of record by regular first class mail to the last known address in the Division's records.

R610-2-17. 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
March 24, 2008 34-23-101 et seq.
Notice of Continuation November 30, 2006 34-28-1 et seq.
34-40-101 et seq.
63G-4-102 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-3. Filing, Investigation, and Resolution of Wage Claims.
R610-3-1. Authority.

This rule is enacted under the authority of Sections 34-23-104, 34-28-9, 34-28-19 and 34-40-105.

R610-3-2. Definitions.

The following definitions are in addition to the statutory definitions specified in Sections 34-23-103, 34-28-2, and 34-40-102.

A. "Claim" means a properly completed Wage Claim Assignment Form, filed with the Division by a wage claimant.

B. "Claimant" means a person making a claim, as stated in subsection A.

C. "Commission" means the Labor Commission.

D. "Defendant" means a person against whom a claim is made.

E. "Director" is the Director of the Division of Antidiscrimination and Labor. Director also means a designee denoted by the Commission to serve in the Director's absence.

F. "Division" means the Division of Antidiscrimination and Labor within the Labor Commission and the personnel responsible for receiving, investigating and resolving claims.

G. "Hearing Officer" means a presiding officer who is designated by the Commission to commence adjudicative proceedings, process claims and complaints, conduct investigations, hold hearings, assess penalties, issue subpoenas, and enter Orders.

H. "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.

I. "Mail" or "Mailed" means first class mailing sent to the parties of a wage claim or claim of retaliation, to the last known address on the Commission's record.

J. "Presiding Officer" includes those defended by Section 63G-4-103(1)(h)(i).

R610-3-3. Exceptions.

Public, general agricultural, household domestic, and certain other employments are excepted from the provisions of these rules pursuant to Section 34-28-1.

R610-3-4. Filing Procedure and Commencement of Agency Action.

A. For purposes of Section 63G-4-201, commencement of an adjudicative proceeding at the Division to resolve a claim for wages is accomplished by the wage claimant filing a wage claim assignment form. The wage claim assignment form shall act as a request for agency action and the form and accompanying agency cover letter shall together include all information specified in Section 63G-4-201(2).

B. An employee who is denied full payment of wages due or is affected or aggrieved by a violation of a statutory provision may file a claim with the Division on a form provided by the Division for that purpose.

1. Besides amounts due an employee for labor or services on a time, task, piece, commission, or other reasonable method of calculating the amount, wages also includes the following items, if due under an agreement with the employer or under a policy of the employer:

a. vacation;
b. holiday;
c. sick leave;
d. paid time off; and
e. severance payments and bonuses.

C. The claim shall include the Claimant's name and address, the Defendant's name and address, a brief and concise statement of the claims, complaints, or allegations, the amount of money which is alleged to be due the Claimant and the Claimant's signature or the signature of the Claimant's authorized representative.

D. Upon receipt of a claim, the Division shall enter its receipt and assign a claim number.

E. The Division may telephone the Defendant and attempt to resolve the claim.

F. When a rapid resolution is not effected, the Division shall mail to the Defendant a copy of the claim and a blank answer form together with an accompanying agency cover letter.

G. The Defendant shall have ten working days from the date of the letter to submit an answer to the claim.

H. Where the Defendant concedes the validity of the claim, the Defendant may pay or otherwise satisfy the claim within ten working days from the date of the letter without being subject to a penalty, under Section 34-28-9(2).

1. As an exception to Subsection H, defendants that are repeat offenders by having more than two wage claims filed against them within a running year, which claims are determined by the Division to be valid and to not have resulted from the same facts or circumstances, shall be subject to a penalty in accordance with Section 34-28-9(2).

I. The Division shall by mail provide a copy of the defendant's answer to the claimant. The claimant shall have ten working days from the date of the letter to submit a rebuttal, if any.

R610-3-5. Investigation.

For the purpose of determining the validity or invalidity of the filed claim, the Division pursuant to Sections 34-28-9 and 34-28-10, may:

A. Interview and obtain additional statements from either party;

B. Attempt to obtain from the Defendant an answer and statement where the Defendant has failed to submit an answer to the claim;

C. Examine, copy, inspect, and summarize relevant records or documents held by the parties or other persons;

D. Obtain written statements of third persons relevant to the claim;

E. Contact and receive relevant information from other government agencies or officials; or

F. Make relevant inquiries necessary in making a preliminary decision.

R610-3-6. Preliminary Findings.

A. At the conclusion of the investigation or upon the Defendant's failure to respond to the allegations of the claim, the Division may issue a Preliminary Finding.

B. Preliminary Findings shall set forth the issue or issues of the claim and state the findings based on the information contained in the wage claim file.

1. If the claim has been determined to be valid the Preliminary Finding shall contain a brief statement of the reason thereof, the statute(s) or rule(s) violated, and specify the remedy which shall be complied with within ten working days from the date of the document.

2. If the claim has been determined to be invalid the Preliminary Finding shall contain a brief statement of the reason thereof and contain notice that the claim is being dismissed.

C. Preliminary Findings shall be mailed to the parties and any attorney of record.

D. A party may submit a request for review or request an informal hearing. This request shall be made in writing and

received by the Division within ten working days of the date of the Preliminary Finding and shall state the reason for the request and include any available evidence to support their position.

E. Failure to request a review or request an informal hearing within the time prescribed in Subsection D. precludes a review or hearing.

R610-3-7. Default Order.

A. A hearing officer may issue an Order On Default And Order To Pay based on the Preliminary Finding issued by the Division.

B. An Order On Default And Order To Pay may be issued following an investigation and bypassing a Preliminary Finding if any of the following occur:

1. The Claimant is issued a non-negotiable check in the payment of wages in violation of Section 34-28-3(2).

2. The Defendant admits the validity of the claim.

3. The Defendant failed to respond to the allegations of the claim within the time specified or to participate in the investigation, or when the Division deems appropriate.

C. The penalty provided for by Section 34-28-9(2) may be awarded in addition to the award for wages.

D. After issuance of the Order On Default And Order To Pay, the only agency review available is that specified in R610-3-11.

R610-3-8. Agreements and Settlements.

A. No provision of Title 34, Chapter 28, can be contravened by a mutual agreement between an employee and employer unless the agreement is approved by the Division.

B. Notice of settlement conference shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the conference. A continuance shall only be granted for good cause, at the option of the hearing officer.

C. In the event of settlement the parties shall sign a settlement agreement stating the terms of the settlement, and shall include:

1. A stipulation that in the event of breach of the agreement the Division may enter an Order enforcing the settlement agreement; and

2. Approval of the settlement agreement by a representative designated by the Division.

R610-3-9. Hearings.

A. Pursuant to Section 63G-4-202(1), the Division may resolve the claim for wages filed pursuant to R610-3-4 by holding an informal hearing subject to the provisions of Section 63-46b-5. This hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

B. Where the Division deems appropriate or upon a timely request of either party, an informal hearing may be scheduled.

C. Notice of hearing shall be mailed to the parties involved in the wage claim advising them of the time, date, and place of the hearing and shall specify if the hearing is an informal or a formal proceeding. Notice of hearing shall be mailed and shall constitute proper notice.

D. A continuance shall only be granted for good cause at the option of the hearing officer.

E. The hearing officer may at his or her option record a hearing or accept testimony under oath.

F. The parties shall submit all relevant evidence, not previously submitted to the Division, at the hearing.

G. The hearing officer may request additional evidence of either party and set time limits for its submission, prior to the close of the hearing.

H. A signed Order issued by the hearing officer shall be pursuant to Section 63G-4-203, and shall be promptly mailed to each of the parties. The Order issued may be:

1. An Order awarding payment to the Claimant and may include a penalty pursuant to Section 34-28-9(2), in addition to the wages determined due.

2. An Order For Dismissal terminating proceedings on the wage claim by the Division.

I. After issuance of the hearing officer's Order, the only agency review available is that specified in R610-3-11.

R610-3-10. Attorney Fees.

A. Attorney fees and costs, in addition to the award for wages, shall be allowed in an Order for Payment and in an Order on Default and Order to Pay pursuant to Section 34-28-9(4)(b). Attorney fees shall be allowed in the amount of $300 or one-third of the award, whichever is greater.

B. Reasonable attorney fees may be awarded private counsel pursuant to Section 34-28-13 for representing a claimant before the Commission.

R610-3-11. Agency Review.

A. After issuance of an Order On Default And Order To Pay or of a hearing officer's Order, the only agency review available to a party is a request for reconsideration as specified in Section 63G-4-302.

B. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted.

C. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

R610-3-12. Judicial Review.

Judicial review of a wage claim Order is pursuant to Section 63G-4-402.

R610-3-13. Declaratory Orders.

As required by Section 63G-4-503, this rule provides the procedure for submission, review, and disposition of petitions for agency Declaratory Orders on the applicability of statutes, rules, and Orders governing or issued by the agency.

A. Petition form and filing.

1. The petition shall be addressed and delivered to the Director, who shall mark the petition with the date of receipt.

2. The petition shall:

a. be clearly designated as a request for an agency Declaratory Order;

b. identify the statute, rule, or Order to be reviewed;

c. describe in detail the situation or circumstance in which applicability is to be reviewed;

d. describe the reason or need for the applicability review, addressing in particular why the review should not be considered frivolous;

e. include an address and telephone number where the petitioner can be contacted during the regular work days;

f. declare whether the petitioner has participated in a completed or on-going adjudicative proceeding concerning the same issue within the past 12 months; and

g. be signed by the petitioner.

B. Reviewability.

1. The agency shall not review a petition for Declaratory Orders that is:

a. not within the jurisdiction and competence of the agency;

b. trivial, irrelevant, or immaterial; or

c. otherwise excluded by state or federal law.

C. Petition review and disposition.

1. The Director shall promptly review and consider the petition and may:

a. meet with the petitioner;

b. consult with counsel or the Attorney General; or

c. take action consistent with the law that the agency deems necessary to provide the petition adequate review and

due consideration.

2. The Director may issue an Order pursuant to Section 63G-4-503(6).

D. Administrative review of the Declaratory Order is per Section 63G-4-302, only.

R610-3-14. Enforcement.

A. Docketing of Order or final agency action as a lien.

1. An abstract of the final Order shall be docketed by the Division in the office of the clerk of the district court of any county in the state. Time of receipt of the abstract shall be noted thereon and entered in the judgment docket pursuant to Section 34-28-9(3)(a), (b), and (c).

2. The docketing of an Order shall constitute a lien against the real property of the defendant situated in the county for a period of eight years.

B. Execution may be issued on the lien within the same time and in the same manner and with the same effect as if the Order were a judgment of the district court.

C. Appeals and judgment enforcement and fees.

1. A copy of each Order or final agency action not complied with after 30 days of its issuance and all notices of appeal of an Order or final agency action may be sent to the office of the appropriate County Attorney, or to counsel employed or appointed by the Commission, to represent the Commission on all appeals and to enforce judgments.

2. Counsel employed or appointed by the Commission or the County Attorney for the county in which the plaintiff or the defendant resides, depending on the district in which the final Order is docketed, shall represent the Commission on all appeals and shall enforce judgments.

3. Reasonable attorney's fees and costs on de novo appeals where the Commission prevails and for judgment enforcing procedures shall be awarded the Commission, the appointed counsel, or the county.

R610-3-15. 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 a 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.

R610-3-16. Retaliation.

A. Section 34-28-19 prohibits an employer from retaliating against employees. Claims of unlawful retaliation shall be resolved as follows:

1. An employee alleging retaliatory action by his employer may file a complaint with the Division. The Division shall mail a copy of the complaint to the employer and allow ten working days for the employer to submit a written response to the complaint. Additionally, the Division may attempt to resolve the complaint by informal means.

2. After the time allowed for response and if informal resolution has been unsuccessful, the Division shall conduct a hearing to determine whether the employer has violated Section 34-28-19 by retaliating against the employee. The Division's determination shall be mailed to each party.

a. If the Division determines that no retaliation has occurred, it shall dismiss the employee's complaint.

b. If the Division determines retaliation has occurred, it shall order the employer to end the retaliatory action and reimburse the employee for lost wages and benefits.

B. Right of Appeal:

1. The only agency review available to any party is a request for reconsideration as specified in Section 63G-4-302.

2. Reconsideration shall be based on the contents of the file and submitted within 20 days of the date of the issued order. No new evidence will be accepted.

3. The Division Director is the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302 (3).

4. Judicial review of the order may be pursued as specified in Section 63G-4-402.

C. The Division may enforce any final order as provided in Section 34-28-9(3) and (4).

R610-3-17. Bankruptcy.

In the event the defendant files a petition with the U.S. Bankruptcy Court, the Division shall suspend its administrative action until the bankruptcy case is concluded or dismissed.

R610-3-18. Deductions and Offsets.

The following sums shall constitute lawful deductions or offsets from wages due an employee:

A. Sums deducted from wages pursuant to the Internal Revenue Code or other Federal tax provision;

B. Sums deducted from wages pursuant to the Social Security Administration Act and Federal Insurance Contribution Act;

C. Sums deducted from wages pursuant to any Utah city, county, or state tax;

D. Sums deducted from wages as dues, contributions, or other fees to a labor, employee, professional, or other employer-related organization or association; and sums as contributions for an employee's participation or eligibility in a health, welfare, insurance, retirement, or other benefit plan or program, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

E. Sums deducted from wages as payments, repayments, contributions, deposits, to a credit union, banking, savings, loan, trust or other financial institution, provided that the:

1. Employee has granted written authorization for the deductions; and

2. Deductions shall terminate upon the written revocation of the authorization;

F. Sums deducted from wages as payment for the purchase of goods or services by the employee from the employer, provided that the:

1. Employee has actual or constructive possession of the goods or services purchased; and

2. Employee's purchase is evidenced by the employee's written acknowledgment;

G. Sums deducted from wages for damages suffered by the employer due to the employee's negligence:

1. A potential deduction shall meet the following pre-conditions:

a. negligence and damages arise out of the course of employment;

b. employer has not received payments, compensation, or any form of restitution for the same monetary loss from an insurer, assurer, surety, or guarantor to cover the injuries, losses, or damages;

c. offset is reasonably related to the amount of the damage; and

d. damage is over and above wear and tear reasonably expected in the normal course of business.

2. Methods of determining an employee's negligence and amount of damage are:

a. by a judicial proceeding;

b. by an employer's written and published procedures coupled with an employee's express authorization for the deduction in writing; or

c. by any other provision allowed or required by law pursuant to Section 34-28-3(5).

H. Sums deducted from wages, in the proper amounts, for enforcement of a valid attachment or garnishment shall be honored by the Division;

I. Sums deducted from wages as repayment to the employer by the employee of advances or loans made to the employee by the employer, provided that the:

1. Advance or loan to the employee occurred while the employee was in the employ of the employer; and

2. Employee's receipt of the advance or loan is evidenced by the employee's written acknowledgment;

J. Sums deducted from wages as a result of loss or damage occurring from the criminal conduct of the employee against the property of the employer, provided that:

1. The employee has been adjudged guilty by a judicial proceeding of the specified crime committed against the property of the employer;

2. The crime occurred during the employment relationship or out of the employment relationship; and

3. The property of the employer cannot or has not been reunited with the employer; or

4. The employee willfully and through his own admission did in fact destroy company property. An offset against the earned wages may be allowed at the hearing officer's discretion.

K. Sums deducted from the wages resulting from cash shortages, provided that the:

1. Employee gives written acknowledgment upon beginning employment that he or she shall be responsible for shortages;

2. Employee shall at the beginning of his or her work period be checked in or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification;

3. Employee at the end of the work period be checked out or verified on the register or with the cash amount by the employer in the employee's presence and give written acknowledgment of the verification; and

4. Employee be the sole and absolute user and have sole access to the register or cash amount from the time checked in under Subsection (2) until the time checked out under Subsection (3);

L. Sums deducted from wages as payment for the purchase of goods, tools, equipment, or other items required for the employment of a person, provided that the:

1. Employee's purchase and receipt of the items is evidenced by a written acknowledgment;

2. Employee has actual or constructive possession of the goods or items; and

3. Employer repurchase the items from the employee at the employee's option upon the termination of employment at a fair and reasonable price;

M. Sums deducted from wages as payment for goods, tools, equipment, or other items furnished and assigned to the employee by the employer, provided that:

1. The item was assigned during the employment of the employee;

2. The employee gave written acknowledgment of the receipt of the item; and

3. The item was not returned to the employer upon termination.

R610-3-19. Timely and Unconditional Payment of Wages.

A. In case of a dispute over wages, the employer shall give written notice to the employee, of the amount of wages which he concedes to be due and shall pay that amount without condition within the time required by statute;

B. Acceptance by the employee of a payment made hereunder shall not constitute a release or waiver as to the balance of a claim for wages;

C. The employer shall not be entitled or permitted to deduct any sums where the employer has failed to make payment of wages within the time period required by statute.

R610-3-20. Check Stubs.

All lawful offsets enumerated in this rule shall be itemized on a statement or a detachable check stub and provided to the employee as required by Section 34-28-3(4).

R610-3-21. Uniforms.

A. Where the wearing of uniforms is a condition of employment, the employer shall furnish the uniforms free of charge.

1. The term "uniform" includes any article of clothing, footwear, or accessory of a distinctive design or color required by an employer to be worn by employees.

2. An article of clothing which is associated with a specific employer by virtue of an emblem (logo) or distinctive color scheme shall be considered a uniform.

B. The employer may request an amount, not to exceed the actual cost of the uniform or $20, whichever is less, as a deposit on each uniform required by the employer. The deposit shall be refunded to the employee at the time uniform is returned.

KEY: wages, minors, labor, time

March 24, 2008 34-23-101 et seq.

Notice of Continuation November 30, 2006 34-28-1 et seq.

34-40-101 et seq.

63G-4-102 et seq.

R610. Labor Commission, Antidiscrimination and Labor, Labor.
R610-4. Employment Agency Licensing.
R610-4-1. Authority.

This rule is being enacted under authority of Section 34A-1-104.

R610-4-2. Definitions.

A. "Applicant" means that person making application to the Division for a license.

B. "Commission" means The Labor Commission.

C. "Division" means the Division of Antidiscrimination and Labor within the Commission and the personnel within the Division.

D. " Division of Adjudication" means the Division of Adjudication within the Commission and the personnel within the Division.

E. "Employment Agency" means all persons, firms, corporations or associations who operate for the purpose of procuring or obtaining for money or other valuable consideration, either directly or indirectly, any work or employment for persons seeking the same, or to otherwise engage in such business, or in any way to act as a broker or go-between between employers and persons seeking work.

F. "Hearing" means that part of agency action specified in Section 63G-4-203.

G. "Job Applicant" means that person who requests the service of an employment agency in seeking employment, training, counseling, resume service, or related services.

H. "License" means a license issued by the Division, as provided in Section 34-29-21.

I. "Licensee" means a person who holds a valid license defined in R610-4-2.H. and issued by the Division.

J. "Local License" means a license to carry on the business of an employment agency issued by a local licensing agency as provided in Sections 34-29-1 through 5.

K. "Person" means any individual, company, society, firm, partnership, association, corporation, manager, contractor, subcontractor, or their agents or employees.

L. "Presiding Officer" includes those defined by Section 63G-4-103(1)(h)(I).

R610-4-3. Labor Commission License a Prerequisite to Local License.

A local license shall not be issued until that license prescribed by Section 34-29-21 has been secured by applicant.

R610-4-4. Application for License.

A written application for an employment agency license shall be filed with the Division and shall include:

A. The name and address of the applicant. The names and addresses of each partner from applicant partnerships, and the name and address of principal officer or director, of applicant corporations.

B. The full address of the place where the business of the employment agency is to be conducted.

C. The business or occupation engaged in by each applicant, partner, principal officer or director for at least two years immediately preceding the filing of the application.

D. The proposed name of the agency. The Division may reject any proposed name which is the same, or similar to, the public employment agency or to a presently licensed employment agency. The applicant which is to be an enfranchised member of an employment agency system may, however, include in its application the name of the system.

E. In addition, two affidavits shall be submitted as to the character of applicants by persons who are residents of the city or county in which the agency is to be conducted, and who have known applicant for at least one year. Affidavit shall be completed as to the individual or to the partners, if a partnership and if a corporation, as to the principal officer or director.

F. A photo copy of the bond filed with the city or county as specified in Section 34-29-4.

G. The applicant's completed financial statement.

H. Other information as the Division may require.

R610-4-5. Eligibility Requirements for License.

A. In the opinion of the Division applicant shall be:

1. Of good character, and

2. Able to show financial responsibility for proper conduct of business.

B. The applicant shall be at least 21 years of age.

R610-4-6. Required Documents.

The following documents shall be filed for approval, together with the application for license.

A. Fee schedules as provided in Section 34-29-10.

1. Subsequent fee schedule changes may be made as provided in Section 34-29-10.

B. Employer job order form in duplicate.

C. Job applicant's contract if different from job order form.

R610-4-7. Denial, Suspension or Revocation of License.

The Division may deny, suspend or revoke a license when:

A. The application or the required documents are not in proper form when submitted. Applicant may re-submit in proper form within 30 days after notice by the Division. If proper submission is not completed during this period, license shall be denied;

B. Any information provided as a part of the application process is false or misleading; or

C. An applicant's license has been revoked for cause within three years from the date of application.

R610-4-8. Period of License.

A license to operate an employment agency is valid only for the person and place named in the license and is effective from the date specified therein to and including the next following December 31, unless suspended or revoked.

R610-4-9. Renewal of License.

A. Annually, at least 45 days prior to the expiration date of the license, the Division shall mail to each currently licensed employment agency a license renewal application form and may require specific documents to be submitted with the renewal form.

B. Each employment agency or their agent shall submit the completed license renewal form along with any requested documents at least 30 days prior to the expiration date of their current license.

R610-4-10. Advertising.

A. No employment agency shall publish or cause to be published any false, fraudulent, or misleading information, representation, notice, or advertisement.

B. Advertising shall be factual.

C. Positions listed in the "Help Wanted" columns of newspapers or other media shall refer to bona fide openings available at the time copy is given to these publications for insertion.

R610-4-11. Ethical Practice and Conduct.

Every licensee shall deal openly, fairly, and honestly in the conduct of the employment agency business and comply with the following standards:

A. Relations with employers.

1. A candidate's personal record, employment record, qualifications, and salary requirements shall be stated by the

agency to the employer as accurately and fully as possible.

2. Candidates shall be referred to the employer for interview only with the prior authorization of the employer through a bona fide job order, which may be given verbally.

3. Confidential information relating to the business policy of employers, which is imparted as an aid to the effective handling of their job requirements, shall be treated accordingly.

4. Letters, bulletins, and resumes concerning applicants that are presented to employers shall represent bona fide candidates.

B. Service charges and collections.

1. No fee charge shall exceed the maximum amount applicable, as listed on the fee schedule filed with the Division, at the time of job referral resulting from a bona fide job order.

2. No job applicant shall be held obligated for a fee until an offer and acceptance have been made between employer and job applicant as a result of the agency's efforts resulting from a bona fide job order.

3. Adjustments and refunds of fees shall be made promptly.

4. Account collection methods shall conform to ethical business standards.

R610-4-12. Bona Fide Job Order.

A bona fide order for employment may be considered to have been given by an employer to an employment agency under the following conditions:

A. If the employer or his agent, in person, by telephone, by telegram, or in writing, registered a request that the agency recruit, or gave permission to the agency to refer, applicants for employment who meet stated job specifications and furnishes information as required by Section 34-29-13:

1. The order is valid for the referral of any qualified applicant until it is filled or canceled by the employer and may serve as the basis for agency advertising. The agency shall contact the employer after a reasonable length of time to insure that the position is still vacant prior to any additional advertising.

B. A bona fide order for employment valid for one specific applicant only (and not valid for advertising) shall be considered to have been given if, as the result of the agency's bringing the qualifications of the job applicant to the attention of an employer, the employer's interest in exploring the possibility of employing the applicant is evidenced by one or more of the following facts:

1. The employer agrees to interview the job applicant.

2. The employer requests that the agency furnish him with the job applicant's resume or other written history data.

3. The employer initiates direct contact with the job applicant as a result of information furnished by the agency.

C. The employment agency shall identify itself to employers as an agency and in all cases where the employer is to pay the fee, the agency shall obtain the employer's agreement from the personnel manager or other agent.

R610-4-13. Commencement of Agency Action and Hearings.

A. A dispute involving fees, as denoted in Section 34-29-10(3), shall be filed with the Division of Adjudication in writing, which filing shall constitute a request for agency action.

B. For purposes of Section 63G-4-202(1), the agency action requested in R610-4-13.A. is designated as an informal adjudicative proceeding conducted subject to the provisions of Section 63G-4-203. However, any proceeding may be converted to a formal adjudicative proceeding pursuant to Section 63G-4-202(3).

C. The Division of Adjudication may investigate any complaint of alleged violation of Sections 34-29-1 et seq. or R610-4 against an employment agency to determine the merits of the complaint, and attempt to resolve the dispute.

D. If an informal hearing is held, the presiding officer shall hear both sides and accept all relevant evidence.

1. A signed Order by the presiding officer shall be issued pursuant to Section 63G-4-203.

2. After issuance of the presiding officer's Order, the only agency review from an informal adjudicative proceeding available to any party is a request for reconsideration as specified in Section 63G-4-302. Reconsideration shall be based on the contents of the file. No new evidence shall be accepted. The Commission, or Division Director if so designated by the Commission, shall be the reviewer for the purpose of reviewing all matters where a request for reconsideration was properly filed and shall do so pursuant to Section 63G-4-302(3).

3. Judicial review of the final agency action resulting from an informal adjudicative proceeding shall be by the district court pursuant to Section 63G-4-402.

E. Any proceeding converted to a formal adjudicative proceeding by the presiding officer shall be conducted pursuant to Section 63G-4-206.

1. A signed Order issued by the presiding officer shall be pursuant to Section 63G-4-208.

2. After issuance of the presiding officer's Order resulting from a formal adjudicative proceeding, any party may seek review of the Order by the Commission, pursuant to Section 63G-4-301.

3. Judicial review of the final agency action resulting from a formal adjudicative proceeding shall be pursuant to Section 63G-4-403.

R610-4-14. 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: employment agencies, licensing

July 2, 1999	**34-23-101 et seq.**
Notice of Continuation June 11, 2004	**34-28-1 et seq.**
	34-40-101 et seq.
	63G-4-102 et seq.

R612. Labor Commission, Industrial Accidents.
R612-1. Workers' Compensation Rules - Procedures.
R612-1-1. Definitions.

A. "Commission" means the Labor Commission.

B. "Division" means the Division of Industrial Accidents within the Labor Commission.

C. "Applicant/Plaintiff" means an injured employee or his/her dependent(s) or any person seeking relief or claiming benefits under the Workers' Compensation and/or Occupational Disease and Disability Laws.

D. "Defendant" means an employer, insurance carrier, self-insurer, the Employers' Reinsurance Fund, and/or the Uninsured Employers' Fund.

E. "Administrative Law Judge" means a person duly designated by the Commission to hear and determine disputed or other cases under the provisions of Title 34A, Chapters 2 and 3, and of Title 63, Chapter 46b.

F. "Insurance Carrier" includes all insurance companies writing workers' compensation and occupational disease and disability insurance, the Workers' Compensation Fund, and self-insurers who are granted self-insuring privileges by the Commission. In all cases involving no insurance coverage by the employer, the term "Insurance Carrier" includes the employer.

G. "Medical Panel" means a panel appointed by an Administrative Law Judge pursuant to the standards set forth in Section 34A-2-601, which is responsible to make findings regarding disputed medical aspects of a compensation claim, and may make any additional findings, perform any tests, or make any inquiry as the Administrative Law Judge may require.

H. "Award" means the finding or decision of the Commission or Administrative Law Judge as to the amount of compensation or benefits due any injured employee or the dependent(s) of a deceased employee.

R612-1-2. Authority.

This rule is enacted under the authority of Section 34A-1-104.

R612-1-3. Official Forms.

A. "Employer's First Report of Injury - Form 122" - This form is used for reporting accidents, injuries, or occupational diseases as per Section 34A-2-407. This form must be filed within seven days of the occurrence of the alleged industrial accident or the employer's first knowledge or notification of the same. This form also serves as OSHA Form 301. The employer must report all injuries, other than first aid administered on site or at an employer sponsored free clinic, to the Industrial Accident Division and to the insurance carrier. First aid treatment is defined as:

a. non-prescription medications at non-prescription strength;

b. administering tetanus immunizations;

c. cleaning, flushing, or soaking wounds on the skin surface;

d. using wound coverings, such as bandages, Band Aid (TM), gauze pads, etc., or using SteriStrips (TM) or butterfly bandages;

e. using hot or cold therapy (limited to hot or cold packs, contrast baths and paraffin);

f. using any totally non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.;

g. using temporary immobilization devices while transporting an accident victim (splints, slings, neck collars, or back boards);

h. drilling a fingernail or toenail to relieve pressure, or draining fluids from blisters;

i. using eye patches; using simple irrigation or a cotton swab to remove foreign bodies not embedded in or adhered to the eye;

j. using irrigation, tweezers, cotton swab or other simple means to remove splinters or foreign material from areas other than the eye;

k. using finger guards;

l. using massages;

m. drinking fluids to relieve heat stress;

First aid, as defined above, is limited to a one-time visit and one subsequent follow up visit within a 7 day time period. (This does not apply to reporting it on OSHA's 300 log). However, if first aid treatment is given by a licensed health professional in an employer sponsored free clinic then two subsequent visits within a 14 consecutive day time period are allowed. The employer must maintain the employer's injury report (Form 122) and health records on site for first aid treatment.

First aid, as defined in a through m, does not include any work injuries resulting in:

i) loss of consciousness;

ii) loss of work;

iii) restriction of work; or

iv) transfer to another job.

B. "Physician's Initial Report of Work Injury or Occupational Disease - Form 123" - This form is used by physicians and chiropractors to report their initial treatment of an injured employee. This form must be completed when a bill is generated for treatment administered by a licensed health care provider, as defined in 34A-2-11. This form is also to be completed by the health care provider if treatment, beyond first aid, is given at an employer sponsored free clinic. The form must be cosigned by the supervising physician, unless the form is completed by a nurse practitioner.

C. "Restorative Services Authorization - Form 221" - This form is to be used by any medical provider billing under the restorative services section of the Commission's adopted Resource-Based Relative Value Scale and the Medical Fee Guidelines. The medical provider shall file this form with the insurance carrier or self-insured employer and the division within ten days of the initial evaluation. After the initial filing, an updated Restorative Services Authorization form must be filed for approval or denial at least every six visits until a fixed state of recovery has been reached.

D. "Statement of Insurance Carrier or Self-Insurer with Respect to Payment of Benefits - Form 141" - This form is used for reporting the initial benefits paid to an injured employee. This form must be filed with or mailed to the division on the same date the first payment of compensation is mailed to the employee. A copy of this form must accompany the first payment.

E. "Employee Notification of Denial of Claim - Form 089" - This form is used by insurance carriers or self-insured employers to notify the claimant that his or her claim, in whole or part, is denied and the reason(s) why the claim is being denied. An insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and the division in writing that the claim, in whole or part, is denied.

F. "Insurance Carriers/ Self-Insurer's Notice of Further Investigation of a Workers' Compensation Claim - Form 441" - This form is used by insurance carriers or self-insured employers to notify the claimant and the commission that further investigation is needed and the reasons for further investigation. This form or letter containing similar information is to be filed within 21 days of notification of claim that further investigation is needed.

G. "Statement of Insurance Carrier or Self-Insurer with Respect to Suspension of Benefits - Form 142" - This form is to be used by insurance carriers or self-insured employers to notify

an employee of the suspension of weekly compensation benefits. The form must be mailed to the employee and filed with the division five days before the date compensation is suspended. The insurance carrier or self-insured employer must specify the reason for the suspension of beneftis.

H. "Application for Hearing - Form 001" - Used by an applicant for instituting an industrial claim against an insurance carrier, self-insured employer, or uninsured employer. This form, obtainable from the division, must be filed and signed by the injured employee or his/her agent. All blanks must be completed to the best knowledge, belief, or information of the injured employee.

I. "Claim for Dependents' Benefits and/or Burial Benefits - Form 025" - This form is used by the dependent(s) of a deceased employee to seek benefits as a result of a fatal accident or occupational disease occurring in the course of employment.

1. This form must be filed before a hearing or an award is made, and pleadings will not be accepted in lieu thereof. If pleadings are submitted, the attorney so filing will be supplied the form for filing before any proceedings are initiated.

2. The filing of this form by the surviving spouse on behalf of the surviving spouse and the surviving spouse's dependent minor children is sufficient for all dependents.

3. Unless otherwise directed by an Administrative Law Judge, the following information shall be supplied before an Order or an Award is made:

(a) A certified copy of the marriage license and birth certificates of dependent minor children. If such evidence is not readily available, the Administrative Law Judge will determine the adequacy of substitute evidence.

(b) Adoption papers or other decrees of courts of record establishing legal responsibility for support of dependent children.

(c) If either the deceased employee or surviving spouse has been involved in divorce proceedings, copies of decrees and orders of the court should be supplied.

J. "Insurance Company's and Self-Insurer's Final Report of Injury and Statement of Total Losses - Form 130" - This form is used by insurance carriers and self-insurers to report the total losses occurring in a claim for any benefits. This form must be filed with the division as soon as final settlement is made but in no event more than 30 days from such settlement. This form shall be filed for all losses including medical only, compensation, survivor benefits, or any combination of all so as to provide complete loss information for each claim.

K. "Dependents' Benefit Order - Form 151" - This form is used by the division in all accidental death cases where no issue of liability for the death or establishment of dependency is raised and only one household of dependents is involved. The carrier indicates acceptance of liability by completing the top half of the form and filing it with the division.

L. "Medical Information Authorization - Form 046" - This form is used to release the applicant's medical records to the Commission or the chairman of a medical panel appointed by an Administrative Law Judge.

M. "Application to Change Doctors - Form 102" - This form must be used by the employee pursuant to the provisions of Rule R612-2-9 as contained herein.

N. "Employee's Notification of Intent to Leave Locality or State, and to Change Doctor or Hospital - Form 044" - As per Section 34A-2-604, this form is used by the employee and must be accompanied by the "Attending Physician's Statement - Form 043" before Commission approval can be granted. Otherwise, compensation may not be allowed.

O. "Attending Physician's Statement - Form 043" - This form must be completed by employee and his last attending physician in the state to establish the medical condition of the employee. It must be accompanied by Form 044.

P. "Compensation Agreement - Form 219" - This form is used by the parties to a workers' compensation claim to enter into an agreement as to a permanent partial impairment award, and must be submitted to the Division of Industrial Accidents for approval.

Q. "Application for Lump Sum or Advance Payment - Form 134" - This form is used by an employee to apply for a lump sum or advance payment for a permanent partial impairment award.

R. "Release to Return to Work - Form 110" - This form may be used to meet the requirements of Rule R612-2-3(D), as contained herein.

S. "Request for Copies From Claimant's File - Form 205" - This form is used to request copies from a claimant's file in the Commission with the appropriate authorized release.

T. Reemployment Program Forms

1. "Initial Assessment Report - Form 206" - This form is completed either by the self-insured employer, the workers' compensation insurance provider, or by a rehabilitation agency contracted by the employer/carrier. The report contains claimant demographics and insurance coverage details, and addresses the issue of need for vocational assistance.

2. "Request for Decision of Administrative Review - Form 207" - This form is completed when the employee wishes to contest the information/decision made by the carrier or rehabilitation agency.

3. "U.S.O.R. Rehabilitation Progress Report - Form 208A" - This form shall be requested from the Utah State Office of Rehabilitation at each stage of the reemployment process (eligibility determination, reemployment plan development/implementation and case closure) or at any interruption of the process. An Individualized Written Rehabilitation Program (USOR 5 IWRP) shall also be requested when a plan is developed. All other private rehabilitation providers shall submit a Form 206 for any plan progress, postponement, or interruption in the plan.

4. "Reemployment Plan - Form 209" - This form is used for either an original or amended work plan. The form contains the details and estimated costs in returning the injured worker to the work force.

5. "Reemployment Plan Closure Report - Form 210" - This form is submitted to the division upon completion of the reemployment plan. The closure report shall detail costs by category either by dollar amounts or time expended (only in the categories of evaluation and counseling). The report shall also contain all the details on the return to work.

6. "Application for Certification as a Reemployment Provider - Form 212" - This form is completed by rehabilitation providers who wish to be certified by the division. It contains provider demographics, Utah staff credentials, services/fees, and references.

7. "Administrative Review Determination - Form 213" - This form is used by the division to summarize the outcome of the administrative review.

U. "Medical Records - Copies - Form 302" - This form is used by a claimant to request a free copy of his/her medical records from a medical provider. This form must be signed by a staff member of the division.

V. The division may approve change of any of the above forms upon public notice. Carriers may print these forms or approved versions.

R612-1-4. Discount.

Eight percent shall be used for any discounting or present value calculations. Lump sums ordered by the Commission or for any attorney fees paid in a single up-front amount, or of any other sum being paid earlier than normally paid under a weekly benefit method shall be subject to the 8% discounting. The Commission shall create and make available a precise discount or present value table based on a 365 day year. For those

instances where discount calculations are not routinely utilized or where the Commission's precise table is not available, the following table, which is a shortened version of the precise table, may be utilized by interpolating between the stated weeks and the related discount.

TABLE

Unaccrued Weeks	X	Weekly Benefit $	X	Cumulative Discount	=	Discount $
1				.001475		
10				.008076		
20				.015343		
30				.022538		
40				.029663		
50				.036719		
60				.043706		
70				.050626		
80				.057478		
90				.064264		
100				.070984		
110				.077639		
120				.084229		
130				.090756		
140				.097221		
150				.103623		
160				.109963		
170				.116243		
180				.122463		
190				.128623		
200				.134724		
210				.140767		
220				.146752		
230				.152680		
240				.158552		
250				.164368		
260				.170129		
270				.175835		
280				.181488		
290				.187087		
300				.192633		
312				.199219		

R612-1-5. Interest.

A. Interest must be paid on each benefit payment which comprises the award from the date that payment would have been due and payable at the rate of 8% per annum.

B. For the purpose of interest calculation, benefits shall become "due and payable" as follows:

1. Temporary total compensation shall be due and payable within 21 days of the date of the accident.

2. Permanent partial compensation shall be due and payable on the next day following the termination of a temporary total disability. However, where the condition is not fixed for rating purposes, the interest shall commence from the date the permanent partial impairment can be medically determined.

3. Permanent partial or permanent total disability compensation payable by the Employers' Reinsurance Fund or the Uninsured Employers' Fund shall be due and payable as soon as reasonably practical after an order is issued.

R612-1-6. Issuance of Checks.

A. Any entity issuing compensation checks or drafts must make those checks/drafts payable directly to the injured worker and must mail them directly to the last known mailing address of the injured worker, with the following exceptions:

1. If the employer provides full salary to the injured worker in return for the worker's compensation benefits, the check may be mailed to the worker at the place of employment;

2. If the employer coordinates other benefits with the worker's compensation benefits, the check may be mailed to the worker at the place of employment.

B. In no case may the check be made out to the employer.

C. Where attorney fees are involved, a separate check should be issued to the worker's attorney in the amount approved or ordered by the Commission, unless otherwise directed by the Commission. Payment of the worker's attorney by issuing a check payable to the worker and his attorney jointly constitutes a violation of this rule.

R612-1-7. Acceptance/Denial of a Claim.

A. Upon receiving a claim for workers' compensation benefits, the insurance carrier or self-insured employer shall promptly investigate the claim and begin payment of compensation within 21 days from the date of notification of a valid claim or the insurance carrier or self-insured employer shall send the claimant and the division written notice on a division form or letter containing similar information, within 21 days of notification, that further investigation is needed stating the reason(s) for further investigation. Each insurance carrier or self-insured employer shall complete its investigation within 45 days of receipt of the claim and shall commence the payment of benefits or notify the claimant and division in writing that the claim is denied and the reason(s) why the claim is being denied.

B. The payment of compensation shall be considered overdue if not paid within 21 days of a valid claim or within the 45 days of investigation unless denied.

C. Failure to make payment or to deny a claim within the 45 day time period without good cause shall result in a referral of the insurance company to the Insurance Department for appropriate disciplinary action and may be cause for revocation of the self-insurance certification for a self-insured employer. Good cause is defined as:

1. Failure by an employee claiming benefits to sign requested medical releases;

2. Injury or occupational disease did not occur within the scope of employment;

3. Medical information does not support the claim;

4. Claim was not filed within the statute of limitations;

5. Claimant is not an employee of the employer he/she is making a claim against;

6. Claimant has failed to cooperate in the investigation of the claim;

7. A pre-existing condition is the sole cause of the medical problem and not the claimed work-related injury or occupational disease;

8. Tested positive for drugs or alcohol; or

9. Other - a very specific reason must be given.

D. If an insurance carrier or self-insured employer begins payment of benefits on an investigation basis so as to process the claim in a timely fashion, a later denial of benefits based on newly discovered information may be allowed.

R612-1-8. Insurance Carrier/Employer Liability.

A. This rule governs responsibility for payment of workers' compensation benefits for industrial accidents when:

1. The worker's ultimate entitlement to benefits is not in dispute; but

2. There is a dispute between self-insured employers and/or insurers regarding their respective liability for the injured worker's benefits arising out of separate industrial accidents which are compensable under Utah law.

B. In cases meeting the criteria of subsection A, the self-insured employer or insurer providing workers' compensation coverage for the most recent compensable injury shall advance workers' compensation benefits to the injured worker. The benefits advanced shall be limited to medical benefits and temporary total disability compensation. The benefits advanced shall be paid according to the entitlement in effect on the date of the earliest related injury.

1. The self-insured employer or insurance carrier advancing benefits shall notify the non-advancing party(s) within the time periods as specified in rule R612-1-7, that benefits are to be advanced pursuant to this rule.

2. The self-insured employers or insurers not advancing

benefits, upon notification from the advancing party, shall notify the advancing party within 10 working days of any potential defenses or limitations of the non-advancing party(s) liability.

C. The parties are encouraged to settle liabilities pursuant to this rule, however, any party may file a request for agency action with the Commission for determination of liability for the workers' compensation benefits at issue.

D. The medical utilization decisions of the self-insured employer or insurer advancing benefits pursuant to this rule shall be presumed reasonable with respect to the issue of reimbursement.

R612-1-9. Compensation Agreements.

A. An applicant, insurance company, and/or employer may enter into a compensation agreement for the purpose of resolving a worker's compensation claim. Compensation agreements must be approved by the Commission. The compensation agreement must be that contained on Form 019 of the Commission forms and shall include the following information:

1. Signatures of the parties involved;
2. Form 122 - Employer's First Report of Injury;
3. Doctor's report of impairment rating;
4. Form 141 - Payment of Benefits Statement.

B. Failure to provide any of the above documentation and forms may result in the return of the compensation agreement to the carrier or self-insured employer without approval.

R612-1-10. Permanent Total Disability.

A. This rule applies to claims for permanent total disability compensation under the Utah Workers' Compensation Act.

1. Subsection B applies to permanent total disability claims arising from accident or disease prior to May 1, 1995.

2. Subsection C applies to permanent total disability claims arising from accident or disease on or after May 1, 1995.

B. For claims arising from accident or disease on or after July 1, 1988 and prior to May 1, 1995, the Commission is required under Section 34A-2-413, to make a finding of total disability as measured by the substance of the sequential decision-making process of the Social Security Administration under Title 20 of the Code of Federal Regulations, amended April 1, 1993. The use of the term "substance of the sequential decision-making process" is deemed to confer some latitude on the Commission in exercising a degree of discretion in making its findings relative to permanent total disability. The Commission does not interpret the code section to eliminate the requirement that a finding by the Commission in permanent and total disability shall in all cases be tentative and not final until rehabilitation training and/or evaluation has been accomplished.

1. In the event that the Social Security Administration or its designee has made, or is in the process of making, a determination of disability under the foregoing process, the Commission may use this information in lieu of instituting the process on its own behalf.

2. In evaluating industrial claims in which the injured worker has qualified for Social Security disability benefits, the Commission will determine if a significant cause of the disability is the claimant's industrial accident or some other unrelated cause or causes.

3. To make a tentative finding of permanent total disability the Commission incorporates the rules of disability determination in 20 CFR 404.1520, amended April 1, 1993. The sequential decision making process referred to requires a series of questions and evaluations to be made in sequence. In short, these are:

a. Is the claimant engaged in a substantial gainful activity?

b. Does the claimant have a medically severe impairment?

c. Does the severe impairment meet or equal the duration requirement in 20 CFR 404.1509, amended April 1, 1993, and the listed impairments in 20 CFR Subpart P Appendix 1, amended April 1, 1993?

d. Does the impairment prevent the claimant from doing past relevant work?

e. Does the impairment prevent the claimant from doing any other work?

4. After the Commission has made a tentative finding of permanent total disability:

a. In those cases arising after July 1,1994, the Commission shall order initiation of payment of permanent total disability compensation;

b. the Commission shall review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act, as well as any qualified reemployment plan submitted by the employer or its insurance carrier; and

c. unless otherwise stipulated, the Commission shall hold a hearing to consider the possibility of rehabilitation and reemployment of the claimant pending final adjudication of the claim.

5. After a hearing, or waiver of the hearing by the parties, the Commission shall issue an order finding or denying permanent total disability based upon the preponderance of the evidence and with due consideration of the vocational factors in combination with the residual functional capacity which the commission incorporates as published in 20 CFR 404 Subpart P Appendix 2, amended April 1, 1993.

C. For permanent total disability claims arising on or after May 1, 1995, Section 34A-2-413 requires a two-step adjudicative process. First, the Commission must make a preliminary determination whether the applicant is permanently and totally disabled. If so, the Commission will proceed to the second step, in which the Commission will determine whether the applicant can be reemployed or rehabilitated.

1. First Step - Preliminary Determination of Permanent Total Disability: On receipt of an application for permanent total disability compensation, the Adjudication Division will assign an Administrative Law Judge to conduct evidentiary proceedings to determine whether the applicant's circumstances meet each of the elements set forth in Subsections 34A-2-413(1)(b) and (c).

(a) If the ALJ finds the applicant meets each of the elements set forth in Subsections 34A-2-413(1)(b) and (c), the ALJ will issue a preliminary determination of permanent total disability and shall order the employer or insurance carrier to pay permanent total disability compensation to the applicant pending completion of the second step of the adjudication process. The payment of permanent total disability compensation pursuant to a preliminary determination shall commence as of the date established by the preliminary determination and shall continue until otherwise ordered.

(b) A party dissatisfied with the ALJ's preliminary determination may obtain additional agency review by either the Labor Commissioner or Appeals Board pursuant to Subsection 34A-2-801(3). If a timely motion for review of the ALJ's preliminary determination is filed with either the Labor Commissioner or Appeals Board, no further adjudicative or enforcement proceedings shall take place pending the decision of the Commissioner or Board.

(c) A preliminary determination of permanent total disability by the Labor Commissioner or Appeals Board is a final agency action for purposes of appellate judicial review.

(d) Unless otherwise stayed by the Labor Commissioner, the Appeals Board or an appellate court, an appeal of the Labor Commissioner or Appeals Board's preliminary determination of permanent total disability shall not delay the commencement of "second step" proceedings discussed below or payment of permanent total disability compensation as ordered by the preliminary determination.

(e) The Commissioner or Appeals Board shall grant a request for stay if the requesting party has filed a petition for judicial review and the Commissioner or Appeals Board determine that:

(i) the requesting party has a substantial possibility of prevailing on the merits;

(ii) the requesting party will suffer irreparable injury unless a stay is granted; and

(iii) the stay will not result in irreparable injury to other parties to the proceeding.

2. Second Step - Reemployment and Rehabilitation: Pursuant to Subsection 34A-2-413(6), if the first step of the adjudicatory process results in a preliminary finding of permanent total disability, an additional inquiry must be made into the applicant's ability to be reemployed or rehabilitated, unless the parties waive such additional proceedings.

(a) The ALJ will hold a hearing to consider whether the applicant can be reemployed or rehabilitated.

(i) As part of the hearing, the ALJ will review a summary of reemployment activities undertaken pursuant to the Utah Injured Worker Reemployment Act;

(ii) The employer or insurance carrier may submit a reemployment plan meeting the requirements set forth in Subsection 34A-2-413(6)(a)(ii) and Subsections 34A-2-413(6)(d)(i) through (iii).

(b) Pursuant to Subsection 34A-2-413(4)(b) the employer or insurance carrier may not be required to pay disability compensation for any combination of disabilities of any kind in excess of the amount of compensation payable over the initial 312 weeks at the applicable permanent total disability compensation rate.

(i) Any overpayment of disability compensation may be recouped by the employer or insurance carrier by reasonably offsetting the overpayment against future liability paid before or after the initial 312 weeks.

(ii) An advance of disability compensation to provide for the employee's subsistence during the rehabilitation process is subject to the provisions of Subsection 34A-2-413(4)(b), described in subsection 2.(b) above, but can be funded by reasonably offsetting the advance of disability compensation against future liability normally paid after the initial 312 weeks.

(iii) To fund an advance of disability compensation to provide for an employee's subsistence during the rehabilitation process, a portion of the stream of future weekly disability compensation payments may be discounted from the future to the present to accommodate payment. Should this be necessary, the employer or insurance carrier shall be allowed to reasonably offset the amounts paid against future liability payable after the initial 312 weeks. In this process, care should be exercised to reasonably minimize adverse financial impact on the employee.

(iv) In the event the parties cannot agree as to the reasonableness of any proposed offset, the matter may be submitted to an ALJ for determination.

(c) Subsections 34A-2-413(7) and (9) require the applicant to fully cooperate in any evaluation or reemployment plan. Failure to do so shall result in dismissal of the applicant's claim or reduction or elimination of benefit payments including disability compensation and subsistence allowance amounts, consistent with the provisions of Section 34A-2-413(7) and (9).

(d) Subsection 34A-2-413(6) requires the employer or its insurance carrier to diligently pursue any proffered reemployment plan. Failure to do so shall result in a final award of permanent total disability compensation to the applicant.

(e) If, after the conclusion of the foregoing "second step" proceeding, the ALJ concludes that successful rehabilitation is not possible, the ALJ shall enter a final order for continuing payment of permanent total disability compensation. The period for payment of such compensation shall be commence on the date the employee became permanently and totally disabled, as determined by the ALJ.

(f) Alternatively, if after the conclusion of the "second step" proceeding, the ALJ concludes that successful rehabilitation and/or reemployment is possible, the ALJ shall enter a final order to that effect, which order shall contain such direction to the parties as the ALJ shall deem appropriate for successful implementation and continuation of rehabilitation and/or reemployment. As necessary under the particular circumstances of each case, the ALJ's final order shall provide for reasonable offset of payments of any disability compensation that constitute an overpayment under Subsection 34A-2-413(4)(b).

(g) The ALJ's decision is subject to all administrative and judicial review provided by law.

D. For purposes of this rule, the following standards and definitions apply:

1. Other work reasonably available: Subject to medical restrictions and other provisions of the Act and rules, other work is reasonably available to a claimant if such work meets the following criteria:

a. The work is either within the distance that a resident of the claimant's community would consider to be a typical or acceptable commuting distance, or is within the distance the claimant was traveling to work prior to his or her accident;

b. The work is regular, steady, and readily available; and

c. The work provides a gross income at least equivalent to:

(1) The current state average weekly wage, if at the time of the accident the claimant was earning more than the state average weekly wage then in effect; or

(2) The wage the claimant was earning at the time of the accident, if the employee was earning less than the state average weekly wage then in effect.

2. Cooperation: As determined by an administrative law judge, an employee is not entitled to permanent total disability compensation or subsistence benefits unless the employee fully cooperates with any evaluation or reemployment plan. The ALJ will evaluate the cooperation of the employee using, but not limited to, the following factors: attendance, active participation, effort, communication with the plan coordinator, and compliance with the requirements of the vocational plan. In determining if these factors were met, the ALJ shall consider relevant changes in the employee's documents medical condition.

3. Diligent Pursuit: The employer or its insurance carrier shall diligently pursue the reemployment plan. The ALJ will evaluate the employer or insurance carrier's diligent pursuit of the plan using, but not limited to, the following factors: timely payment of expenses and benefits outline in the vocational plan, and as required by the educational institution providing the vocational training, communication with the employee, compliance with the requirements of the vocational plan, and timely modification of the plan as required by documented changes in the employee's medical condition.

4. Resolution of disputes regarding "cooperation" and "diligent pursuit": If a party believes another party is not cooperating with or diligently pursing either the evaluations necessary to establish a plan, or the requirements of an approved reemployment or rehabilitation plan, the aggrieved party shall submit to the workers' compensation mediation unit an outline of the specific instances of non-cooperation or lack of diligence. Other parties may submit a reply. The Mediation Unit will promptly schedule mediation to reestablish cooperation among the parties necessary to evaluate or comply with the plan. If mediation is unsuccessful, a party may request the Adjudication Division resolve the dispute. The Adjudication Division will conduct a hearing on the matter within 30 days and shall issue a written decision with 10 days thereafter.

R612-1-11. Burial Expenses.

(1) Pursuant to Section 34A-2-418 if death results from an industrial injury or occupational disease, burial expenses in ordinary cases shall be paid by the employer or insurance carrier up to $8,000. Unusual cases may result in additional payment, either voluntarily by the employer or insurance carrier or through commission order.

(2) Beginning in the year 2004 and every two years thereafter, the Commission shall review this rule and shall make such adjustments as are necessary so that the burial expense provided by this rule remains equitable when compared to the average cost of burial in this state.

KEY: workers' compensation, time, administrative procedures, filing deadlines

July 2, 2005	**34A-2-101 et seq.**
Notice of Continuation August 15, 2007	**34A-3-101 et seq.**
	34A-1-104 et seq.
	63G-4-102 et seq.

R612. Labor Commission, Industrial Accidents.
R612-9. Designation of the Initial Assessment of Noncompliance Penalties as an "Informal" Proceeding.
R612-9-1. Authority.

This rule is enacted under authority of Section 34A-1-104 and Section 63G-4-202(1) and is applicable to proceedings under Section 34A-2-211 to assess penalties against employers who have failed to obtain workers compensation insurance coverage.

R612-9-2. Designation as Informal Proceedings.

Initial proceedings to assess such penalty are hereby designated as informal adjudicatory proceeding, while all subsequent proceedings with respect to assessment of such penalty are hereby designated as formal proceedings.

KEY: penalties, worker's compensation, uninsured employers, informal adjudicative proceedings
November 14, 1995 63G-3-301(3)(c)
Notice of Continuation December 17, 2004 63G-4-202(1)
34A-1-104

R612. Labor Commission, Industrial Accidents.
R612-10. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers.
R612-10-1. HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers.

A. Authority - The HIV, Hepatitis B and C Testing and Reporting for Emergency Medical Services Providers rule is established under the authority of U.C.A. Section 78B-8-404.

B. Purpose - To establish procedures pursuant to U.C.A. Section 78B-8-401 for source patient testing and reporting following a significant exposure of an emergency medical services provider.

C. Definitions

1. Department means the Utah Labor Commission.

2. Contact means designated person(s) within the emergency medical services agency or the employer of the emergency medical services provider.

3. Disease means Human Immunodeficiency Virus, acute or chronic Hepatitis B or Hepatitis C infections.

4. Emergency medical services provider means Emergency Medical personnel as defined in Section 26-8a-102, a public safety officer, local fire department personnel, or personnel employed by the Department of Corrections or by a county jail, who provide prehospital Emergency medical care for an emergency medical services agency either as an employee or a volunteer.

5. Emergency medical services (EMS) agency means an agency, entity, or organization that employs or utilizes emergency medical services providers as defined in (4) as employees or volunteers.

6. Source Patient means any individual cared for by a prehospital emergency medical services provider, including but not limited to victims of accidents or injury, deceased persons, and prisoners or persons in the custody of the Department of Corrections.

7. Receiving facility means a hospital, health care or other facility where the patient is delivered by the emergency medical services provider for care.

8. "Significant Exposure" and "Significantly Exposed" mean:

a. exposure of the body of one person to the blood or body fluids visibly contaminated by blood of another person by:

1. percutaneous injury, including a needle stick or cut with a sharp object or instrument; or

2. contact with an open wound, mucous membrane, or nonintact skin because of a cut, abrasion, dermatitis, or other damage; or

b. exposure that occurs by any other method of transmission defined by the Department of Health as a significant exposure.

D. Emergency Medical Services Provider Responsibility.

1. The EMS provider shall document and report all significant exposures to the receiving facility and contact as defined in (C) (2).

2. The reporting process is as follows:

a. The exposed EMS provider shall complete the Exposure Report Form (ERF) at the time the patient is delivered to the receiving facility and provide a copy to the person at the receiving facility authorized by the facility to receive the form. In the event the exposed EMS provider does not accompany the source patient to the receiving facility, he/she may report the exposure incident, with information requested on the ERF, by telephone to a person authorized by the facility to receive the form. In this event, the exposed EMS provider shall nevertheless submit a written copy of the ERF within three days to an authorized person of the receiving facility.

b. The exposed EMS provider shall, within three days of the incident, submit a copy of the ERF to the contact as defined in (C) (2).

E. Receiving Facility Responsibility:

1. The receiving facility shall establish a system to receive ERFs as well as telephoned reports from exposed EMS providers on a 24-hour per day basis. The facility shall also have available or on call, trained pre-test counselors for the purpose of obtaining consent and counseling of source patients when HIV testing has been requested by EMS providers. The receiving facility shall contact the source patient prior to release from the facility to provide the individual with counseling or, if unable to provide counseling, provide the source patient with phone numbers for a trained counselor to provide the counseling within 24 hours.

2. Upon notification of exposure, the receiving facility shall request permission from the source patient to draw a blood sample for disease testing, as defined in (C) (3). In conjunction with this request, the source patient must be advised of his/her right to refuse testing and be advised that if he/she refuses to be tested that fact will be forwarded to the EMS agency or employer of EMS provider. The source patient shall also be advised that if he/she refuses to be tested, the EMS agency or provider may seek a court order to compel the source patient to submit to a blood draw for the disease testing.

Testing is authorized only when the source patient, his/her next of kin or legal guardian consents to testing, with the exception that consent is not required from an individual who has been convicted of a crime and is in the custody or under the jurisdiction of the Department of Corrections, or if the source patient is dead. If consent is denied, the receiving facility shall complete the ERF and send it to the EMS agency or employer of the EMS provider. If consent is received, the receiving facility shall draw a sample of the source patient's blood and send it, along with the ERF, to a qualified laboratory for testing.

3. The laboratory that the receiving facility has sent source patient's blood draw to shall send the disease test results, by Case ID number, to the EMS agency or employer of the EMS provider.

F. EMS Agency/Employer Responsibility:

1. The EMS agency/employer, upon receipt of the disease tests, from the receiving facility laboratory, shall immediately report the result, by case number, not name, to the exposed EMS provider.

2. The EMS agency/employer, upon the receipt of refusal of testing by the source, shall report that refusal to the EMS provider.

3. The agency/employer or its insurance carrier shall pay for the EMS provider and the source patient testing for the covered diseases per the Labor Commission fee schedule.

4. The EMS agency/employer shall maintain the records of any disease exposures contained in this rule per the OSHA Blood Borne Pathogen standards.

KEY: workers' compensation, administrative procedures, reporting, settlements
December 2, 2005
34A-2-101 et seq.
34A-3-101 et seq.
34A-1-104
78B-8-402
78B-8-404

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 63G, Chapter 3, 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 63G, Chapter 3, 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.

5. FR Vol. 72, No. 220, Thursday, November 15, 2007, Pages 64342 to and including 64430 "Employer Payment for Personal Protective Equipment 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.

2. FR Vol. 72, No. 220, Thursday, November 15, 2007, Pages 64342 to and including 64430 "Employer Payment for Personal Protective Equipment Standard; Final Rule" is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall 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 63G, Chapter 3, 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 63G, Chapter 3, 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 63G, Chapter 4, 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 63G, Chapter 3, 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
May 22, 2008 **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 63G, Chapter 3, 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

R616. Labor Commission, Boiler and Elevator Safety.
R616-1. Coal, Gilsonite, or other Hydrocarbon Mining Certification.
R616-1-1. Authority and Purpose.

This rule is established pursuant to Section 40-2-1.1 and Section 40-2-14, which authorize the Labor Commission to enact rules governing the certification of individuals to work in the positions of underground mine foreman, surface mine foreman, fire boss, underground electrician or surface electrician in coal mines, gilsonite mines or other hydrocarbon mines in Utah.

R616-1-2. Definitions.

A. "Commission" means the Labor Commission created in Section 34A-1-103.

B. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

C. "Certification" means a person being judged competent and qualified by the Division for a mining position identified in Section 40-2-15 by meeting standards established by the Division and the examining panel pursuant to the requirements in Sections 40-2-14 through 16.

R616-1-3. Fees.

As required by Section 40-2-15, the Labor Commission shall establish and collect fees for certification sufficient to fund the Commission's miner certification process. The Commission's fees schedule shall be submitted to the Legislature for approval pursuant to Section 63J-1-301(2).

R616-1-4. Code of Federal Regulations.

The provisions of 30 CFR, sections 1 through 199, "Federal Underground Coal Mine Safety Standards," 11th ed., July 1, 1996, are hereby incorporated by reference.

R616-1-5. Initial Agency Action.

Division action either granting or denying an applicant's application for certification are classified as informal adjudicative actions pursuant to Section 63G-4-202 of the Utah Administrative Procedures Act and shall be adjudicated accordingly.

KEY: certification, labor, mining
May 23, 2007 34A-1-104
Notice of Continuation April 28, 2008 40-2-1 et seq.

R616. Labor Commission, Boiler and Elevator Safety.
R616-2. Boiler and Pressure Vessel Rules.
R616-2-1. Authority.

This rule is established pursuant to Title 34A, Chapter 7 for the purpose of establishing reasonable safety standards for boilers and pressure vessels to prevent exposure to risks by the public and employees.

R616-2-2. Definitions.

A. "ASME" means the American Society of Mechanical Engineers.

B. "Boiler inspector" means a person who is an employee of:

1. The Division who is authorized to inspect boilers and pressure vessels by having met nationally recognized standards of competency and having received the Commission's certificate of competency; or

2. An insurance company writing boiler and pressure vessel insurance in Utah who is deputized to inspect boilers and pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

E. "National Board" means the National Board of Boiler and Pressure Vessel Inspectors.

F. "Nonstandard" means a boiler or pressure vessel that does not bear ASME and National Board stamping and registration.

G. "Owner/user agency" means any business organization operating pressure vessels in this state that has a valid owner/user certificate from the Commission authorizing self-inspection of unfired pressure vessels by its owner/user agents, as regulated by the Commission, and for which a fee has been paid.

H. "Owner/user agent" means an employee of an owner/user agency who is authorized to inspect unfired pressure vessels by having met nationally recognized standards of competency, receiving the Commission's certificate of competency, and having paid a certification fee.

R616-2-3. Safety Codes and Rules for Boilers and Pressure Vessels.

The following safety codes and rules shall apply to all boilers and pressure vessels in Utah, except those exempted pursuant to Section 34A-7-101, and are incorporated herein by this reference in this rule.

A. ASME Boiler and Pressure Vessel Code (2007).

1. Section I Rules for Construction of Power Boilers published July 1, 2007.

2. Section IV Rules for Construction of Heating Boilers published July 1, 2007.

3. Section VIII Rules for Construction of Pressure Vessels published July 1, 2007.

B. Power Piping ASME B31.1 (2004), issued August 16, 2004.

C. Controls and Safety Devices for Automatically Fired Boilers ASME CSD-1-1998; the ASME CSD-1a-1999 addenda, issued March 10, 2000; and the ASME CSD-1b (2001) addenda, issued November 30, 2001.

D. National Board Inspection Code ANSI/NB-23 (2004) issued December 31, 2004, the 2005 Addendum issued December 31, 2005, and the 2006 Addendum issued December 31, 2006.

E. NFPA 85 Boiler and Combustion Systems Hazard Code 2004 Edition.

F. Recommended Administrative Boiler and Pressure Vessel Safety Rules and Regulations NB-132 Rev. 4.

G. Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair and Alteration API 510 Ninth Edition, June 2006. Except:

1. Section-8, and

2. Appendix-A.

R616-2-4. Quality Assurance for Boilers, Pressure Vessels and Power Piping.

A. Consistent with the requirements of the Commission and its predecessor agency since May 1, 1978, all boilers and pressure vessels installed on or after May 1, 1978 shall be registered with the National Board and the data plate must include the National Board number.

B. Pursuant to Section 34A-7-102(2), any boiler or pressure vessel of special design must be approved by the Division to ensure it provides a level of safety equivalent to that contemplated by the Boiler and Pressure Vessel Code of the ASME. Any such boiler or pressure vessel must thereafter be identified by a Utah identification number provided by the Division.

C. All steam piping, installed after May 1, 1978, which is external (from the boiler to the first stop valve for a single boiler and the second stop valve in a battery of two or more boilers having manhole openings) shall comply with Section 1 of the ASME Boiler and Pressure Vessel Code or ASME B31.1 Power Piping as applicable.

D. Nonstandard boilers or pressure vessels installed in Utah before July 1, 1999 may be allowed to continue in operation provided the owner can prove the equivalence of its design to the requirements of the ASME Boiler and Pressure Vessel Code. Nonstandard boilers or pressure vessels may not be relocated or moved.

E. Effective July 1, 1999, all boiler and pressure vessel repairs or alterations must be performed by an organization holding a valid Certificate of Authorization to use the "R" stamp from the National Board. Repairs to pressure relief valves shall be performed by an organization holding a valid Certificate of Authorization to use the "VR" stamp from the National Board.

R616-2-5. Code Applicability.

A. The safety codes which are applicable to a given boiler or pressure vessel installation are the latest versions of the codes in effect at the time the installation commenced.

B. If a boiler or pressure vessel is replaced, this is considered a new installation.

C. If a boiler or pressure vessel is relocated to another location or moved in its existing location, this is considered a new installation.

R616-2-6. Variances to Code Requirements.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner or user, the Division may allow the owner or user a variance pursuant to Section 34A-7-102. Variances must be in writing to be effective, and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their boiler or pressure vessel installation provides safety equivalent to the safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

R616-2-7. Boiler and Pressure Vessel Compliance Manual.

A. The Division shall develop and issue a safety code compliance manual for organizations and personnel involved in

the design, installation, operation and maintenance of boilers and pressure vessels in Utah.

B. This compliance manual shall be reviewed annually for accuracy and shall be re-issued on a frequency not to exceed two years.

C. If a conflict exists between the Boiler and Pressure Vessel compliance manual and a safety code adopted in R616-2-3, the code requirements will take precedence.

R616-2-8. Inspection of Boilers and Pressure Vessels.

A. It shall be the responsibility of the Division to make inspections of all boilers or pressure vessels operated within its jurisdiction, when deemed necessary or appropriate.

B. Boiler inspectors shall examine conditions in regards to the safety of the employees, public, machinery, ventilation, drainage, and into all other matters connected with the safety of persons using each boiler or pressure vessel, and when necessary give directions providing for the safety of persons in or about the same. The owner or user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary. In the event an internal inspection of a boiler or pressure vessel is required the owner or user shall, at a minimum, prepare the boiler or pressure vessel by meeting the requirements of 29 CFR Part 1910.146 "Permit Required Confined Spaces" and 29 CFR Part 1910.147 "Control of Hazardous Energy (Lockout/Tagout)".

C. If the Division finds a boiler or pressure vessel complies with the safety codes and rules, the owner or user shall be issued a Certificate of Inspection and Permit to Operate.

D. If the Division finds a boiler or pressure vessel is not being operated in accordance with safety codes and rules, the owner or user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the boiler or pressure vessel into compliance.

E. Pursuant to Sections 34A-1-104, 34A-2-301 and 34A-7-102, if the improvements or changes to the boiler or pressure vessel are not made within a reasonable time, the boiler or pressure vessel is being operated unlawfully.

F. If the owner or user refuses to allow an inspection to be made, the boiler or pressure vessels is being operated unlawfully.

G. If the owner or user refuses to pay the required fee, the boiler or pressure vessel is being operated unlawfully.

H. If the owner or user operates a boiler or pressure vessel unlawfully, the Commission may order the boiler or pressure vessel operation to cease pursuant to Sections 34A-1-104 and 34A-7-103.

I. If, in the judgment of a boiler inspector, the lives or safety of employees or public are or may be endangered should they remain in the danger area, the boiler inspector shall direct that they be immediately withdrawn from the danger area, and the boiler or pressure vessel be removed from service until repairs have been made and the boiler or pressure vessel has been brought into compliance.

J. An owner/user agency may conduct self inspection of its own unfired pressure vessels with its own employees who are owner/user agents under procedures and frequencies established by the Division.

R616-2-9. Fees.

Fees to be charged as required by Section 34A-7-104 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

R616-2-10. Notification of Installation, Revision, or Repair.

A. Before any boiler covered by this rule is installed or before major revision or repair, particularly welding, begins on a boiler or pressure vessel, the Division must be advised at least one week in advance of such installation, revision, or repair unless emergency dictates otherwise.

B. It is recommended that a business organization review its plans for purchase and installation, or of revision or repair, of a boiler or pressure vessel well in advance with the Division to ensure meeting code requirements upon finalization.

R616-2-11. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the boiler inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-2-12. Presiding Officer.

The boiler inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-2-13, the Commission shall appoint the presiding officer for that hearing.

R616-2-13. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(2)(a) and 63G-4-201(3).

R616-2-14. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-2-13 shall be informal and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Section 63G-4-202(3).

KEY: boilers, certification, safety
December 24, 2007 34A-7-101 et seq.
Notice of Continuation November 30, 2006

R616. Labor Commission, Boiler and Elevator Safety.
R616-3. Elevator Rules.
R616-3-1. Authority.

This rule is established pursuant to Section 34A-7-201 for the purpose of the Labor Commission ascertaining, fixing, and enforcing reasonable standards regarding elevators for the protection of life, health, and safety of the general public and employees.

R616-3-2. Definitions.

A. "ANSI" means the American National Standards Institute, Inc.

B. "ASME" means the American Society of Mechanical Engineers.

C. "Commission" means the Labor Commission created in Section 34A-1-103.

D. "Division" means the Division of Boiler and Elevator Safety of the Labor Commission.

E. "Elevator" means a hoisting and lowering mechanism equipped with a car or platform and that moves in guides in a substantially vertical direction.

F. "Escalator" means a stairway, moving walkway, or runway that is power driven, continuous and used to transport one or more individuals.

R616-3-3. Safety Codes for Elevators.

The following safety codes are adopted and incorporated by reference within this rule:

A. ASME A17.1, Safety Code for Elevators and Escalators, 2007 ed. issued April 6, 2007, and amended as follows:

1. Delete 2.2.2.5;

2. Amend 8.6.5.8 as follows: Existing hydraulic cylinders installed below ground when found to be leaking shall be replaced with cylinders conforming to 3.18.3.4 or the car shall be provided with safeties conforming to 3.17.1 and guide rails, guide rail supports and fastenings conforming to 3.23.1. This code is issued every three years with annual addenda. New issues and addenda become mandatory only when a formal change is made to these rules. Elevators are required to comply with the A17.1 code in effect at the time of installation.

B. ASME A17.3 - 2002 Safety Code for Existing Elevators and Escalators. This code is adopted for regulatory guidance only for elevators classified as remodeled elevators by the Division of Boiler and Elevator Safety.

C. ASME A90.1-1992, Safety Standard for Belt Manlifts.

D. ANSI A10.4-1990, Safety Requirements for Personnel Hoists and Employee Elevators for Construction and Demolition Operations.

E. 2006 International Building Code.

F. ICC/ANSI A117.1-1998 Accessible and Usable Buildings and Facilities, sections 407 and 408, approved February 13, 1998.

G. ASME A18.1-2005 Safety Standard For Platform Lifts And Stairway Chairlifts, issued November 29, 2005.

R616-3-4. Inspector Qualification.

A. Any person who performs elevator safety inspections must have a current certification as a Qualified Elevator Inspector as outlined in ASME QEI-1, Qualifications for Elevator Inspectors.

R616-3-5. Modifications and Variances to Codes.

A. In a case where the Division finds that the enforcement of any code would not materially increase the safety of employees or general public, and would work undue hardships on the owner/user, the Division may allow the owner/user a variance. Variances must be in writing to be effective and can be revoked after reasonable notice is given in writing.

B. Persons who apply for a variance to a safety code requirement must present the Division with the rationale as to how their elevator installation provides safety equivalent to the applicable safety code.

C. No errors or omissions in these codes shall be construed as permitting any unsafe or unsanitary condition to exist.

D. The Commission may, by rule, add or delete from the applicable safety codes for any good and sufficient safety reason.

E. In the event that adopted safety codes are in conflict with one another, the ASME A17.1, Safety Code for Elevators and Escalators will take precedence. The exception to this is for compliance with the accessibility guidelines of Pub. L. No. 101-336 "The Americans with Disability Act of 1990". In this instance, the International Building Code standards adopted in R616-3-3 for accessibility as applied to elevators take precedence over ASME A17.1.

R616-3-6. Exemptions.

A. These rules apply to all elevators in Utah with the following exemptions:

1. Private residence elevators installed inside a single family dwelling. Common elevators which serve multiple private residences are not exempt from these rules.

2. Elevators in buildings owned by the Federal government.

B. Owners of elevators exempted in R616-3-5.A. may request a safety inspection by Division of Boiler and Elevator Safety inspectors. Code non-compliance items will be treated as recommendations by the inspector with the owner having the option as to which, if any, are corrected. Owners requesting these inspections will be invoiced at the special inspection rate. If the owner requests a State of Utah Certificate to Operate for the elevator, all of the recommendations must be completed to the satisfaction of the inspector and the owner will be invoiced the appropriate certificate fee.

R616-3-7. Inspection of Elevators, Permit to Operate, Unlawful Operations.

A. It shall be the responsibility of the Division to make inspections of all elevators when deemed necessary or appropriate.

B. Elevator inspectors shall examine conditions in regards to the safety of the employees, public, machinery, drainage, methods of lighting, and into all other matters connected with the safety of persons using or in close proximity to each elevator, and when necessary give directions providing for the better health and safety of persons in or about the same. The owner/user is required to freely permit entry, inspection, examination and inquiry, and to furnish a guide when necessary.

C. If the Division finds that an elevator complies with the applicable safety codes and rules, the owner/user shall be issued a Certificate of Inspection and Permit to Operate.

1. The Certificate of Inspection and Permit to Operate is valid for 24 months.

2. The Certificate of Inspection and Permit to Operate shall be displayed in a conspicuous location for the entire validation period. If the certificate is displayed where accessible to the general public, as opposed to being in the elevator machine room, it must be protected under a transparent cover.

D. If the Division finds an elevator is not being operated in accordance with the safety codes and rules, the owner/user shall be notified in writing of all deficiencies and shall be directed to make specific improvements or changes as are necessary to bring the elevator into compliance.

E. Pursuant to Section 34A-7-204, if the improvements or changes are not made within a reasonable time, by agreement of the division and the owner, the elevator is being operated

unlawfully.

F. If the owner/user refuses to allow an inspection to be made, the elevator is being operated unlawfully.

G. If the owner/user refuses to pay the required fee, the elevator is being operated unlawfully.

H. If the owner/user operates an elevator unlawfully, the Commission may order the elevator operation to cease pursuant to Section 34A-1-104.

I. If, in the judgment of an elevator inspector, the lives or safety of employees or public are, or may be, endangered should they remain in the danger area, the elevator inspector shall direct that they be immediately withdrawn from the danger area, and the elevator removed from service until repairs have been made and the elevator has been brought into compliance.

R616-3-8. Inclined Wheelchair Lift Headroom Clearance.

A. Headroom clearance for inclined wheelchair lifts throughout the range of travel shall be not less than 80 inches (2032 mm) as measured vertically from the leading edge of the platform floor.

B. For existing facilities only, in the event that it is not technically or economically feasible to provide other means of access for disabled persons, inclined wheelchair lifts may be installed if all of the following conditions are met:

1. The appropriate building inspection jurisdiction approves the use of an inclined wheelchair lift for the specific application.

2. Headroom clearance throughout the range of travel shall be not less than 60 inches as measured vertically from the leading edge of the platform floor.

3. The passenger restriction sign as required by ASME A18.1 3.1.2.3 shall be amended as follows: "PHYSICALLY DISABLED PERSONS ONLY. NO FREIGHT. HEADROOM CLEARANCE IS LIMITED. USE ONLY IN THE SITTING POSITION".

R616-3-9. Valves in Hydraulic Elevator Operating Fluid Systems.

A. Due to the potential loss of pressure retaining capability when over torqued, bronze-bodied valves shall not be installed in the hydraulic systems of a hydraulic elevator.

B. This requirement is in effect for all new installations and remodel installations involving the hydraulic system.

C. If a bronze-bodied valve installed on an existing elevator begins to leak, that valve shall be replaced by a steel-bodied valve.

R616-3-10. Hydraulic Elevator Piping.

A. This rule establishes minimum standards for hydraulic fluid piping in hydraulic elevators. The piping specifications referred to in this rule are governed by ASME or ASTM piping specifications (e.g. ASME Specification SA-53 Table X2.4).

B. Hydraulic elevators not incorporating a safety valve may use schedule 40 piping.

C. For newly installed hydraulic elevators that do incorporate a safety valve:

1. Where piping is protected by the safety valve, schedule 40 piping may be used;

2. Where grooved or threaded connections are used in piping that is unprotected by the safety valve, i.e. between the safety valve and the hydraulic jack(s), nominal pipe size (NPS)3 or schedule 80 piping may be used;

3. Where piping is unprotected by the safety valve, but welded or bolted flange connections are used, schedule 40 piping may be used.

R616-3-11. Shunt Trips in Elevator Systems.

A. The means (shunt trip) to automatically disconnect the main line power supply to the elevator discussed in 2.8.2.3.2 of A17.1 is not required for hydraulic elevators with a rise of 50 feet or less.

R616-3-12. Hoistway Vents.

Hoistway ventilation as outlined in the International Building Code is under the jurisdiction of the local building official.

R616-3-13. Hand Line Control Elevators.

A. Operation of a hand line control elevator is not permitted.

B. Owners of hand line control elevators are required to render the elevator electrically and mechanically incapable of operation.

R616-3-14. Remodeled Elevators.

A. When an elevator is classified as a remodeled (modernized) elevator by the Division, the components of the elevator involved in the modernization must comply with the standards of the latest version of A17.1 and A17.3 in effect at the time the remodeling of the elevator commences.

B. When a hydraulic elevator has been remodeled it is considered a new installation.

R616-3-15. Fees.

A. Fees to be charged as provided by Section 34A-1-106 and 63J-1-303 shall be adopted by the Labor Commission and approved by the Legislature pursuant to Section 63J-1-301(2).

B. The fee for the initial certification permit shall be invoiced to and paid by the company or firm installing the elevator.

C. The renewal certification permit shall be invoiced to and paid by the owner/user.

D. Any request for a special inspection shall be invoiced to and paid by the person/company requesting the inspection, at the hourly rate plus mileage and expenses.

R616-3-16. Notification of Installation, Revision or Remodeling.

A. Before any elevator covered by this rule is installed or a major revision or remodeling begins on the elevator, the Division must be advised at least one week in advance of such installation, revision, or remodeling unless emergency dictates otherwise.

R616-3-17. Initial Agency Action.

Issuance or denial of a Certificate of Inspection and Permit to Operate by the Division, and orders or directives to make changes or improvements by the elevator inspector are informal adjudicative actions commenced by the agency per Section 63G-4-201.

R616-3-18. Presiding Officer.

The elevator inspector is the presiding officer referred to in Section 63G-4-201. If an informal hearing is requested pursuant to R616-3-18, the Commission shall appoint the presiding officer for that hearing.

R616-3-19. Request for Informal Hearing.

Within 30 days of issuance, any aggrieved person may request an informal hearing regarding the reasonableness of a permit issuance or denial or an order to make changes or improvements. The request for hearing shall contain all information required by Sections 63G-4-201(3)(a) and 63G-4-201(3)(b).

R616-3-20. Classification of Proceeding for Purpose of Utah Administrative Procedures Act.

Any hearing held pursuant to R616-3-18 shall be informal

and pursuant to the procedural requirements of Section 63G-4-203 and any agency review of the order issued after the hearing shall be per Section 63G-4-302. An informal hearing may be converted to a formal hearing pursuant to Subsection 63G-4-202(3).

KEY: elevators, certification, safety
March 24, 2008 34A-1-101 et seq.
Notice of Continuation November 30, 2006

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 63G, Chapter 4, 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 63G, Chapter 4, "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 procedures
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 63G-4-204 to 63G-4-209 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 63G-4-204 to 63G-4-209 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 procedures
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 63G-3-101 et seq. and under the authority provided at Sections 40-6-5, 40-8-6(1), and 40-10-6(1).

KEY: administrative procedures
1994 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 63G-4-401, 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 procedures
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 63G, chapter 4 of the Utah code annotated (1953, as amended).

KEY: administrative procedures
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 63G-4-403 through 63G-4-405 of the Utah Code Annotated (1953, as amended).

KEY: administrative procedures
1988 40-6-1 et seq.
Notice of Continuation November 5, 2007

R642. Natural Resources; Oil, Gas and Mining; Administration.
R642-100. Records of the Division and Board of Oil, Gas and Mining.
R642-100-100. Responsibility and Authority.

110. Authority for the R642-100 rules is found in the Government Records Access and Management Act (GRAMA) (U.C.A. 63G-2-101, et seq.)

120. The Utah Division and Board of Oil, Gas and Mining ("Division" and "Board") will be considered as an agency for the purposes of the GRAMA.

130. The Director of the Division of Oil, Gas and Mining ("Director") will be considered to be the Agency Head for the purposes of activities under the GRAMA.

140. The Division and Board maintain an office at 1594 West North Temple, Suite 1210, P.O. Box 145801, Salt Lake City, Utah 84114-5801.

R642-100-200. Requests for Records.

210. Records may be requested by any person desiring access to Division or Board records.

220. Requests will be submitted in writing to the Administrative Assistant to the Director and Secretary to the Board.

230. All requests will be made at the Division office address listed in R642-100-140 in person during regular office hours or through the U.S. Mail and will be set forth with reasonable specificity:

231. The name of the record requested;

232. The date the record was made;

233. The form in which the record is needed, and;

234. The name and address and daytime phone number of the requester.

240. Forms are available at the Division to make records requests.

R642-100-300. Fees for Records.

310. The Division and Board of Oil, Gas and Mining will charge fees to supply records to all requestors, except as provided in R642-100-400 and R642-100-700.

320. Fees for records will reflect direct and indirect costs incurred by the Division and Board and will follow any policy guidance of the Division of Finance, Department of Administrative Services. The Division and Board may require payment of past fees and future estimated fees before processing a request if fees are expected to exceed $50.00, or if a requester has not paid fees from previous requests.

330. Fees will be reasonable and at a minimum, enable the Division and Board to obtain its actual cost of duplicating, compiling, or retrieving records from archival storage.

340. When a record is requested for inspection or review by a requester within the Division offices and no extraordinary efforts are made by the Division or Board in compiling or retrieving the record, no fee will be assessed to the requester.

R642-100-400. Waiver of Fees for Records.

410. Under the Government Records Access and Management Act (GRAMA) (U.C.A. 63G-2-101 et seq.), fees may be waived by the Director under any of the following circumstances:

411. When release of the record, in the opinion of the Director, benefits the public interest;

412. If the individual making the records request is the subject of a record and access is not otherwise restricted under U.C.A. 63G-2-101 et seq.

413. If the requestor is an individual specified in Section 63G-2-202(1) or (2), or

414. If the requester's rights are directly implicated by a record and he or she is impecunious.

420. Requests for a waiver of fees will be made in writing to the Director and will set forth the reasons why a requester desires a waiver of fees. The Director may delegate the authority to waive fees.

R642-100-500. Classification and Release of Records and Exceptions.

510. Records of the Division and Board will be classified and released in accordance with the Government Records Access and Management Act (GRAMA).

520. All records of the Division and Board which are not public as described in the GRAMA will be maintained as having restricted access as authorized under the GRAMA.

530. Any person denied access to a record of the Division or Board under the procedures outlined in GRAMA has the opportunity to appeal to the Director for more liberal access to a particular record. Appeals will be in writing and include:

531. A description of the record requested;

532. An explanation of how the release of the record would serve the interest of the public and how, in the appellant's opinion, the public's interest outweighs the privacy interests of restricted access.

533. The identity of the requester and an address where he or she may be contacted.

540. The Division will share its records with other agencies on a case-by-case basis in consideration of applicable laws.

R642-100-600. Responses to Requests for Records.

610. Responses to requests for records by the Division will be in writing and will be performed in accordance with the provisions of the Government Records Access and Management Act (GRAMA), U.C.A. 63G-2-101 et seq.

620. The Division and Board may respond to requests for information by means of prepared forms.

630. Rule 6 of the Utah Rules of Civil Procedure will apply to calculate time periods specified in GRAMA.

R642-100-700. Official Transcripts of Division and Board Proceedings.

710. The right to copy verbatim transcripts of Board and Division proceedings prepared by a Certified Court Reporter will be considered to be the property of the Reporter.

720. Unless otherwise classified as eligible for a more restricted classification by the Board or Division, all official transcripts will be considered as public records which are open for inspection or review in the Division offices at the address listed in R642-100-140.

730. Persons desiring copies of the official transcripts of the Board and Division proceedings will be provided with the name and address of the court reporter.

KEY: public records
1994 63G-2-101 et seq.
Notice of Continuation March 7, 2007

R642. Natural Resources; Oil, Gas and Mining; Administration.
R642-200. Applicability.
R642-200-100. Applicability.

If access to any record under the control of the Division is governed by another authority, such as a court rule, another state statute, federal statute, or federal regulation, the provisions of Title R642 will not apply. In each of these cases where Title R642 does not apply, access will be controlled by the provisions of the specifically-applicable statute, rule, or regulation.

KEY: public records
1994 63G-2-101 et seq.
Notice of Continuation December 16, 2003

R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-100. Administrative: Introduction.
R645-100-100. Scope.

110. General Overview. The rules presented herein establish the procedures through which the Utah State Division of Oil, Gas and Mining will implement those provisions of the Coal Mining Reclamation Act of 1979, (the Act) pertaining to the effects of coal mining and reclamation operations and pertaining to coal exploration.

120. R645 Rules Organization. The R645 Rules have been subdivided into the four major functional aspects of the Division's coal mining and exploration State Program.

121. The heading entitled ADMINISTRATIVE encompasses general introductory material, definitions applicable throughout the R645 Rules, procedures for the exemption of certain coal extraction activities, designating areas unsuitable for coal mining, protection of employees, and requirements for blaster certification.

122. The heading entitled COAL EXPLORATION establishes the minimum requirements for acquiring approval and identifies performance standards for coal exploration.

123. The heading entitled COAL MINE PERMITTING describes certain procedural requirements and options attendant to the coal mine permitting process. Moreover, the minimum requirements for acquiring a permit for a coal mining and reclamation operation are identified.

124. The heading entitled INSPECTION AND ENFORCEMENT delineates the authority, administrative procedures, civil penalties, and employee protection attendant to the Division's inspection and enforcement program.

130. Effective Date. The provisions of R645-100 through and including R645-402 will become effective and enforceable upon final approval by the Office of Surface Mining, U.S. Department of the Interior. Existing coal regulatory program rules, R645 Chapters I and II, will be in effect until approval of R645-100 through R645-402 by the Office of Surface Mining and will be considered repealed upon approval of R645-100 through R645-402.

R645-100-200. Definitions.

As used in the R645 Rules, the following terms have the specified meanings:

"Abandoned site" means, for the purpose of R645-400, a coal mining and reclamation operation for which the Division has found in writing that,

(a) All coal mining and reclamation operations at the site have ceased;

(b) The Division has issued at least one notice of violation or the initial program equivalent, and either:

(i) Is unable to serve the notice despite diligent efforts to do so; or

(ii) The notice was served and has progressed to a failure-to-abate cessation order or the initial program equivalent;

(c) The Division:

(i) Is taking action to ensure that the permittee and operator, and owners and controllers of the permittee and operator, will be precluded from receiving future permits while violations continue at the site; and

(ii) Is taking action pursuant to section 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2)(a) of the Act to ensure that abatement occurs or that there will not be a recurrence of the failure-to-abate, except where after evaluating the circumstances it concludes that further enforcement offers little or no likelihood of successfully compelling abatement or recovering any reclamation costs; and

(d) Where the site is, or was, permitted and bonded:

(i) The permit has either expired or been revoked; and

(ii) The Division has initiated and is diligently pursuing forfeiture of, or has forfeited any available performance bond.

(e) In lieu of the inspection frequency established in R645-400-130, the Division shall inspect each abandoned site on a set frequency commensurate with the public health and safety and environmental considerations present at each specific site, but in no case shall the inspection frequency be set at less than one complete inspection per calendar year.

(1) In selecting an alternate inspection frequency authorized under part (e) of this definition, the Division shall first conduct a complete inspection of the abandoned site and provide public notice under paragraph (2) below. Following the inspection and public notice, the Division shall prepare and maintain for public review a written finding justifying the alternative inspection frequency selected. This written finding shall justify the new inspection frequency by affirmatively addressing in detail all of the following criteria:

(i) How the site meets each of the criteria under the definition of an abandoned site and thereby qualifies for a reduction in inspection frequency;

(ii) Whether, and to what extent, there exist on the site impoundments, earthen structures or other conditions that pose, or may reasonably be expected to change into, imminent dangers to the health or safety of the public or significant environmental harms to land, air or water resources;

(iii) The extent to which existing impoundments or earthen structures were constructed and certified in accordance with prudent engineering designs approved in the permit;

(iv) The degree to which erosion and sediment control is present and functioning;

(v) The extent to which the site is located near or above urbanized areas, communities, occupied dwellings, schools and other public or commercial buildings and facilities;

(vi) The extent of reclamation completed prior to abandonment and the degree of stability of unreclaimed areas, taking into consideration the physical characteristics of the land mined and the extent of settlement or revegetation that has occurred naturally with time; and

(vii) Based on a review of the complete and partial inspection report record for the site during at least the last two consecutive years, the rate at which adverse environmental or public health and safety conditions have and can be expected to progressively deteriorate.

(2) The public notice and opportunity to comment required under part (e)(1) of this definition shall be provided as follows:

(i) The Division shall place a notice in the newspaper with the broadest circulation in the locality of the abandoned site providing the public with a 30-day period in which to submit written comments.

(ii) The public notice shall contain the permittee's name, the permit number, the precise location of the land affected, the inspection frequency proposed, the general reasons for reducing the inspection frequency, the bond status of the permit, the telephone number and address of the office where written comments on the reduced inspection frequency may be submitted, and the closing date of the comment period.

"Account" means the Abandoned Mine Reclamation Account established pursuant to Section 40-10-25 of the Act.

"Acid Drainage" means water with a pH of less than 6.0 and in which total acidity exceeds total alkalinity discharged from an active, inactive, or abandoned coal mining and reclamation operation, or from an area affected by coal mining and reclamation operations.

"Acid-Forming Materials" means earth materials that contain sulfide minerals or other materials which, if exposed to air, water, or weathering processes, form acids that may create acid drainage.

"Act" means Utah Code Annotated Section 40-10-1 et seq.

"Adjacent Area" means the area outside the permit area where a resource or resources, determined according to the

context in which adjacent area is used, are or reasonably could be expected to be adversely impacted by proposed coal mining and reclamation operations, including probable impacts from underground workings.

"Administratively Complete Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain information addressing each application requirement of the State Program and to contain all information necessary to initiate processing and public review.

"Affected Area" means any land or water surface area which is used to facilitate, or is physically altered by, coal mining and reclamation operations. The affected area includes the disturbed area; any area upon which coal mining and reclamation operations are conducted; any adjacent lands the use of which is incidental to coal mining and reclamation operations; all areas covered by new or existing roads used to gain access to, or for hauling coal to or from coal mining and reclamation operations, except as provided in this definition; any area covered by surface excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, shipping areas; any areas upon which are sited structures, facilities, or other property material on the surface resulting from, or incident to, coal mining and reclamation operations; and the area located above underground workings. The affected area shall include every road used for purposes of access to, or for hauling coal to or from, coal mining and reclamation operations, unless the road (a) was designated as a public road pursuant to the laws of the jurisdiction in which it is located; (b) is maintained with public funds, and constructed, in a manner similar to other public roads of the same classification within the jurisdiction; and (c) there is substantial (more than incidental) public use. Editorial Note: The definition of "Affected area", insofar, as it excludes roads which are included in the definition of "Surface coal mining operations", was suspended at 51 FR 41960, Nov. 20, 1986. Accordingly, Utah suspends the definition of Affected Area insofar as it excludes roads which are included in the definition of "coal mining and reclamation operations."

"Agricultural Use" means the use of any tract of land for the production of animal or vegetable life. The uses include, but are not limited to, the pasturing, grazing, and watering of livestock, and the cropping, cultivation, and harvesting of plants.

"Alluvial Valley Floors" means the unconsolidated stream-laid deposits holding streams with water availability sufficient for subirrigation or flood irrigation agricultural activities, but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits formed by unconcentrated runoff or slope wash, together with talus, or other mass-movement accumulations, and windblown deposits.

"Applicant" means any person seeking a permit, permit change, and permit renewal, transfer, assignment, or sale of permit rights from the Division to conduct coal mining and reclamation operations or, where required, seeking approval for coal exploration.

"Application" means the documents and other information filed with the Division under the R645 Rules for the issuance of permits; permit changes; permit renewals; and transfer, assignment, or sale of permit rights for coal mining and reclamation operations or, where required, for coal exploration.

"Approximate Original Contour" means that surface configuration achieved by backfilling and grading of the mined areas so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain with all highwalls, spoil piles, and coal refuse piles having a design approved under the R645 Rules and prepared for abandonment. Permanent water impoundments may be permitted where the Division has determined that they comply with R645-301-413.100 through R645-301-413.334, R645-301-512.240, R645-301-514.300, R645-301-515.200, R645-301-533.100 through R645-301-533.600, R645-301-542.400, R645-301-733.220 through R645-301-733.224, R645-301-743, R645-302-270 through R645-302-271.400, R645-302-271.600, R645-302-271.800, and R645-302-271.900.

"Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

"Arid and Semiarid Area" means, in the context of ALLUVIAL VALLEY FLOORS, an area where water use by native vegetation equals or exceeds that supplied by precipitation. All coalfields in Utah are in arid and semiarid areas.

"Auger Mining" means a method of mining coal at a cliff or highwall by drilling holes into an exposed coal seam from the highwall and transporting the coal along an auger bit to the surface.

"Best Technology Currently Available" means equipment, devices, systems, methods, or techniques which will (a) prevent, to the extent possible, additional contributions of suspended solids to stream flow or runoff outside the permit area, but in no event result in contributions of suspended solids in excess of requirements set by applicable state or federal laws; and (b) minimize, to the extent possible, disturbances and adverse impacts on fish, wildlife, and related environmental values, and achieve enhancement of those resources where practicable. The term includes equipment, devices, systems, methods, or techniques which are currently available anywhere as determined by the Director, even if they are not in routine use. The term includes, but is not limited to, construction practices, siting requirements, vegetation selection and planting requirements, animal stocking requirements, scheduling of activities, and design of sedimentation ponds in accordance with R645-301 and R645-302. Within the constraints of the State Program, the Division will have the discretion to determine the best technology currently available on a case-by-case basis, considering among other things the economic feasibility of the equipment, devices, systems, methods or techniques, as authorized by the Act and the R645 Rules.

"Blaster" means a person who is directly responsible for the use of explosives in connection with surface blasting operations incidental to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES or SURFACE COAL MINING AND RECLAMATION ACTIVITIES, and who holds a valid certificate issued by the Division in accordance with the statutes and regulations administered by the Division governing training, examination, and certification of persons responsible for the use of explosives in connection with surface blasting operations incident to coal mining and reclamation operations.

"Board" means the Board of Oil, Gas and Mining for the state of Utah, or the Board's delegated representative.

"Cemetery" means any area of land where human bodies are interred.

"Coal" means combustible carbonaceous rock, classified as anthracite, bituminous, subbituminous, or lignite by ASTM Standard D388-95.

"Coal Exploration" means the field gathering of: (a) surface or subsurface geologic, physical, or chemical data by mapping, trenching, drilling, geophysical, or other techniques necessary to determine the quality and quantity of overburden and coal of an area; or (b) the gathering of environmental data to establish the conditions of an area before beginning coal mining and reclamation operations under the requirements of the R645

Rules.

"Coal Mine Waste" means coal processing waste and underground development waste.

"Coal Mining and Reclamation Operations" means (a) activities conducted on the surface of lands in connection with a surface coal mine or, subject to the requirements of Section 40-10-18 of the Act, surface coal mining and reclamation operations and surface impacts incident to an underground coal mine, the products of which enter commerce or the operations of which directly or indirectly affect interstate commerce. Such activities include all activities necessary and incidental to the reclamation of the operations, excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining; the use of explosives and blasting; in-situ distillation; or retorting, leaching, or other chemical or physical processing; and the cleaning, concentrating, or other processing or preparation of coal. Such activities also include the loading of coal for interstate commerce at or near the mine site. Provided, these activities do not include the extraction of coal incidental to the extraction of other minerals, where coal does not exceed 16-2/3 percent of the tonnage of minerals removed for purposes of commercial use or sale, or coal exploration subject to Section 40-10-8 of the Act; and, provided further, that excavation for the purpose of obtaining coal includes extraction of coal from coal refuse piles; and (b) the areas upon which the activities described under part (a) of this definition occur or where such activities disturb the natural land surface. These areas will also include any adjacent land the use of which is incidental to any such activities, all lands affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage and excavation, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas upon which are sited structures, facilities, or other property or material on the surface, resulting from or incident to those activities.

"Coal Mining and Reclamation Operations Which Exist on the Date of Enactment" means all coal mining and reclamation operations which were being conducted on August 3, 1977.

"Coal Preparation or Coal Processing" means the chemical and physical processing and the cleaning, concentrating, or other processing or preparation of coal.

"Coal Processing Plant" means a facility where coal is subjected to chemical or physical processing or the cleaning, concentrating, or other processing or preparation. Coal processing plant includes facilities associated with coal processing activities, such as, but not limited to, the following: loading facilities; storage and stockpile facilities; sheds, shops, and other buildings; water-treatment and water-storage facilities; settling basins and impoundments; and coal processing and other waste disposal areas.

"Coal Processing Waste" means earth materials which are separated from the product coal during cleaning, concentrating, or the processing or preparation of coal.

"Collateral Bond" means an indemnity agreement in a sum certain executed by the permittee as principal which is supported by the deposit with the Division of: (a) a cash account, which will be the deposit of cash in one or more federally-insured or equivalently protected accounts, payable only to the Division upon demand, or the deposit of cash directly with the Division; (b) negotiable bonds of the United States, a State, or a municipality, endorsed to the order of, and placed in the possession of, the Division; (c) negotiable certificates of deposit, made payable or assigned to the Division and placed in its possession, or held by a federally insured bank; (d) an irrevocable letter of credit of any bank organized or authorized to transact business in the United States payable only to the Division upon presentation; (e) a perfected, first lien security interest in real property in favor of the Division; or (f) other investment grade rated securities having a rating of AAA or AA or A, or an equivalent rating issued by a nationally recognized securities rating service, endorsed to the order of, and placed in the possession of, the Division.

"Combustible Material" means organic material that is capable of burning, either by fire or through oxidation, accompanied by the evolution of heat and a significant temperature rise.

"Community or Institutional Building" means any structure, other than a public building or an occupied dwelling, which is used primarily for meetings, gatherings or functions of local civic organizations or other community groups; functions including, but not limited to educational, cultural, historic, religious, scientific, correctional, mental-health or physical-health care facility; or is used for public services, including, but not limited to, water supply, power generation, or sewage treatment.

"Compaction" means increasing the density of a material by reducing the voids between the particles, and is generally accomplished by controlled placement and mechanical effort such as from repeated application of wheel, track, or roller loads from heavy equipment.

"Complete and Accurate Application" means an application for permit approval or approval for coal exploration, where required, which the Division determines to contain all information required under the Act, the R645 Rules, and the State Program that is necessary to make a decision on permit issuance.

"Continuously Mined Areas" means land which was mined for coal by underground mining operations prior to August 3, 1977, the effective date of the Federal Act, and where mining continued after that date.

"Cooperative Agreement" means the agreement between the Governor of the State of Utah and the Secretary of the Department of the Interior as published at 30 CFR 944.30.

"Cropland" means land used for the production of adapted crops for harvest, alone or in a rotation with grasses and legumes, and includes row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar specialty crops.

"Cumulative Impact Area" means the area, including the permit area, within which impacts resulting from the proposed operation may interact with the impacts of all anticipated mining on surface and groundwater systems. Anticipated mining will include, at a minimum, the entire projected lives through bond releases of: (a) the proposed operation, (b) all existing operations, (c) any operation for which a permit application has been submitted to the Division, and (d) all operations required to meet diligent development requirements for leased federal coal for which there is actual mine development information available.

"Cumulative measurement period" means, for the purpose of R645-106, the period of time over which both cumulative production and cumulative revenue are measured.

(a) For purposes of determining the beginning of the cumulative measurement period, subject to Division approval, the operator must select and consistently use one of the following:

(i) For mining areas where coal or other minerals were extracted prior to August 3, 1977, the date extraction of coal or other minerals commenced at that mining area or August 3, 1977, or

(ii) For mining areas where extraction of coal or other minerals commenced on or after August 3, 1977, the date extraction of coal or other minerals commenced at that mining area, whichever is earlier.

(b) For annual reporting purposes pursuant to R645-106-

900, the end of the period for which cumulative production and revenue is calculated is either

(i) For mining areas where coal or other minerals were extracted prior to July 1, 1992, June 30, 1992, and every June 30 thereafter; or

(ii) For mining areas where extraction of coal or other minerals commenced on or after July 1, 1992, the last day of the calendar quarter during which coal extraction commenced, and each anniversary of that day thereafter.

"Cumulative production" means, for the purpose of R645-106, the total tonnage of coal or other minerals extracted from a mining area during the cumulative measurement period. The inclusion of stockpiled coal and other mineral tonnages in this total is governed by R645-106-700.

"Cumulative revenue" means, for the purpose of R645-106, the total revenue derived from the sale of coal or other minerals and the fair market value of coal or other minerals transferred or used, but not sold, during the cumulative measurement period.

"Current Assets" means cash or other assets or resources which are reasonably expected to be converted to cash or sold or consumed within one year or within the normal operating cycle of the business.

"Current Liabilities" means obligations which are reasonably expected to be paid or liquidated within one year or within the normal operating cycle of the business.

"Direct Financial Interest" means ownership or part ownership by an employee of lands, stocks, bonds, debentures, warrants, partnership shares, or other holdings, and also means any other arrangement where the employee may benefit from his or her holding in or salary from coal mining and reclamation operations. Direct financial interests include employment, pensions, creditor, real property, and other financial relationships.

"Director" means the Director, Utah State Division of Oil, Gas and Mining, or the Director's representative.

"Director of the Office" means the Director of the Office of Surface Mining, Reclamation and Enforcement, U.S. Department of the Interior.

"Disturbed Area" means an area where vegetation, topsoil, or overburden is removed or upon which topsoil, spoil, coal processing waste, underground development waste, or noncoal waste is placed by coal mining and reclamation operations. Those areas are classified as disturbed until reclamation is complete and the performance bond or other assurance of performance required by R645-301-800 is released. For the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, disturbed area will not include those areas (a) in which the only coal mining and reclamation operations include diversion ditches, siltation structures, or roads that are designed, constructed and maintained in accordance with R645-301 and R645-302; and (b) for which the upstream area is not otherwise disturbed by the operator.

"Diversion" means a channel, embankment, or other man-made structure constructed to divert water from one area to another.

"Division" means Utah State Division of Oil, Gas and Mining, the designated state regulatory authority.

"Downslope" means the land surface between the projected outcrop of the lowest coalbed being mined along each highwall and a valley floor.

"Edge Effect" means the positive effect created by the juxtaposition of two diverse habitats.

"Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or for other similar purposes.

"Employee" means any person employed by the Division who performs any function or duty under the Act, and does not mean the Board of Oil, Gas and Mining which is excluded from this definition.

"Ephemeral Stream" means a stream which flows only in direct response to precipitation in the immediate watershed, or in response to the melting of a cover of snow and ice, and which has a channel bottom that is always above the local water table.

"Essential Hydrologic Functions" means the role of an ALLUVIAL VALLEY FLOOR in collecting, storing, regulating, and making the natural flow of surface or ground water, or both, usefully available for agricultural activities by reason of the valley floor's topographic position, the landscape, and the physical properties of its underlying materials. A combination of these functions provides a water supply during extended periods of low precipitation.

"Excess Spoil" means spoil material disposed of in a location other than the mined-out area, provided that the spoil material used to achieve the approximate original contour or to blend the mined-out area with the surrounding terrain in accordance with R645-301-553.220 in nonsteep slope areas will not be considered excess spoil.

"Existing Structure" means a structure or facility used in connection with or to facilitate coal mining and reclamation operations for which construction began prior to January 21, 1981.

"Extraction of Coal as an Incidental Part" means the extraction of coal which is necessary to enable government-financed construction to be accomplished. For purposes of R645-102, only that coal extracted from within the right-of-way in the case of a road, railroad, utility line, or other such construction, or within the boundaries of the area directly affected by other types of government-financed construction, may be considered incidental to that construction. Extraction of coal outside the right-of-way or boundary of the area directly affected by the construction will be subject to the requirements of the Act and the R645 Rules.

"Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (P.L. 95-87).

"Federal Lands" means any land, including mineral interests, owned by the United States without regard to how the United States acquired ownership of the lands or which agency manages the lands. It does not include Indian lands.

"Fixed Assets" means plants and equipment, but does not include land or coal in place.

"Flood Irrigation" means, with respect to ALLUVIAL VALLEY FLOORS, supplying water to plants by natural overflow or the diversion of flows, so that the irrigated surface is largely covered by a sheet of water.

"Fragile Lands" means, for the purposes of R645-103-300, geographic areas containing natural, ecologic, scientific, or aesthetic resources that could be significantly damaged or be destroyed by coal mining and reclamation operations. Examples of fragile lands include valuable habitats for fish or wildlife, critical habitats for endangered or threatened species of animals or plants, uncommon geologic formations, paleontological sites, National Natural Landmark sites, areas where mining may result in flooding, environmental corridors containing a concentration of ecologic and aesthetic features, areas of recreational value due to high environmental quality.

"Fugitive Dust" means that particulate matter not emitted from a duct or stack which becomes airborne due to the forces of wind or coal mining and reclamation operations, or both. During coal mining and reclamation operations, it may include emissions from haul roads; wind erosion of exposed surfaces, storage piles, and spoil piles; reclamation operations; and other activities in which material is either removed, stored, transported, or redistributed.

"Fund" means the Abandoned Mine Reclamation Account established pursuant to 40-10-25 of the Act.

"Government-Financed Construction" means, for the

purposes of R645-102, construction funded 50 percent or more by funds appropriated from a government-financing agency's budget or obtained from general revenue bonds, but will not mean government-financing agency guarantees, insurance, loans, funds obtained through industrial revenue bonds or their equivalent, or in-kind payments.

"Government Financing Agency" means, for the purposes of R645-102 a federal, state, county, municipal, or local unit of government, or a department, bureau, agency or office of the unit which, directly or through another unit of government, finances construction.

"Gravity Discharge" means, with respect to UNDERGROUND MINING AND RECLAMATION ACTIVITIES, mine drainage that flows freely in an open channel downgradient. Mine drainage that occurs as a result of flooding a mine, to the level of the discharge, is not gravity discharge.

"Ground Cover" means the area of ground covered by the combined aerial parts of vegetation and the litter that is produced naturally on-site, expressed as a percentage of the total area of measurement.

"Ground Water" means subsurface water that fills available openings in rock or soil materials to the extent that they are considered water saturated.

"Habitats of Unusually High Value for Fish and Wildlife" means an area defined by the state as crucial-critical use areas for wildlife.

"Half-Shrub" means a perennial plant with a woody base whose annually produced stems die back each year.

"Head-of-Hollow Fill" means a fill structure consisting of any material, other than organic material, placed in the uppermost reaches of a hollow where side slopes of the existing hollow, measured at the steepest point, are greater than 20 degrees, or the average slope of the profile of the hollow from the toe of the fill to the top of the fill, is greater than ten degrees. In head-of-hollow fills, the top surface of the fill, when completed, is at approximately the same elevation as the adjacent ridge line, and no significant area of natural drainage occurs above the fill draining into the fill area.

"Higher or Better Uses" means postmining land uses that have a higher economic value or nonmonetary benefit to the landowner, or the community, than the premining land uses.

"Highwall" means the face of exposed overburden and coal in an open cut of surface coal mining and reclamation activities or for entry to underground mining activities.

"Highwall Remnant" means that portion of highwall that remains after backfilling and grading of a REMINING permit area.

"Historic Lands" means, for the purposes of R645-103-300, areas containing historic, cultural, and scientific resources. Examples of historic lands include archeological sites, properties listed on or eligible for listing on a Utah or National Register of Historic Places, National Historic Landmarks, properties having religious or cultural significance to native Americans or religious groups, and properties for which historic designation is pending.

"Historically Used for Cropland" means (a) lands that have been used for cropland for any five years or more out of the ten years immediately preceding the acquisition, including purchase, lease, or option, of the land for the purpose of conducting or allowing through resale, lease, or option the conducting of coal mining and reclamation operations; (b) lands that the Division determines, on the basis of additional cropland history of the surrounding lands and the lands under consideration, that the permit area is clearly cropland but falls outside the specific five-years-in-ten criterion, in which case the regulations for prime farmland may be applied to include more years of cropland history only to increase the prime farmland acreage to be preserved; or (c) lands that would likely have been used as cropland for any five out of the last ten years, immediately preceding such acquisition but for the same fact of ownership or control of the land unrelated to the productivity of the land.

"Hydrologic Balance" means the relationship between the quality and quantity of water inflow to, water outflow from, and water storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the dynamic relationships among precipitation, runoff, evaporation, and changes in ground and surface water storage.

"Hydrologic Regime" means the entire state of water movement in a given area. It is a function of the climate and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form, falls as precipitation, moves along or into the ground surface and returns to the atmosphere as vapor by means of evaporation and transpiration.

"Imminent Danger to the Health and Safety of the Public" means the existence of any condition or practice, or any violation of a permit or other requirements of the Act in a coal mining and reclamation operation, which could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same condition or practice giving rise to the peril, would avoid exposure to the danger during the time necessary for abatement.

"Impounding Structure" means a dam, embankment, or other structure used to impound water, slurry, or other liquid or semiliquid material.

"Impoundments" means all water, sediment, slurry, or other liquid or semiliquid holding structures, either naturally formed or artificially built.

"Indian Lands" means all lands, including mineral interests, within the exterior boundaries of any federal Indian reservation, notwithstanding the issuance of any patent, and including rights-of-way, and all lands including mineral interests held in trust for or supervised by an Indian tribe.

"Indirect Financial Interest" means the same financial relationships as for direct ownership, but where the employee reaps the benefits of such interests, including interests held by his or her spouse, minor child(ren) and other relatives, including in-laws, residing in the employee's home. The employee will not be deemed to have an indirect financial interest if there is no relationship between the employee's functions or duties and the coal mining and reclamation operations in which the spouse, minor child(ren), or other resident relatives hold a financial interest.

"In-Situ Processes" means activities conducted on the surface or underground in connection with in-place distillation, retorting, leaching, or other chemical or physical processing of coal. The term includes, but is not limited to, in-situ gasification, in-situ leaching, slurry mining, solution mining, borehole mining, and fluid-recovery mining.

"Intermittent Stream" means a stream, or reach of a stream, that is below the local water table for at least some part of the year and obtains its flow from both surface runoff and groundwater discharge.

"Irreparable Damage to the Environment" means any damage to the environment in violation of the Act, the State Program, or the R645 Rules that cannot be corrected by actions of the applicant.

"Knowingly" means for the purposes of R645-402, that an individual knew or had reason to know in authorizing, ordering, or carrying out an act or omission on the part of a corporate permittee that such act or omission constituted a violation, failure, or refusal.

"Land Use" means specific uses or management-related activities, rather than the vegetation or cover of the land. Land uses may be identified in combination when joint or seasonal

uses occur and may include land used for support facilities that are an integral part of the use. Changes of land use from one of the following categories to another will be considered as a change to an alternative land use which is subject to approval by the Division.

CROPLAND - Land used for the production of adapted crops for harvest, alone or in rotation with grasses and legumes, that include row crops, small grain crops, hay crops, nursery crops, orchard crops, and other similar crops.

DEVELOPED WATER RESOURCES - Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, flood control, and water supply.

FISH AND WILDLIFE HABITAT - Land dedicated wholly or partially to the production, protection, or management of species of fish or wildlife.

FORESTRY - Land used or managed for the long-term production of wood, wood fiber, or wood-derived products.

GRAZING LAND - Land used for grasslands and forest lands where the indigenous vegetation is actively managed for grazing, browsing, or occasional hay production.

INDUSTRIAL/COMMERCIAL - Land used for (a) extraction or transformation of materials for fabrication of products, wholesaling of products, or long-term storage of products; this includes all heavy and light manufacturing facilities, or (b) retail or trade of goods or services, including hotels, motels, stores, restaurants, and other commercial establishments.

PASTURE LAND OR LAND OCCASIONALLY CUT FOR HAY - Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or occasionally cut and cured for livestock feed.

RECREATION - Land used for public or private leisure-time activities, including developed recreation facilities such as parks, camps, and amusement areas, as well as areas for less intensive uses such as hiking, canoeing, and other undeveloped recreational uses.

RESIDENTIAL - Land used for single and multiple-family housing, mobile home parks, or other residential lodgings.

UNDEVELOPED LAND OR NO CURRENT USE OR LAND MANAGEMENT - Land that is undeveloped or if previously developed, land that has been allowed to return naturally to an undeveloped state or has been allowed to return to forest through natural succession.

"Liabilities" means obligations to transfer assets or provide services to other entities in the future as a result of past transactions.

"Material Damage" for the purposes of R645-301-525, means:

(a) Any functional impairment of surface lands, features, structures or facilities;

(b) Any physical change that has a significant adverse impact on the affected land's capability to support any current or reasonably foreseeable uses or causes significant loss in production or income; or

(c) Any significant change in the condition, appearance or utility of any structure or facility from its pre-subsidence condition.

"Materially Damage the Quantity or Quality of Water" means, with respect to ALLUVIAL VALLEY FLOORS, to degrade or reduce, by coal mining and reclamation operations, the water quantity or quality supplied to the alluvial valley floor to the extent that resulting changes would significantly decrease the capability of the alluvial valley floor to support agricultural activities.

"Mining" means, for the purposes of R645-400-351, (a) extracting coal from the earth or coal waste piles and transporting it within or from the permit area; and (b) the processing, cleaning, concentrating, preparing or loading of coal where such operations occur at a place other than a mine site.

"Mining area" means, for the purpose of R645-106, an individual excavation site or pit from which coal, other minerals and overburden are removed.

"Moist Bulk Density" means the weight of soil (oven dry)per unit volume. Volume is measured when the soil is at field moisture capacity (1/3 bar moisture tension). Weight is determined after drying the soil at 105 degrees Celsius.

"NRCS" means Natural Resources Conservation Service, U.S. Department of Agriculture.

"MSHA" means the Mine Safety and Health Administration, U.S. Department of Labor.

"Mulch" means vegetation residues or other suitable materials that aid in soil stabilization and soil moisture conservation, thus providing microclimatic conditions suitable for germination and growth.

"Natural Hazard Lands" means, for the purposes of R645-103-300, geographic areas in which natural conditions exist which pose or, as a result of coal mining and reclamation operations, may pose a threat to the health, safety, or welfare of people, property or the environment, including areas subject to landslides, cave-ins, large or encroaching sand dunes, severe wind or soil erosion, frequent flooding, avalanches, and areas of unstable geology.

"Net Worth" means total assets minus total liabilities and is equivalent to owners' equity.

"Non-commercial Building" means any building, other than an occupied residential dwelling, that, at the time the subsidence occurs, is used on a regular or temporary basis as a public building or community or institutional building as those terms are defined at R645-100-200. Any building used only for commercial agricultural, industrial, retail or other commercial enterprises is excluded.

"Noxious Plants" means species that have been included on the official Utah list of noxious plants.

"Occupied Dwelling" means any building that is currently being used on a regular or temporary basis for human habitation.

"Occupied Residential Dwelling and Structures Related Thereto" means, for purposes of R645-301, any building or other structure that, at the time the subsidence occurs, is used either temporarily, occasionally, seasonally, or permanently for human habitation. This term also includes any building, structure or facility installed on, above or below, or a combination thereof, the land surface if that building, structure or facility is adjunct to or used in connection with an occupied residential dwelling. Examples of such structures include, but are not limited to, garages; storage sheds and barns; greenhouses and related buildings; utilities and cables; fences and other enclosures; retaining walls; paved or improved patios, walks and driveways; septic sewage treatment facilities; and lot drainage and lawn and garden irrigation systems. Any structure used only for commercial agricultural, industrial, retail or other commercial purposes is excluded.

"Office" means Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior.

"Operator" means any person engaged in coal mining who removes, or intends to remove, more than 250 tons of coal from the earth or from coal refuse piles by mining within 12 consecutive calendar months in any one location.

"Other minerals" means, for the purpose of R645-106, any commercially valuable substance mined for its mineral value, excluding coal, topsoil, waste and fill material.

"Other Treatment Facilities" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, any chemical treatments, such as flocculation or neutralization, or mechanical structures, such as clarifiers or precipitators, that have a point source discharge and that are utilized to prevent additional contribution of dissolved or

suspended solids to stream flow or runoff outside the permit area or to comply with all applicable State and Federal water quality laws and regulations.

"Outslope" means the face of the spoil or embankment sloping downward from the highest elevation to the toe.

"Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

"Owned or controlled" and "owns or controls" means any one or a combination of the relationships specified in paragraphs (a) and (b) of this definition:

(a)(1) Being a permittee of a coal mining and reclamation operation;

(2) Based on the instrument of ownership or voting securities, owning of record in excess of 50 percent of an entity; or

(3) Having any other relationship which gives one person authority directly or indirectly to determine the manner in which an applicant, an operator, or other entity conducts coal mining and reclamation operations.

(b) The following relationships are presumed to constitute ownership or control unless a person can demonstrate that the person subject to the presumption does not in fact have the authority directly or indirectly to determine the manner in which the relevant coal mining and reclamation operation is conducted:

(1) Being an officer or director of an entity;

(2) Being the operator of a coal mining and reclamation operation;

(3) Having the ability to commit the financial or real property assets or working resources of an entity;

(4) Being a general partner in a partnership;

(5) Based on the instruments of ownership or the voting securities of a corporate entity, owning of record 10 through 50 percent of the entity; or

(6) Owning or controlling coal to be mined by another person under a lease, sublease, or other contract and having the right to receive such coal after mining or having authority to determine the manner in which that person or another person conducts coal mining and reclamation operation.

"Parent Corporation" means corporation which owns or controls the applicant.

"Perennial Stream" means a stream or part of a stream that flows continuously during all of the calendar year as a result of groundwater discharge or surface runoff. The term does not include intermittent stream or ephemeral stream.

"Performance Bond" means a surety bond, collateral bond, or self-bond, or a combination thereof, by which a permittee assures faithful performance of all the requirements of the Act, the R645 Rules, the State Program, and the requirements of the permit and reclamation plan.

"Performing Any Function or Duty Under This Act" means those decisions or actions, which if performed or not performed by a board member or employee, affect the State Program under the Act.

"Permanent Diversion" means a diversion remaining after coal mining and reclamation operations are completed which has been approved for retention by the Division and other appropriate state and federal agencies.

"Permanent Impoundment" means an impoundment which is approved by the Division and, if required, by other state and federal agencies for retention as part of the postmining land use.

"Permit" means a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program. For purposes of the federal lands program, permit means a permit issued by the Division pursuant to the cooperative agreement with the Secretary.

"Permit Area" means the area of land, indicated on the approved map submitted by the operator with his or her application, required to be covered by the operator's performance bond under R645-301-800, and which will include the area of land upon which the operator proposes to conduct coal mining and reclamation operations under the permit, including all disturbed areas, provided that areas adequately bonded under another valid permit may be excluded from the permit area.

"Permit Change" means any coal mining and reclamation operations not previously approved by the Division in the Permit or in any previously-approved permit change under R645-303-220.

"Permittee" means a person holding, or required by the Act or the R645 Rules to hold, a permit to conduct coal mining and reclamation operations issued by the Division pursuant to the State Program or, under the cooperative agreement pursuant to Section 523 of P.L. 95-87, by the Director of the Office and the Division.

"Person" means an individual, Indian tribe when conducting coal mining and reclamation operations on non-Indian lands, partnership, association, society, joint venture, joint-stock company, firm, company, corporation, cooperative or other business organization, and any agency, unit, or instrumentality of federal, state, or local government including any publicly owned utility or publicly owned corporation of federal, state, or local governments.

"Person Having an Interest Which Is or May Be Adversely Affected or Person With a Valid Legal Interest" means any person (a) who uses any resource of economic, recreational, aesthetic, or environmental value that may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division, or the Board, or (b) whose property is or may be adversely affected by coal exploration or coal mining and reclamation operations or any related action of the Division or the Board.

"Precipitation Event" means a quantity of water resulting from drizzle, rain, snow, sleet, or hail in a limited period of time. It may be expressed in terms of recurrence interval. As used in the R645 Rules, precipitation event also includes that quantity of water emanating from snow cover as snowmelt in a limited period of time.

"Previously Mined Area" means land affected by coal mining and reclamation operations prior to August 3, 1977, that has not been reclaimed to the standards of Ut. Admin. R645 or 30 CFR chapter VII.

"Prime Farmland" means those lands which are defined by the Secretary of Agriculture in 7 CFR 657 (Federal Register Vol. 4 No. 21) and which have historically been used for cropland as that phrase is defined herein.

"Principal Shareholder" means any person who is the record or beneficial owner of ten percent or more of any class of voting stock.

"Prohibited Financial Interest" means any direct or indirect financial interest in any coal mining and reclamation operation.

"Property to be Mined" means both the surface estates and mineral estates within the permit area and the area covered by underground workings.

"Public Building" means any structure that is owned or leased and principally used by a government agency for public business or meetings.

"Public Office" means a facility under the direction and control of a governmental entity which is open to public access on a regular basis during reasonable business hours.

"Public Park" means an area or portion of an area dedicated or designated by any federal, state, or local agency primarily for public recreational use, whether or not such use is limited to certain times or days, including any land leased, reserved, or held open to the public because of that use.

"Public Road", for the purpose of part R645-103-200, R645-301-521.123, and R645-301-521.133 means a road (a) which has been designated as a public road pursuant to the laws

of the jurisdiction in which it is located; (b) which is maintained with public funds in a manner similar to other public roads of the same classification within the jurisdiction; (c) for which there is substantial (more than incidental) public use; and (d) which meets road construction standards for other public roads of the same classification in the local jurisdiction.

"Publicly Owned Park" means a public park that is owned by a federal, state, or local governmental entity.

"Qualified Laboratory" means, for the purposes of R645-302-290, a designated public agency, private firm, institution, or analytical laboratory which can prepare the required determination of probable hydrologic consequences, statement of results of test borings or core samplings under SOAP, or other services as specified at R645-302-299 and which meet the standards of R645-302-295.100.

"Rangeland" means land on which the natural potential (climax) plant cover is principally native grasses, forbs, and shrubs valuable for forage. This land includes natural grasslands and savannahs, such as prairies, and juniper savannahs, such as brushlands. Except for brush control, management is primarily achieved by regulating the intensity of grazing and season of use.

"Reasonably Available Spoil" means spoil and suitable coal mine waste material generated by the remining activity or other spoil or suitable coal mine waste material located in the permit area that is accessible and available for use, and that when rehandled will not cause a hazard to public safety or significant damage to the environment.

"Recharge Capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

"Reclamation" means those actions taken to restore mined land as required by the R645 Rules to a postmining land use approved by the Division.

"Recurrence Interval" means the interval of time in which a precipitation event is expected to occur once, on the average. For example, the 10-year 24-hour precipitation event would be that 24-hour precipitation event expected to occur on the average once in ten years.

"Reference Area" means a land unit maintained under appropriate management for the purpose of measuring vegetation ground cover, productivity, and plant species diversity that are produced naturally or by crop production methods approved by the Division. Reference areas must be representative of geology, soil, slope, and vegetation in the permit area.

"Refuse Pile" means a surface deposit of coal mine waste that does not impound water, slurry, or other liquid or semiliquid material.

"Remining" means conducting coal mining and reclamation operations which affect previously mined areas.

"Renewable Resource Lands" means aquifers and areas for the recharge of aquifers and other underground waters, areas for agricultural or silvicultural production of food and fiber, and grazing lands. For the purposes of R645-103, RENEWABLE RESOURCE LANDS means geographic areas which contribute significantly to the long-range productivity of water supply or of food or fiber products, such lands to include aquifers and aquifer recharge areas.

"Renewal of a Permit" means, for the purposes of R645-302-300, a decision by the Division to extend the time by which the permittee may complete mining within the boundaries of the original permit.

"Replacement of Water Supply" means, with respect to State-appropriated water supplies contaminated, diminished, or interrupted by coal mining and reclamation operations, provision of water supply on both a temporary and permanent basis equivalent to premining quantity and quality. Replacement includes provision of an equivalent water delivery system and payment of operation and maintenance costs in excess of customary and reasonable delivery costs for premining water supplies.

(a) Upon agreement by the permittee and the water supply owner, the obligation to pay such operation and maintenance costs may be satisfied by a one-time payment in an amount which covers the present worth of the increased annual operation and maintenance costs for a period agreed to by the permittee and the water supply owner.

(b) If the affected water supply was not needed for the land use in existence at the time of loss, contamination, or diminution, and if the supply is not needed to achieve the postmining land use, replacement requirements may be satisfied by demonstrating that a suitable alternative water source is available and could feasibly be developed. If the latter approach is selected, written concurrence must be obtained from the water supply owner.

"Road" means a surface right-of-way for purposes of travel by land vehicles used in coal mining and reclamation operations or coal exploration. A road consists of the entire area within the right-of-way, including the roadbed, shoulders, parking and side areas, approaches, structures, ditches, and surface. The term includes access and haul roads constructed, used, reconstructed, improved, or maintained for use in coal mining and reclamation operations or coal exploration, including use by coal hauling vehicles to and from transfer, processing, or storage areas. The term does not include ramps and routes of travel within the immediate mining area or within spoil or coal mine waste disposal areas.

"Safety Factor" means the ratio of the available shear strength to the developed shear stress, or the ratio of the sum of the resisting forces to the sum of the loading or driving forces, as determined by accepted engineering practices.

"Secretary" means the Secretary of the Department of Interior or his or her representative.

"Sedimentation Pond" means an impoundment used to remove solids from water in order to meet water quality standards or effluent limitations before the water leaves the permit area.

"Self Bond" means an indemnity agreement in a sum certain executed by the applicant or by the applicant and any corporate guarantor, and made payable to the Division with or without separate surety.

"Significant Forest Cover" means an existing plant community consisting predominantly of trees and other woody vegetation. The Secretary of Agriculture will decide on a case-by-case basis whether the forest cover is significant within those national forests in Utah.

"Significant, Imminent Environmental Harm to Land, Air, or Water Resources" means (a) the environmental harm has an adverse impact on land, air, or water resources which resources include, but are not limited to, plant and animal life; (b) an environmental harm is imminent, if a condition, practice, or violation exists which (i) is causing such harm, or (ii) may reasonably be expected to cause such harm at any time before the end of the reasonable abatement time that would be set under 40-10-22 of the Act, and (c) an environmental harm is significant if that harm is appreciable and not immediately repairable.

"Significant Recreational, Timber, Economic, or Other Values Incompatible With Coal Mining and Reclamation Operations" means those values to be evaluated for their significance which could be damaged by, and are not capable of existing together with, coal mining and reclamation operations because of the undesirable effects mining would have on those values, either on the area included in the permit application or on other affected areas. Those values to be evaluated for their importance include (a) recreation, including hiking, boating, camping, skiing, or other related outdoor activities, (b) timber

management and silviculture, (c) agriculture, aquaculture, or production of other natural, processed, or manufactured products which enter commerce, and (d) scenic, historic, archaeologic, aesthetic, fish, wildlife, plants, or cultural interests.

"Siltation Structure" means, for the purposes of R645-301-356.300, R645-301-356.400, R645-301-513.200, R645-301-742.200 through R645-301-742.240, and R645-301-763, a sedimentation pond, a series of sedimentation ponds or other treatment facilities.

"Slope" means average inclination of a surface, measured from the horizontal, generally expressed as the ratio of a unit of vertical distance to a given number of units of horizontal distance (e.g., 1v:5h). It may also be expressed as a percent or in degrees.

"SOAP" means Small Operator Assistance Program.

"Soil Horizons" means contrasting layers of soil parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The four major soil horizons are"

A HORIZON - The uppermost mineral layer, often called the surface soil. It is the part of the soil in which organic matter is most abundant, and leaching of soluble or suspended particles is typically the greatest.

E HORIZON - The layer commonly near the surface below an A horizon and above a B horizon. An E horizon is most commonly differentiated from an overlying A horizon by lighter color and generally has measurably less organic matter than the A horizon. An E horizon is most commonly differentiated from an underlying B horizon in the same sequum by color of higher value or lower chroma, by coarser texture, or by a combination of these properties.

B HORIZON - The layer that typically is immediately beneath the E horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A, E, or C horizons.

C HORIZON - The deepest layer of soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

"Soil Survey" means a field and other investigations resulting in a map showing the geographic distribution of different kinds of soils and an accompanying report that describes, classifies, and interprets such soils for use. Soil surveys must meet the standards of the National Cooperative Soil Survey as incorporated by reference in R645-302-314.100.

"Spoil" means overburden that has been removed during coal mining and reclamation operations.

"Stabilize" means to control movement of soil, spoil piles, or areas of disturbed earth by modifying the geometry of the mass, or by otherwise modifying physical or chemical properties, such as by providing a protective surface coating.

"State Program" means the program established by the state of Utah and approved by the Secretary of the Department of the Interior pursuant to the Federal Act and the Act to regulate coal mining and reclamation operations on non-Indian and non-federal lands within Utah, according to the Federal Act, the Act and the R645 Rules. Pursuant to the cooperative agreement between the state of Utah and the Office, the State Program applies to federal lands in accordance with the terms of the cooperative agreement.

"Steep Slope" means any slope of more than 20 degrees or such lesser slope as may be designated by the Division after consideration of soil, climate, and other characteristics of a region or Utah.

"Subirrigation" means, with respect to ALLUVIAL VALLEY FLOORS, the supplying of water to plants from underneath or from a semisaturated or saturated subsurface zone where water is available for use by vegetation.

"Substantial Legal and Financial Commitments in a Coal Mining and Reclamation Operation" means, for the purposes of R645-103-300, significant investments that have been made on the basis of a long-term coal contract in power plants, railroads, coal-handling, preparation, extraction or storage facilities, and other capital-intensive activities. An example would be an existing mine not actually producing coal, but in a substantial stage of development prior to production. Costs of acquiring the coal in place or the right to mine it without an existing mine, as described in the above example, alone are not sufficient to constitute substantial legal and financial commitments.

"Substantially Disturb" means, for purposes of COAL EXPLORATION, to significantly impact land or water resources by blasting; by removal of vegetation, topsoil, or overburden; by construction of roads or other access routes; by placement of excavated earth or waste material on the natural land surface or by other such activities; or to remove more than 250 tons of coal.

"Successor in Interest" means any person who succeeds to rights granted under a permit, by transfer, assignment, or sale of those rights.

"Surety Bond" means an indemnity agreement in a sum certain payable to the Division, executed by the permittee as principal and which is supported by the performance guarantee of a corporation licensed to do business as a surety in Utah.

"Surface Operations and Impacts Incident to an Underground Coal Mine" means all operations involved in or related to UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES which are either conducted on the surface of the land, produce changes in the land surface or disturb the surface, air, or water resources of the area including all activities listed in 40-10-3(18) of the Act and the definition of underground mining activities appearing herein.

"SURFACE COAL MINING AND RECLAMATION ACTIVITIES" means those coal mining and reclamation operations incident to the extraction of coal from the earth by removing the materials over a coal seam, before recovering the coal, by auger coal mining, or by recovery of coal from a deposit that is not in its original geologic location.

"Suspended Solids or Nonfilterable Residue, Expressed as Milligrams Per Liter" means organic or inorganic materials carried or held in suspension in water which are retained by a standard glass fiber filter in the procedure outlined by the Environmental Protection Agency's regulation for waste water and analyses (40 CFR Part 136).

"Tangible Net Worth" means net worth minus intangibles such as goodwill and rights to patents or royalties.

"Temporary Diversion" means a diversion of a stream, or overland flow, which is used during coal exploration or coal mining and reclamation operations and not approved by the Division to remain after reclamation as part of the approved postmining land use.

"Temporary Impoundment" means an impoundment used during coal mining and reclamation operations, but not approved by the Division to remain as part of the approved postmining land use.

"Ton" means 2,000 pounds avoirdupois (.90718 metric ton).

"Topsoil" means the A and E soil horizon layers of the four major soil horizons.

"Toxic-Forming Materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

"Toxic Mine Drainage" means water that is discharged from active or abandoned mines or other areas affected by coal exploration or coal mining and reclamation operations which contains a substance that through chemical action or physical effects is likely to kill, injure, or impair biota commonly present

in the area that might be exposed to it.

"Transfer, Assignment, or Sale of Permit Rights" means a change in ownership or other effective control over the right to conduct coal mining and reclamation operations under a permit issued by the Division.

"UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES" means coal mining and reclamation operations incident to the extraction of coal by underground methods including a combination of (a) underground extraction of coal or in situ processing, construction use, maintenance, and reclamation of roads, above-ground repair areas, storage areas, processing areas, shipping areas, areas upon which are sited support facilities including hoist and ventilating ducts, areas utilized for the disposal and storage of waste, and areas on which materials incident to underground mining operations are placed; and (b) underground operations such as underground construction, operation, and reclamation of shafts, adits, underground support facilities, in situ processing, and underground mining, hauling, storage, and blasting.

"Underground Development Waste" means waste-rock mixtures of coal, shale, claystone, siltstone, sandstone, limestone, or related materials that are excavated, moved, and disposed of from underground workings in connection with UNDERGROUND COAL MINING AND RECLAMATION ACTIVITIES.

"Undeveloped Rangeland" means, for purposes of ALLUVIAL VALLEY FLOORS, lands where the use is not specifically controlled and managed.

"Unwarranted Failure to Comply" means the failure of the permittee to prevent the occurrence of any violation of the State Program or any permit condition due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit of the Act due to indifference, lack of diligence, or lack of reasonable care.

"Upland Areas" means, with respect to ALLUVIAL VALLEY FLOORS, those geomorphic features located outside the floodplain and terrace complex such as isolated higher terraces, alluvial fans, pediment surfaces, landslide deposits, and surfaces covered with residuum, mud flows, or debris flows, as well as highland areas underlain by bedrock and covered by residual weathered material or debris deposited by sheetwash, rillwash, or windblown material.

"Valid Existing Rights" means (a) for haul roads" (i) a recorded right of way, recorded easement, or a permit for a coal haul road recorded as of August 3, 1977, or (ii) any other road in existence as of August 3, 1977; (b) a person possesses valid existing rights if the person proposing to conduct coal mining and reclamation operations can demonstrate that property rights to the coal had been acquired prior to August 3, 1977 and that the coal is both needed for, and immediately adjacent to, an ongoing coal mining and reclamation operation which existed on August 3, 1977. A determination that coal is "needed for" will be based upon a finding that the extension of mining is essential to make the coal mining and reclamation operation as a whole economically viable; (c) where an area comes under the protection of 40-10-24 of the Act after August 3, 1977, valid existing rights will be found if on the date the protection comes into existence, a validly authorized coal mining and reclamation operation exists on that area; and (d) interpretation of the terms of the document relied upon to establish the rights to which the standard of portions (a) and (c) of this definition applies will be based either upon applicable Utah statutory or case law concerning interpretation of documents conveying mineral rights or, where no applicable Utah law exists, upon the usage and custom at the time and place it came into existence.

"Valley Fill" means a fill structure consisting of any material, other than organic material, that is placed in a valley where side slopes of the existing valley, measured at the steepest point, are greater than 20 degrees, or where the average slope of the profile of the valley from the toe of the fill to the top of the fill is greater than ten degrees.

"Violation, Failure, or Refusal" means for the purposes of R645-402, (1) A violation of a condition of a permit issued under the State Program, or (2) A failure or refusal to comply with any order issued under UCA 40-10-22, or any order incorporated in a final decision issued under UCA 40-10-20(2) or R645-104-500.

"Water Supply", "State-appropriated Water", and "State-appropriated Water Supply" are all synonymous terms and mean, for the purposes of the R645 Rules, state appropriated water rights which are recognized by the Utah Constitution or Utah Code.

"Violation Notice" means any written notification from a governmental entity of a violation of law, whether by letter, memorandum, legal or administrative pleading, or other written communication.

"Water Table" means the upper surface of a zone of saturation where the body of ground water is not confined by an overlying impermeable zone.

"Willfully" means for the purposes of R645-402, that an individual acted (1) either intentionally, voluntarily, or consciously, and (2) with intentional disregard or plain indifference to legal requirements in authorizing, ordering, or carrying out a corporate permittee's action or omission that constituted a violation, failure, or refusal.

"Willful Violation" means an act or omission which violates the State Program or any permit condition, committed by a person who intends the result which actually occurs.

R645-100-300. Responsibility.

310. The Division is responsible for the regulation of coal mining and reclamation operations and coal exploration under the approved State Program on non-federal and non-Indian lands in accordance with the procedures in the R645 Rules.

320. The Division, through a cooperative agreement, exercises certain authority relating to the regulation of coal mining and reclamation operations on federal lands in accordance with 30 CFR Part 745.

R645-100-400. Applicability.

410. Except as provided under R645-100-420, the R645 Rules apply to all coal exploration and coal mining and reclamation operations, except:

411. The extraction of coal by a landowner for his or her own noncommercial use from land owned or leased by him or her. Noncommercial use does not include the extraction of coal by one unit of an integrated company or other business or nonprofit entity which uses the coal in its own manufacturing or power plants;

412. The extraction of 250 tons of coal or less by a person conducting coal mining and reclamation operations. A person who intends to remove more than 250 tons is not exempted;

413. The extraction of coal as an incidental part of federal, state or local government-financed highway or other construction in accordance with R645-102.

414. The extraction of coal incidental to the extraction of other minerals where coal does not exceed 16-2/3 percent of the mineral tonnage removed for commercial use or sale in accordance with R645-106; or

415. Coal exploration on lands subject to the requirements of 43 CFR Parts 3480-3487.

420. Existing Structure Exemption. Each structure used in connection with or to facilitate coal exploration or coal mining and reclamation operations will comply with the performance standards and design requirements of R645-301 and R645-302, except that:

421. An existing structure which meets the performance

standards but does not meet the design requirements of R645-301 and R645-302 may be exempted from meeting those design requirements by the Division. The Division may grant this exemption only as part of the permit application process after obtaining the information required by R645-301-526.110 through R645-301-526.115.4 and after making the findings required by R645-300-130.

422. If the performance standard of the MC Rules (Interim Program Rules) is at least as stringent as the comparable performance standard of the R645 Rules, an existing structure which meets the performance standards of the MC Rules may be exempted by the Division from meeting the design requirements of the R645 Rules. The Division may grant this exemption only as part of the permit application process after obtaining the information required by R645-301-526.110 through R645-301-526.115.4 and after making the findings required by R645-300-130.

423. An existing structure which meets a performance standard of the MC Rules which is less stringent than the comparable performance standard in the R645 Rules will be modified or reconstructed to meet the design standard of the R645 Rules pursuant to a compliance plan approved by the Division only as part of the permit application as required in R645-301-526.110 through R645-301-526.115.4 and according to the findings required by R645-300-130.

424. An existing structure which does not meet the performance standards of the MC Rules and which the applicant proposes to use, in connection with or to facilitate the coal exploration or coal mining and reclamation operation, will be modified or reconstructed to meet the performance design standards of R645-301 and R645-302 prior to issuance of the permit.

430. The exemptions provided in paragraphs R645-100-421 and R645-100-422 will not apply to:

431. The requirements for existing and new coal mine waste disposal facilities; and

432. The requirements to restore the approximate original contour of the land.

440. Regulatory Determination of Exemption. The Division may, on its own initiative, and will, within a reasonable time of a request from any person who intends to conduct coal mining and reclamation operations, make a written determination whether the operation is exempt under R645-100-400. The Division will give reasonable notice of the request to interested persons. Prior to the time a determination is made, any person may submit, and the Division will consider, any written information relevant to the determination. A person requesting that an activity be declared exempt will have the burden of establishing the exemption. If a written determination of exemption is reversed through subsequent administrative or judicial action, any person who, in good faith, has made a complete and accurate request for an exemption, and relied upon the determination, will not be cited for violations which occurred prior to the date of the reversal.

450. Termination of Jurisdiction.

451. The Division may terminate its jurisdiction under the regulatory program over the reclaimed site of a completed coal mining and reclamation operation, or increment thereof, when:

451.100. The Division determines in writing that under the initial program all requirements imposed under the MC rules have been successfully completed; or

451.200. The Division determines in writing that under the permanent program all requirements imposed under the applicable regulatory program have been successfully completed or, where a performance bond was required, the Division has made a final decision in accordance with the State program to release the performance bond fully.

452. Following a termination under R645-100-451, the Division will reassert jurisdiction under the regulatory program over a site if it is demonstrated that the bond release or written determination referred to under R645-100-451 was based upon fraud, collusion, or misrepresentation of a material fact.

R645-100-500. Petition to Initiate Rulemaking.

Persons other than the Division or Board may petition to initiate rulemaking pursuant to the R641 Rules and the Utah Administrative Rulemaking Act, U.C.A. 63G-3-101, et seq.

R645-100-600. Notice of Citizen Suits.

A person who intends to initiate a civil action in his or her own behalf under 40-10-21 of the Act will give notice of intent to do so in accordance with R645-100-600.

610. Notice will be given by certified mail to the Director, if a complaint involves or relates to Utah.

620. Notice will be given by certified mail to the alleged violator, if the complaint alleges a violation of the Act or any rule, order, or permit issued under the Act.

630. Service of notice under R645-100-600 is complete upon mailing to the last known address of the person being notified.

640. A person giving notice regarding an alleged violation will state, to the extent known:

641. Sufficient information to identify the provision of the Act, rule, order, or permit allegedly violated;

642. The act or omission alleged to constitute a violation;

643. The name, address, and telephone number of the person or persons responsible for the alleged violation;

644. The date, time, and location of the alleged violation;

645. The name, address, and telephone number of the person giving notice; and

646. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

650. A person giving notice of an alleged failure by the Director to perform a mandatory act or duty under the Act will state, to the extent known:

651. The provision of the Act containing the mandatory act or duty allegedly not performed;

652. Sufficient information to identify the omission alleged to constitute the failure to perform a mandatory act or duty under the Act;

653. The name, address, and telephone number of the person giving notice; and

654. The name, address, and telephone number of legal counsel, if any, of the person giving notice.

R645-100-700. Availability of Records.

710. Records required by the Act to be made available locally to the public will be retained at the Division office closest to the area involved.

720. Other nonconfidential records or documents in the possession of the Division may be requested from the Division.

730. Information received which is required to be held confidential by the terms of the Act will not be available for public inspection.

R645-100-800. Computation of Time.

810. Except as otherwise provided, computation of time under the R645 Rules is based on calendar days.

820. In computing any period of prescribed time, the day on which the designated period of time begins is not included. The last day of the period is included unless it is a Saturday, Sunday, or a legal holiday on which the Division is not open for business, in which event the period runs until the end of the next day which is not Saturday, Sunday, or a legal holiday.

830. Intermediate Saturdays, Sundays, and legal holidays are excluded from the computation when the period or prescribed time is seven days or less.

KEY: reclamation, coal mines
March 26, 2008 **40-10-1 et seq.**
Notice of Continuation March 7, 2007

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-1. Minerals Regulatory Program.
R647-1-101. Preamble.

These Rules and all subsequent revisions as approved and promulgated by the Board of Oil, Gas, and Mining (Board) of the State of Utah, are developed pursuant to the requirements of the Utah Mined Land Reclamation Act of 1975, Title 40, Chapter 8 of the Utah Code Annotated as amended (the Act). Section 40-8-2 of the Act states the findings of the Legislature.

In accordance with this legislative direction, these Rules recognize the necessity to balance the reclamation objectives of the Act with the physical, biological and economical constraints which may exist on successful reclamation. The Act and its revisions are hereby expressly incorporated herein by reference and made a part of these Rules.

There is intentional duplication in these rules. For example, the rule on hole plugging requirements is repeated in the section on Exploration, Small Mining Operations, and Large Mining Operations. This repetition is intended to benefit the Operator by putting all the rules relevant to a type of operation in the introductory section and in the section on that type of operation.

R647-1-102. Introduction.

1. Effective Dates, Applicability, Type of Operations Affected:

1.11. Effective November 1, 1988, the following rules apply to all previously exempted mining operations and to mining operations planning to commence, or resume operations within the state of Utah. These rules will not apply to existing mining operations approved prior to the effective date of these rules, or to notices of intention or amendments filed prior to these rules. However, these rules will apply to any revisions to an approved notice of intention filed subsequent to the effective date of these rules.

1.12. Operators should refer to the section of these rules which applies to the type of mining operation (e.g., exploration, small mining operation, or large mining operation) being conducted or proposed.

1.13. These rules apply to all lands within the state of Utah lawfully subject to its police power, regardless of surface or mineral ownership, and regardless of the type of mining operation conducted.

2. Cooperative Agreements/Memoranda of Understanding:

The Division of Oil, Gas and Mining (Division) will cooperate with other state agencies, local governmental bodies, agencies of the federal government, and private interests in the furtherance of the purposes of the Utah Mined Land Reclamation Act. The Division is authorized to enter into cooperative agreements and develop memoranda of understanding with agencies in furtherance of the purposes of the Act. The objective is to minimize the need for operators to undertake duplicative, overlapping, excessive, or conflicting procedures.

3. Operator Responsibilities, Compliance with other Local, State and Federal Laws:

The approval or acceptance of a complete notice of intention shall not relieve an operator from his responsibility to comply with the applicable statutes, rules, regulations, and ordinances of all local, state and federal agencies with jurisdiction over any aspect of the operator's mining operations, including, but not limited to: Utah State Division of Water Rights, the Utah Department of Business Regulation, the Utah State Industrial Commission, the Utah Department of Environmental Quality, the Utah Division of State History, the Division of Forestry, Fire and State Lands, The School and Institutional Trust Lands Administration, the Utah Division of Wildlife Resources, the U. S. Fish and Wildlife Service, the United States Bureau of Land Management, the United States Forest Service, the United States Environmental Protection Agency, and local county or municipal governments.

4. Division Guidelines, Operator Assistance in Application Preparation:

Each operator who conducts mining operations on any lands within the state of Utah is responsible for compliance with the following rules. The Division shall provide guidelines to aid the operator in complying with the rules.

R647-1-103. General Rules.

The following are general rules for statewide application.

R647-1-104. Violations and Enforcement.

If after notice and hearing, the Board finds that a violation of the Act, these rules, a notice of intention, or a Board or Division order has occurred, the Board may take any enforcement action authorized by law including requiring: compliance, abatement, mitigation, cessation of operations, a civil suit, forfeiture of surety, reclamation, or any other lawful action.

R647-1-105. Forms.

The attached forms are intended for the convenience of the operator and the Division, and may be changed from time to time. The forms are not part of these rules and use of a particular form, though encouraged, is not required, as long as all of the necessary information is provided in a reasonable manner.

R647-1-106. Definitions.

"Act" means the Utah Mined Land Reclamation Act, enacted in 1975, as amended. (Section 40-8-1, et seq., UCA).

"Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions. Those matters not governed by Title 63G, Chapter 4, Administrative Procedures Act, of the Utah Code annotated (1953, as amended) shall not be included within this definition.

"Agency" means a board, commission, department, division, officer, council, office, committee, commission, bureau, or other administrative unit of this state, including the agency head, agency employees, or other persons acting on behalf of or under the authority of the agency head, but does not mean the Legislature, the courts, the governor, any political subdivision of the state, or any administrative unit of a political subdivision of the state.

"Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

"Amendment" is an insignificant change in the approved notice of intention.

"Approved Notice of Intention" means a formally filed notice of intention to commence mining operations, including any amendments or revisions thereto that is determined to be complete and contains a mining and reclamation plan, which has been approved by the Division. A notice of intention for exploration having a disturbed area of five acres or less, or a small mining operation must be determined complete in writing by the Division, but does not require a mining and reclamation plan.

"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 the Rules of

Practice and Procedure before the Board of Oil, Gas and Mining.

"Deleterious Materials" means earth, waste or introduced materials exposed by mining operations to air, water, weather or microbiological processes, which would likely produce chemical or physical conditions in the soils or water that are detrimental to the biota or hydrologic systems.

"Deposit" or "mineral deposit" means an accumulation of mineral matter in the form of consolidated rock, unconsolidated materials, solutions, or otherwise occurring on the surface, beneath the surface, or in the waters of the land from which any useful product may be produced, extracted or obtained, or which is extracted by underground mining methods for underground storage. "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water, geothermal steam, and oil and gas, but includes oil shale and bituminous sands extracted by mining operations.

"Development" means the work performed in relation to a deposit following its discovery, but prior to and in contemplation of production mining operations. Development includes, but is not limited to, preparing the site for mining operations; further defining the ore deposit by drilling or other means; conducting pilot plant operations; and constructing roads or ancillary facilities.

"Disturbed Area" means the surface land disturbed by mining operations. The disturbed area for small mining operations shall not exceed five acres. The disturbed area for large mining operations shall not exceed the acreage described in the approved notice of intention.

"Division" means the Utah Division of Oil, Gas and Mining. The Division Director or designee is the Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with Rule R647-5.

"Exempt Mining Operations" means those mining operations which were previously exempt from the Act because less than 500 tons of material was mined in a period of twelve consecutive months or less than two acres of land was excavated or used as a disposal site in a period of twelve consecutive months. These exemptions were eliminated by statutory amendments in 1986 and are no longer available.

"Exploration" means surface disturbing activities conducted for the purpose of discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral deposit, and identifying regions or specific areas in which deposits or mineral deposits are most likely to exist. "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes; digging pits or cuts; building roads and other access ways.

"Gravel" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 2mm and 10mm, which has been deposited by sedimentary processes.

"Land affected" means the surface and subsurface of an area within the state where mining operations are being or will be conducted, including, but not limited to: (a) on-site private ways, roads, and railroads; (b) land excavations; (c) exploration sites; (d) drill sites or workings; (e) refuse banks or spoil piles; (f) evaporation or settling ponds; (g) stockpiles; (h) leaching dumps; (i) placer areas; (j) tailings ponds or dumps; (k) work, parking, storage, or waste discharge areas, structures, and facilities. Land affected does not include: (x) lands which have been reclaimed in accordance with an approved plan or as otherwise approved by the Board, (y) lands on which mining operations ceased prior to July 1, 1977, or (z) lands on which previously exempt mining operations ceased prior to April 29, 1989.

"Large Mining Operations" means mining operations which have a disturbed area of more than five surface acres at any time.

"License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

"Mining operations" means those activities conducted on the surface of the land for the exploration for, development of, or extraction of a mineral deposit, including, but not limited to, surface mining and the surface effects of underground and in situ mining; on-site transportation, concentrating, milling, evaporation, and other primary processing. "Mining operation" does not include: the extraction of sand, gravel, and rock aggregate; the extraction of oil and gas; the extraction of geothermal steam; smelting or refining operations; off-site operations and transportation; reconnaissance activities; or activities which will not cause significant surface resource disturbance and do not involve the use of mechanized earth-moving equipment, such as bulldozers or backhoes.

"Notice of Intention" means a notice of intention to commence mining operations, that provide the complete information required for authorization to conduct mining operations, and includes any amendments or revisions thereto.

"Off-site" means the land areas that are outside of or beyond the on-site land.

"On-site" means the surface lands on or under which surface or underground mining operations are conducted. A series of related properties under the control of a single operator but separated by small parcels of land controlled by others will be considered a single site unless excepted by the Division.

"Operator" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mining operation or proposed mining operation.

"Owner" means any natural person, corporation, association, partnership, receiver, trustee, executor, administrator, guardian, fiduciary, agent, or other organization or representative of any kind, either public or private, owning, controlling, conducting, or managing a mineral deposit or the surface of lands employed in mining operations.

"Party" means the Board, Division or other person commencing an adjudicative 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 an adjudicative proceeding.

"Permit" means a notice to conduct mining operations issued by the Division. A notice to conduct mining operations is issued by the Division when either a notice of intention for a small mining operation or exploration is determined to be complete and includes a surety approved by the Division, or a notice of intention for a large mining operation or exploration with a plan of operations and surety approved by the Division.

"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 another agency.

"Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the Board, or its appointed Hearing Examiner, shall be considered the Presiding Officer of all appeals of informal adjudicative proceedings which commenced before the Division as well as all adjudicative proceedings which commence before the Board. The Division Director or his/her designee shall be considered a Presiding Officer for all informal adjudicative proceedings which commence before the Division in accordance with this Rule R647-5. If fairness to the parties is not compromised, an agency may substitute one Presiding Officer for another during any proceeding.

"Reclamation" means actions performed during or after

mining operations to shape, stabilize, revegetate, or otherwise treat the land affected in order to achieve a safe and ecologically stable condition and use which will be consistent with local environmental conditions and land management practices.

"Regrade or Grade" means to physically alter the topography of any land surface.

"Respondent" means any person against whom an adjudicative proceeding is initiated, whether by an agency or any other person.

"Revision" means a change to an approved Notice of Intention to Conduct Mining Operations, which will increase or decrease the amount of land affected, or alter the location and type of on-site surface facilities, such that the nature of the reclamation plan will differ substantially from that in the approved Notice of Intention.

"Rock Aggregate" means those consolidated rock materials associated with a sand deposit, a gravel deposit, or a sand and gravel deposit, that were created by alluvial sedimentary processes. The definition of rock aggregate specifically excludes any solid rock in the form of bedrock which is exposed at the surface of the earth or overlain by unconsolidated material.

"Sand" means a naturally occurring unconsolidated to moderately consolidated accumulation of rock and mineral particles, the dominant size range being between 1/16mm to 2mm, which has been deposited by sedimentary processes.

"Small Mining Operations" means mining operations which have a disturbed area of five or less surface acres at any time.

"Surface Mining" means mining conducted on the surface of the land including open pit, strip, or auger mining; dredging; quarrying; leaching; surface evaporation operations; reworking abandoned dumps and tailings and activities related thereto.

"Underground Mining" means mining carried out beneath the surface by means of shafts, tunnels or other underground mine openings.

KEY: minerals reclamation
February 23, 2006 **40-8-1 et seq.**
Notice of Continuation July 8, 2003

R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-5. Administrative Procedures.
R647-5-101. Formal and Informal Proceeding.

1. Adjudicative proceedings which shall commence formally before the Board in accordance with the "Rules of Practice and Procedure Before the Board of Oil, Gas and Mining", the R641 rules, include the following: R647-2-112, Failure to Reclaim, Forfeiture of Surety; R647-3-112, Failure to Reclaim, Forfeiture of Surety; R647-3-113.5, Over 10-Year Suspension; R647-4-114, Failure to Reclaim, Forfeiture of Surety; R647-4-117.4, Over 10-Year Suspension.

2. Adjudicative proceedings which shall commence informally before the Division in accordance with this Rule R647-5 include the following: R647-2-101, Notice of Intent to Commence Mining Operations; R647-2-102, Extension; R647-2-107, Operation Practices; R647-2-108, Unplugged Over 30 Days/Alternative Plan; R647-2-109, Reclamation Practices Variance; R647-2-109.13, Revegetation Approval; R647-2-110, Variance, Revocation or Adjustment of Variance; R647-2-111, Release of Surety; R647-2-114, New or Revised Notice of Intention; R647-3-101, Notice of Intention to Commence Small Mining Operations; R647-3-107, Operation Practices; R647-3-108, Unplugged over 30 Days/Alternate Plan; R647-3-109, Reclamation Practices Variance; R647-3-109.13, Revegetation Approval; R647-3-110, Variance, Revocation, or Adjustment of Variance; R647-3-111, Release of Surety; R647-3-113.1, Waiver, Annual Report; R647-3-113.3 and R647-3-113.4, Termination or Suspension; R647-3-113.5, Reevaluations, Reclamation; R647-3-114, Mine Enlargement; R647-3-115, Revisions; R647-3-117, Report Waiver; R647-4-101, Notice of Intention to Commence Large Mining Operation; R647-4-102, Updated Information or Modifications; R647-4-107, Operation Practices; R647-4-108, Unplugged over 30 Days/Alternate Plan; R647-4-111, Reclamation Practice, Variance; R647-4-111.13, Revegetation Approval; R647-4-112, Variances, Revocation or Adjustment; R647-4-113, Release of Surety; R647-4-117.3 and R647-4-117.4, Termination or Suspension; R647-4-118, Revisions; R647-4-119, Amendments; R647-4-121, Annual Report, Waiver.

3. Adjudicative proceedings which shall commence before the Board but follow the procedures for the informal process in this Rule R647-5 include the following:

R647-2-111, Surety, Form and Amount; R647-3-111, Surety, Form and Amount; and R647-4-113, Surety, Form and Amount.

R647-5-102. Informal Process.

Adjudicative proceedings declared by these rules hereinabove to commence in the informal phase shall be processed according to Rule R647-5 et seq. below. All other requirements of the Mineral Rules shall apply when they supplement these rules governing the informal phase and when not in conflict with any of the rules of R647-5. Notwithstanding this, any longer time periods provided for in the Mineral Rules shall apply.

R647-5-103. Definitions.

Definitions as used in these rules may be found under R647-1-106.

R647-5-104. Commencement of Adjudicative Proceedings.

1. Except for emergency orders described further in these rules, all adjudicative proceedings that commence in the informal phase shall be commenced by either:

1.11. A Notice of Agency Action, if proceedings are commenced by the Board or Division; or

1.12. A Request for Agency Action, if proceedings are commenced by persons other than the Board or Division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.11. The 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:

2.11.111 The names and mailing addresses of all 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;

2.11.112 The Division's file number or other reference number;

2.11.113 The name of the adjudicative proceeding;

2.11.114 The date that the Notice of Agency Action was mailed;

2.11.115 A statement that the adjudicative proceeding is to be conducted informally according to the provisions of these Rules and Sections 63G-4-202 and 63G-4-203 of the Utah Code Annotated (1953, as amended), if applicable;

2.11.116 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request for hearing may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

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

2.11.118 The name, title, mailing address, and telephone number of the Division Director; and

2.11.119 A statement of the purpose of the adjudicative proceeding and, to the extent known by the Division Director, the questions to be decided.

2.12. Unless waived, the Division shall:

2.12.111 Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule; and

2.12.112 Publish the Notice of Agency Action if required by statute or by the Mineral Rules.

2.13. All the listed adjudicative processes that commence informally may be petitioned for by a person other than the Division or Board. That person's Request for Agency Action shall be in writing and signed by the person invoking the jurisdiction of the Division or by his or her attorney, and shall include:

2.13.111 The names and addresses of all persons to whom a copy of the Request for Agency Action is being sent;

2.13.112 A space for the Division's file number or other reference number;

2.13.113 Certificate of mailing of the Request for Agency Action;

2.13.114 A statement of the legal authority and jurisdiction under which Division action is requested;

2.13.115 A statement of the relief or action sought from the Division; and

2.13.116 A statement of the facts and reasons forming the basis for relief or action.

2.14. The person requesting the Division action shall use the forms of the Division with the additional information required by Rule R647-5-104.2.13 above. The Division is hereby authorized to codify said forms in conformance with this rule. Said forms shall be deemed a Request for Agency Action. 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.

2.15. In the case of a Request for Agency Action, the Division shall, unless waived, ensure that notice by mail has been promptly given to all parties, or by publication when

required by statute or the Mineral Rules. The written notice shall:

2.15.111 Give the Division's file number or other reference number;

2.15.112 Give the name of the proceeding;

2.15.113 Designate that the proceeding is to be conducted informally according to the provisions of these Rules and Section 63G-4-202 and 63G-4-203 of Utah Code Annotated (1953, as amended), if applicable;

2.15.114 A statement that the parties may request an informal hearing before the Division within ten (10) days of the date of mailing or publication and that failure to make such a request may preclude that party from any further participation, appeal or judicial review in regard to the subject adjudicative proceeding;

2.15.115 Give the name, title, mailing address, and telephone number of the Division Director; and

2.15.116 If the purpose of the adjudicative proceeding is to award a license or other privilege as to which there are multiple competing applicants, the Division may, by rule or order, conduct a single adjudicative proceeding to determine the award of that license or privilege.

R647-5-105. Conversion of Informal to Formal Phase.

1. Any time before a final order is issued in any adjudicative proceeding before the Division, the Division Director may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

1.11. Conversion of the proceeding is in the public interest; and

1.12. Conversion of the proceeding does not unfairly prejudice the rights of any party.

2. An adjudicative proceeding which commences informally shall also be processed formally if an appeal to the Board is filed under the rules hereinbelow. Such an appeal changes the character of the adjudicative process to a contested case which requires a formal hearing process before the Board or its designated Hearing Examiner to best protect the interests of the public as well as the parties involved.

R647-5-106. Procedures for Informal Phase.

1. A Request for Agency Action or Notice of Agency Action shall be the method of commencement of an adjudicative process as previously discussed in these rules.

2. The mailing requirements of Rule R647-5-104.2.12.111 and R647-5-104.2.14, whichever is applicable, shall be met.

3. The Notice of Agency Action shall be published in a newspaper of general circulation likely to give notice to interested persons when required by statute or by these Mineral Rules.

4. All notices required herein shall indicate the date of publication or mailing and specify that any affected person may file with the Division within ten (10) days of said date, a written objection and request for informal hearing before the Division and that failure to make such a request may preclude that person from further participation, appeal or judicial review in regard to the subject adjudicative proceeding. Said ten (10) day period shall be waived if the Division receives a waiver signed by those entitled to notice under these rules.

5. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency action shall be permitted to testify, present evidence, and comment on the issues.

6. Hearings will be held only after timely notice to all parties.

7. Discovery is prohibited, but the Division Director may issue subpoenas or other orders to compel production of necessary evidence.

8. All parties shall have access to information contained in the Division's files and to all materials and information gathered in by investigation, or to the extent permitted by law.

9. Intervention is prohibited, except where required by federal statute or rule.

10. All hearings shall be open to all parties.

11. Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within said ten (10) day period, the Division Director shall issue a written, signed order that states the following:

11.11 The decision;

11.12 The reasons for the decision;

11.13 A notice of the right to appeal to the Board;

11.14 The time limits for filing an appeal.

12. The Division Director's order shall be based on the facts appearing in the Division's files and on the facts presented in evidence at any hearings.

13. Unless waived by the intended recipient of the order, a copy of the Division Director's order shall be promptly mailed to each of the parties.

14. The Division may record any hearing. Any party, at his or her own expense, may have a reporter approved by the Division prepare a transcript from the Division's record of the hearing.

15. Nothing in this section restricts or precludes any investigative right or power given to the Division by another statute.

16. Default. The Division Director may enter an order of default against a party if the party fails to participate in the adjudicative proceeding. The order of default shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the Division Director set aside the default order and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the Division shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party. Notwithstanding this, in an adjudicative proceeding that has no parties other than the Division and the party in default, the Division Director shall, after issuing the order of default, dismiss the proceeding.

17. Appeal of Division Order. Any aggrieved party that participated at a hearing before the Division or an applicant who is aggrieved by a denial or approval with conditions, may file a written appeal to the Board within ten (10) days of the issuance of the order. The written appeal shall be in the form of a Request for Agency Action for a formal hearing before the Board or its designated Hearing Examiner in conformance with the Rules of Practice and Procedure before the Board of Oil, Gas and Mining, and shall also state the grounds for the appeal and the relief requested.

18. Emergency Orders. Notwithstanding the other provisions of these rules, the Division Director or any member of the Board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-8-6. The emergency order shall remain in effect no longer than until the next regular meeting of the Board, or such shorter period of time as shall be prescribed by statute.

18.11. Prerequisites for Emergency Order. The following must exist to allow an emergency order:

18.11.111 The facts known to the Division Director or Board member or presented to the Division Director or Board member show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

18.11.112 The threat requires immediate action by the Division Director or Board member.

18.12. Limitations. In issuing its Emergency Order, the Division Director or Board member shall:

18.12.111 Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

18.12.112 Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the Division Director's or Board member's utilization of emergency adjudicative proceedings;

18.12.113 Give immediate notice to the persons who are required to comply with the order;

18.12.114 If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the Division shall commence a formal adjudicative proceeding before the Board of Oil, Gas and Mining.

R647-5-107. Exhaustion of Administrative Remedies.

1. Persons must exhaust their administrative remedies in accordance with Section 63G-4-401, Utah Code Annotated (1953, as amended), prior to seeking judicial review.

2. 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 the Rules of Practice and Procedure before the Board of Oil, Gas and Mining. 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.

R647-5-108. 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.

R647-5-109. 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, other remaining provisions, sections, subsections or phrases shall remain in full force and effect.

R647-5-110. Construction.

The Utah Administrative Procedures Act described in Title 63G, Chapter 4 of the Utah Code Annotated (1953, as amended) shall supersede any conflicting provision of these rules. These rules should be construed to be in compliance with said Act.

R647-5-111. Time Periods.

Nothing in these rules may be interpreted to restrict the Division Director, for good cause shown, from lengthening or shortening any time period prescribed herein.

KEY: minerals reclamation
February 23, 2006 40-8-1 et seq.
Notice of Continuation July 8, 2003

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.
R649-10. Administrative Procedures.
R649-10-1. Designation of Informal Adjudicative Proceedings.

1. Adjudicative proceedings which shall be conducted informally before the division in accordance with these rules are all actions prescribed by the Oil and Gas Conservation General Rules as being specifically under the division's authority and jurisdiction including: R649-2 General Rules; R649-3 Drilling and Operating Practices; R649-5 Underground Injection Control of Recovery Operations and Class II Injection Wells; R649-6 Gas Processing and Waste Crude Oil Treatment; R649-8 Reporting and Report Forms; R649-9 Disposal of Produced Water.

2. Prior to the issuance of a final order in any adjudicative proceeding, the presiding officer may convert an informal proceeding to a formal adjudicative proceeding if:

2.1. Conversion of the proceeding is in the public interest.

2.2. Conversion of the proceeding does not unfairly prejudice the rights of any party.

3. Informal adjudicative proceedings shall be commenced and conducted in accordance with these rules and the provisions of the applicable Oil and Gas Conservation General Rules. In case of conflict between these rules and the Oil and Gas Conservation General Rules, these rules shall govern the informal adjudicative proceedings.

R649-10-2. Definitions.

As used in these rules:

1. "Adjudicative proceeding" means an agency action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all agency actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and judicial review of all of such actions.

2. "Agency" means the Board of Oil, Gas and Mining and the Division of Oil, Gas and Mining including the director or division employees acting on behalf of or under the authority of the director or board.

3. "Agency head" means an individual or body of individuals in whom the ultimate legal authority of the agency is vested by statute.

4. "Board" means the Board of Oil, Gas and Mining.

5. "Division" means the Division of Oil, Gas and Mining.

6. "License" means a franchise, permit, certification, approval, registration, charter, or similar form of authorization required by statute.

7. "Party" means the board, division, or other person commencing an adjudicative 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 an adjudicative proceeding.

8. "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 another agency.

9. "Presiding Officer" means an agency head, or an individual or body of individuals designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative proceeding. For the purpose of these rules, the board, or its appointed hearing examiner, shall be considered the presiding officer of all appeals or informal adjudicative proceedings which commence before the division as well as all adjudicative proceedings which commence before the board. The director or his designated agent shall be considered a presiding officer for all informal adjudicative proceedings which commence before the division. If fairness to the parties is not compromised, an agency may substitute one presiding officer for another during any proceeding.

10. "Respondent" means any person against whom an adjudicative proceeding is initiated whether by an agency or any other person.

R649-10-3. Commencement of Informal Adjudicative Proceedings.

1. Except for emergency orders, all informal adjudicative proceedings shall be commenced by:

1.1. A Notice of Agency Action, if proceedings are commenced by the board or division; or

1.2. A Request for Agency Action, if proceedings are commenced by persons other than the board or division.

2. A Notice of Agency Action shall be filed and served according to the following requirements:

2.1. The Notice of Agency Action shall be in writing and shall be signed by a presiding officer and shall include:

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

2.1.2. The division's file number or other reference number.

2.1.3. The name of the adjudicative proceeding.

2.1.4. The date that the Notice of Agency Action was mailed.

2.1.5. A statement that the adjudicative proceeding is to be conducted informally according to the provision of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.1.6. A statement that the parties may request an informal hearing before the division within ten days, or such later period as may be provided for in the Oil and Gas Conservation General Rules, of the date of mailing or publication.

2.1.7. A statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained.

2.1.8. The name, title, mailing address, and telephone number of the presiding officer.

2.1.9. A statement of the purpose of the adjudicative proceeding and, to the extent known by the presiding officer, the questions to be decided.

2.2. The Division shall:

2.2.1. Mail the Notice of Agency Action to each party and any other person who has a right to notice under statute or rule.

2.2.2. Publish the Notice of Agency Action as required by statute or by the Oil and Gas Conservation General Rules.

2.2.3 Post a copy of the notice in a public area in the main office of the division at least 24 hours in advance of the scheduled agency proceeding.

2.3. A Request for Agency Action initiated by a person other than the board or the division shall be in writing and signed by the person seeking action by the the agency or by his representative, and shall include:

2.3.1. The names and addresses of all persons to whom a copy of the request for agency action is being sent.

2.3.2. The agency's file number or other reference number, if known.

2.3.3. The date that the request for agency action was mailed.

2.3.4. A statement of the legal authority and jurisdiction under which the agency action is requested.

2.3.5. A statement of the relief or action sought from the division.

2.3.6. A statement of the facts and reasons forming the basis for relief or action.

2.4. The person requesting agency action shall file the request with the division and shall send a copy by mail to each person known to have a direct interest in the requested agency action unless previously waived in writing by each person entitled to receive notice of the requested agency action.

2.5. The person requesting the agency action may use the division forms as specified in the Oil and Gas Conservation General Rules as a request for agency action.

2.6. The presiding officer shall promptly review a Request for Agency Action and shall:

2.6.1. Notify the requesting party in writing whether the request is granted and when the adjudicative proceeding is completed;

2.6.2. Notify the requesting party in writing that the request is denied; or

2.6.3. Notify the requesting party that further proceedings are required to determine the agency's response to the request.

2.7. The division shall mail any required notice to all parties, except that any notice required by R649-10-3-2.6 may be published when publication is required by statute.

2.7.1. Give the division's file number or other reference number.

2.7.2. Give the name of the proceeding.

2.7.3. Designate that the proceeding is to be conducted informally according to the provisions of these rules and Sections 63G-4-202 and 63G-4-203 if applicable.

2.7.4. If a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in a scheduled and noticed hearing may be held in default.

2.7.5. If the adjudicative proceeding is to be informal, and a hearing is required by statute or rule, or if a hearing is permitted by rule and may be requested by a party with the time prescribed by rule, state the parties' right to request a hearing and the time within which a hearing may be requested under the agency's rules.

2.7.6. Give the name, title, mailing address, and telephone number of the presiding officer.

R649-10-4. Procedures for Informal Adjudicative Proceedings.

1. Procedures for informal adjudicative proceedings should include the following:

1.1. Unless the agency by rule provides for and requires a response, no answer or other pleading responsive to the allegations contained in the notice of agency action or the request for agency action need be filed.

1.2. The agency shall hold a hearing if a hearing is requested within ten days or such later period as may be provided for in the Oil and Gas Conservation General Rules.

1.3. In any hearing, the parties named in the Notice of Agency Action or in the Request for Agency Action shall be permitted to testify, present evidence, and comment on the issues.

1.4. Hearings will be held only after timely notice to all parties.

1.5. Discovery is prohibited, but the agency may issue subpoenas or other orders to compel production of necessary evidence.

1.6. All parties shall have access to information contained in the agency's files and to all materials and information gathered in any investigation, to the extent permitted by law.

1.7. Intervention is prohibited, except where a federal statute or rule requires that a state permit intervention.

1.8. All hearings shall be open to all parties.

1.9. Within a reasonable time after the close of an informal adjudicative proceeding, the presiding officer shall issue a signed order in writing that states the following:

1.9.1. The decision.

1.9.2. The reasons for the decision.

1.9.3. A notice of any right of administrative or judicial review available to the parties.

1.9.4. A statement that the filing of an appeal or the requesting of a review shall be accomplished within 30 days of the issuance of the order.

1.10. The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at any hearings.

1.11. A copy of the presiding officer's order shall be promptly mailed to each of the parties and to all persons who request a copy.

2.1. The agency may record any hearing.

2.2. Any party, at his own expense, may have a reporter, approved by the agency, prepare a transcript from the agency's record of the hearing.

3.0. Nothing in this section restricts or precludes any investigative right or power given to an agency by another statute.

R649-10-5. Default In An Informal Proceeding.

1. The presiding officer may enter an order of default against:

1.1. A party in an informal adjudicative proceeding if after proper notice the party fails to participate in the informal adjudicative proceeding.

2.0. An order of default shall include a statement of the grounds for default and shall be mailed to all parties.

3.1. A defaulted party may seek to have the agency set aside the default order, and any order in the adjudicative proceeding issued subsequent to the default order, by following the procedures outlined in the Utah Rules of Civil Procedure.

3.2. A motion to set aside a default and any subsequent order shall be made to the presiding officer.

3.3. A defaulted party may seek board review under R649-10-6 only on the decision of the presiding officer on the motion to set aside the default.

4.0. In an adjudicative proceeding commenced by the agency, or in an adjudicative proceeding commenced by a party that has other parties besides the party in default, the presiding officer shall, after issuing the order of default, conduct any further proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.0. In an adjudicative proceeding that has no parties other than the agency and the party(ies) in default, the presiding officer may, after issuing the order(s) of default, dismiss the proceeding.

R649-10-6. Appeal of Division Order.

1. A request for review of an order issued by the division shall be filed with the secretary to the Board within 30 days of issuance of the order and:

1.1. Be signed by the party seeking review.

1.2. State the grounds for review and the relief requested.

1.3. State the date upon which it was mailed.

1.4. Be sent by mail to the presiding officer and to each party.

2. Within 15 days of the mailing date of request for review, or within the time period provided by agency rule, whichever is longer, any party may file a response with the board. One copy of the response shall be sent by mail to each of the parties and to the presiding officer.

3. The board shall review the order within a reasonable time or within the time required by statute or the agency's rules.

4. To assist in review, the board may by order or rule permit the parties to file briefs or other papers, or to conduct oral argument.

5. Notice of hearings on review shall be mailed to all parties.

6.1. Within a reasonable time after the filing of any response, other filings, or oral argument, or within the time required by statute or applicable rules, the board shall issue a

written order on review.

6.2. The order on review shall be signed by the board chairman or by a person designated by the board for that purpose and shall be mailed to each party.

6.3. The order on review shall contain:

6.3.1. A designation of the statute or rule permitting or requiring review.

6.3.2. A statement of the issues reviewed.

6.3.3. Findings of fact as to each of the issues reviewed.

6.3.4. Conclusions of law as to each of the issues reviewed.

6.3.5. The reasons for the disposition.

6.3.6. Whether the decision of the presiding officer or agency is to be affirmed, reversed, or modified, and whether all or any portion of the adjudicative proceeding is to be remanded.

6.3.7. A notice of any right of further administrative reconsideration or judicial review available to aggrieved parties.

6.3.8. The time limits applicable to any appeal or review.

R649-10-7. Emergency Orders.

Notwithstanding the other provisions of these rules, the director or any member of the board is authorized to issue an emergency order without notice and hearing in accordance with Section 40-6-10. The emergency order shall remain in effect no longer than until the next regular meeting of the board, or such shorter period of time as shall be prescribed by statute.

1. An emergency order may be issued if:

1.1. The facts known by or presented to the director or board member are supported by affidavit to show that an immediate and significant danger of waste or other danger to the public health, safety, or welfare exists; and

1.2. The threat requires immediate action by the director or board member,

2. Limitations. In issuing its emergency order, the director or board member shall:

2.1. Limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

2.2. Issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency adjudicative proceedings;

2.3. Give immediate notice to the persons who are required to comply with the order; and

2.4. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the division shall commence a formal adjudicative proceeding in accordance with the procedural rules of the board.

R649-10-8. Exhaustion of Administrative Remedies.

A person aggrieved by a division order in an adjudicative proceeding must seek review of that order by the board as provided in R649-10-6.

R649-10-9. 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: oil and gas law
December 18, 1996 40-6-1 et seq.
Notice of Continuation May 11, 2006 63G-4

R652. Natural Resources; Forestry, Fire and State Lands.
R652-6. Government Records Access and Management.
R652-6-100. Purpose and Authority.

1. This rule provides procedures for appropriate access to division records.

2. This rule is authorized by Sections 63G-2-204, 63G-2-603, 63A-12-104, 65A-1-10, and 65A-6-7.

R652-6-200. Definitions.

1. Terms used in this rule are defined in Section 63G-2-103.

2. In addition:

(a) Records officer: the individual designated by the director of the division as defined in Subsection 63G-2-103(25) to work with the state archives in the care, maintenance, scheduling, designation, classification, disposal and preservation of records and shall be responsible for supervision of the records access activities of the records coordinators.

(b) Records coordinators: individuals designated by the division director to coordinate records access requests and to assist the public in gaining access to records maintained by the division. Records coordinators are located in the following:

i) State Office, 1594 W. North Temple, Suite 3520, PO Box 145703, Salt Lake City, UT 84114-5703.

ii) Central Area Office, 1660 S. Industrial Park Road, Suite 201, PO Box 505, Richfield, UT 84701.

iii) Southwestern Area Office, 585 N. Main St, Cedar City, UT 84720.

iv) Southeastern Area Office, 1165 S. Highway 191, Suite 6, Moab, UT 84532.

v) Bear River Area Office, 1780 N. Research Parkway, Suite 104, North Logan, UT 84341-1940.

vi) Northeastern Area Office, 152 East 100 North, Vernal, UT 84078.

R652-6-300. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the government entity.

R652-6-400. Requests for Access.

1. Request for access to records shall be on a form provided by the division or in another legible written document which contains the following information: the requester's name, mailing address, daytime telephone, a description of the records requested that identifies the record with reasonable specificity, and if the record is not public, information regarding requester's status.

2. The request shall be submitted to the records officer or coordinator. The response to the request may be delayed if not properly directed.

3. The division shall deny a request for private, controlled, protected or limited access records if the request is not made in writing and does not contain information required in this section.

4. Notwithstanding the provision of subsection 63G-2-204(1), the division may waive the requirement for a written request if the records requested are public, the records are readily accessible and the request is filled promptly by providing access or copying at the time the request is made.

R652-6-500. Other Requests.

1. For research purposes:

Access requests for private or controlled records for research purposes pursuant to Section 63G-2-202(8), shall be made in writing and directed only to the records officer.

2. To amend a record:

An individual may contest the accuracy or completeness of a document pertaining to him as maintained by the division pursuant to Section 63G-2-603.

(a) The request to amend shall be made in writing to the records officer.

(b) Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

3. To claim business confidentiality:

A request for protected records status based on a claim of business confidentiality may be made pursuant to Section 63G-2-309. Such a request shall be submitted in writing to the director or his designee. The request shall contain the claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

4. To claim limited records status:

A lessee may claim that mineral information provided to the division should be protected under Section 65A-6-7.

(a) Such a request shall be submitted in writing to the director or his designee. The request shall contain a claim that the information provided the division is of a proprietary nature and a concise statement of reasons supporting the claim.

(b) If the division agrees the information is of a proprietary nature, the request shall be granted and the information shall receive limited records status until:

i) the lease is terminated and the division believes the release of the information is not detrimental to the trust; or

ii) the lessee or its successor in interest ceases to exist as an entity and the division believes the release of the information is not detrimental to the trust.

(c) A record granted limited records status under this section shall not be released to another party without written permission from the lessee providing the information during the period the limited records status is in effect.

(d) The division may make information provided limited records status under this section available for inspection, but not for copying, by the Utah Geological Survey or the Division of Oil, Gas and Mining if consultation is requested by the division, provided further that the confidentiality of such information is safeguarded.

R652-6-600. Denials.

1. If any access or status request is denied in whole or in part, a notice of denial shall be given to the requester in person or sent to the requester's address.

2. The notice of denial shall contain the information required in subsection 63G-2-205(2).

R652-6-700. Appeal of Determination.

1. Any person aggrieved by an access or status request determination including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination to the director by submitting a notice of appeal either on a form provided by the division or another legible written document which contains the following information: the petitioner's name, mailing address and daytime telephone number (if available); and the relief sought.

2. Upon receiving the notice of appeal and review of relevant information including that submitted with the appeal and criteria prescribed in Sections 63G-2-204, 63G-2-603, 63A-12-104, 65A-1-10 and 65A-6-7, the director may:

(a) uphold the original classification or status request determination; or,

(b) reclassify the record if he believes the original classification was incorrect; or,

(c) release the record regardless of its classification if the director believes that the interest of the public in obtaining access to the record outweighs the interest of the division in prohibiting access to the record.

R652-6-800. Fees.

1. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the records officer or any records coordinator located at the addresses provided in R652-6-200, Definitions.

KEY: GRAMA, government documents, public records
March 14, 1997 65A-6-7
Notice of Continuation April 2, 2007 65A-1-10

R652. Natural Resources; Forestry, Fire and State Lands.
R652-7. Public Petitions for Declaratory Orders.
R652-7-100. Authority.

This rule implements Section 63G-4-503 which authorizes the Division of Forestry, Fire and State Lands to provide the procedures for submission, review, and disposition of petitions for agency declaratory orders on the applicability of statutes, rules, and orders governing or issued by the agency.

R652-7-200. Definitions.

Terms used in this rule are defined in Section 63G-3-102, with the exception of:

1. agency: Division of Forestry, Fire and State Lands.

2. director: director of the Division of Forestry, Fire and State Lands.

3. applicability determination: a determination whether a statute, rule, or order within the primary jurisdiction of the agency should be applied to specified circumstances and how it applies if applicable;

4. declaratory order: an administrative order arising from an applicability determination that establishes rights, status, and other legal relations under a statute, rule, or order; and

5. statute, rule, or order within the primary jurisdiction of the agency:

(a) a statute, the implementation of which is expressly or by clear implication assigned to the agency by legislative action or executive order; or

(b) a rule or order enacted or issued pursuant to express or clearly implied responsibility to implement a statute.

R652-7-300. Petition and Intervention Procedure.

1. Any person or agency may petition for a declaratory order. A petition will be denied summarily if the petitioner seeks an order concerning issues addressed in an agency adjudicative proceeding completed during the 12-month period preceding the petition date for which the petitioner had notice. A person may seek information on agency policies or positions without a formal request for a declaratory order. Information requests are handled expeditiously and without the procedural formality of the declaratory order process.

2. The petition shall be addressed and delivered to the director. Any person may petition for intervention within 30 days of the filing of a petition for a declaratory order or at least 30 days prior to a specified time established by agreement between the petitioner for a declaratory order and the agency, whichever is later.

R652-7-400. Petition Form.

1. The petition must:

(a) be clearly designated as a request for an agency declaratory order;

(b) identify the statute, rule, or order to be reviewed or applied;

(c) state specifically the factual issue, situation, or circumstance in which applicability is sought;

(d) describe the reason or need for the applicability review, including the specific relationship of the requested declaratory order to the legal rights, interests, and objectives of the petitioner;

(e) include an address and telephone number where the petitioner can be reached during regular work days;

(f) identify the names, addresses, and phone numbers of other persons or parties the petitioner believes or knows will be directly affected by the issuance of a declaratory order; and

(g) be signed by the petitioner or his authorized representative.

2. Any letter that expressly states the intent to request an agency declaratory order and substantially complies with the information required in this subsection shall be treated as fulfilling the requirements of this subsection even though a technical deficiency may exist in the letter.

R652-7-500. Petition Review and Disposition.

1. Upon receipt of a petition, the director or his designee shall review the petition for compliance with R652-7-400. The petition shall be denied if:

(a) the specified facts, issue, situation, or circumstance is based on disputed facts;

(b) the petition raises policy questions which have not been addressed by the agency; and

(c) the petition requests a ruling on any order other than an executed contract.

2. Incomplete, or unclear, petitions shall be returned to the petitioner with an explanation of the additional information required.

3. When a petition is complete, the director shall, in compliance with 63G-4-503(6), issue a written order:

(a) stating the applicability or nonapplicability of the statute, rule, or order at issue; the reasons for the applicability or nonapplicability of the statute, rule, or order; and any requirements imposed on the agency, the petitioner, or any other person having intervened in or consented to the applicability determination process.

(b) setting an informal hearing for the petitioner and any intervenor to examine questions not related to factual disputes;

(c) documenting an agreement to issue a declaratory order by a specified time; or

(d) denying the petition for a declaratory order.

4. Unless otherwise agreed to by the director or his designee and the petitioner, any petition for which an order is not issued pursuant to (2) above is deemed denied.

KEY: administrative procedures, public petitions
1988 63G-4-503
Notice of Continuation September 12, 2003

R652. Natural Resources; Forestry, Fire and State Lands.
R652-8. Adjudicative Proceedings.
R652-8-100. Authority.

This rule implements Sections 63G-4-102(5), 63G-4-202, 63G-4-203 which authorizes the Division of Forestry, Fire and State Lands to designate adjudicative proceedings as informal and provides procedures for informal adjudicative proceedings. Leases, sales and exchanges are treated as contracts for purchase or sale of interests in real property. Therefore, management and administrative actions concerning specific leases, sales or exchanges are not governed by the procedural requirements of this rule pursuant to 63G-4-102(2)(g).

R652-8-200. Initial Designation of All Adjudicative Proceedings as Informal.

1. All requests for agency adjudications are initially designated as informal adjudications. Requests for action include applications for leases, permits, easements, sale of sovereign lands, exchange of sovereign lands, sale of forest products and any other disposition of resources under the authority of the agency or other matter where the law applicable to the agency permits parties to initiate adjudicative proceedings.

2. All adjudications commenced by the agency shall be initially designated as informal adjudications. Agency adjudications include actions relating to leases, permits, easements, sales contracts and other agreements and contracts under the authority of the agency.

R652-8-300. Procedures for Informal Adjudicative Proceedings.

1. Procedures for all categories of informal adjudicative proceedings shall comply with applicable provisions of Section 63G-4-203.

2. Procedures governing requests for agency action shall be as follows:

(a) requests for agency action shall include the information prescribed in Section 63G-4-201(3);

(b) the division shall review requests for agency action for completeness and sufficiency of information. Parties submitting requests with insufficient information shall be allowed 30 days to cure the deficiencies, but may make a written request for additional time based on good cause shown;

(c) inadequate requests not remedied within the prescribed time shall be considered on the merits of the information provided;

(d) the division may prescribe one or more printed forms as provided by Section 63G-4-201(3) which may include standard leases, permits, easements, patents, certificates of sale, and the applications for such, or any other agreement, contract, conveyance or instrument.

3. Notice of agency action shall be provided to parties as provided in Section 63G-4-201(2).

R652-8-400. Hearings.

1. Hearings shall be conducted as prescribed in Section 63G-4-203.

2. Hearings shall be scheduled by the presiding officer. All matters relating to the conduct and regulation of the hearing, including testimony, examination, issues, evidence, argument, parties, jurisdiction and standing of parties shall be in the discretion of the presiding officer or a designee.

3. A hearing on a notice of agency action may be requested when applicable under R652-8-400(2) by any party to the action. A request for hearing must be received by the division within 30 days after the mailing of the notice of agency action. A request for hearing shall include any response to the information contained in the notice of agency action.

R652-8-500. Presiding Officer or Designee.

The division director is the presiding officer at all adjudicative proceedings unless at the discretion of the director a designee is appointed as the presiding officer.

KEY: administrative procedures, adjudicative proceedings
1989 63G-4-102(5)
Notice of Continuation June 28, 2006 63G-4-202

R652. Natural Resources; Forestry, Fire and State Lands.
R652-30. Special Use Leases.
R652-30-100. Authority.

This rule implements Section 65A-7-1 which authorizes the Division of Forestry, Fire and State Lands to prescribe standards and conditions for the leasing and development of surface resources on state lands.

R652-30-200. Surface Leasing of Sovereign Lands.

1. The division may issue special use leases for terms of up to 51 years for surface uses, excluding grazing, on all sovereign lands.

2. In exceptional cases, the division may issue leases for a term of up to 99 years when it has been determined that such a term would be in the best interest of the beneficiaries.

3. The division shall issue leases for the term most consistent with land management objectives found in R652-2. The term of a lease will not normally be for a period longer than specified below for a particular lease type.

(a) Military: ten years
(b) Agricultural: 20 years
(c) Recreational: 20 years
(d) Telecommunications: 20 years
(e) Commercial: 51 years
(f) Industrial: 51 years
(g) Residential: 51 years
(h) Governmental (Other than Military): 51 years

R652-30-300. Classifications of Special Use Leases.

Special use leases are classified either as standard or unit development special use leases. Applications may be made under the following categories.

1. Standard

The standard classification may include the following uses:

(a) Commercial: Restaurants, service stations, boating facilities, motels, retail businesses.

(b) Industrial: Testing sites, mining or extraction facilities, manufacturing plants.

(c) Residential: A lease on which the applicant intends, at the time of lease issuance, to establish a private, permanent home and legal domicile.

(d) Agricultural: Crop production, improved pasture lands.

(e) Recreational: Outdoor sports, picnicking facilities, open space, conservation zones, recreational cabin sites.

2. Unit Development Special Use Lease

The unit development lease may be issued when the proposed land use requires a planning and decision process beyond the scope of the standard special use lease procedures.

R652-30-310. Requests for Proposals.

1. The division may issue requests for proposals (RFP) for any sovereign land on which the director has determined the potential for development exists.

2. A proposal submitted in response to the RFP may be for sale, lease, joint development, or exchange and shall receive protected status until the director selects the preferred proposal.

3. Proposals will be evaluated on the criteria found in R652-30-500(2)(g).

4. Requests for proposals shall be advertised pursuant to R652-30-500(2)(d) as well as any other advertising methods which the director determines will increase exposure of the subject property to qualified applicants. The advertisement shall indicate where a person interested in submitting a proposal may obtain an information packet.

5. Proposals shall contain a non-refundable application and review fee as specified in R652-4.

6. Applicants selected in an RFP process shall be exempt from R652-30-500(2)(b) through R652-30-500(2)(e).

R652-30-400. Lease Rates.

1. The division shall receive at least fair market value for surface leases. Fair market value of the subject property shall be determined by the division based upon a market analysis including:

(a) the income-producing ability of the highest and best use of the property; and

(b) a market study of comparable values of similar properties.

2. Lease rates shall be based on fair market value. Lease rates may be determined by the division by:

(a) multiplying the fair market value of the subject property by the current division-determined interest rate.

(b) comparable lease data which may include percentage rent based on either net or gross income with a guaranteed minimum.

(c) using either a fixed rate per acre or a crop-share formula for agricultural leases providing that the rental rate is customary and reasonable. The division may require the lessee to acquire adequate crop insurance.

3. The division may periodically establish minimum lease rates for special use leases based on the costs incurred in administering the leases, and a desired minimum rate of return.

4. Rental Review Procedures for Special Use Leases

(a) Standard

i) Base rentals shall be adjusted as of the effective date specified in the respective lease through a lease review conducted by the division. Any lease which is reviewed within one year of the effective date specified in the lease shall be deemed to have been reviewed timely and any adjustment in base rentals shall be as of the effective date.

ii) Adjustments in base rentals may be based upon changes in the market value, changes in established indices, or other methods which may be appropriate and in the best interest of the beneficiaries. The determination of which method to use may be based upon an analysis of the cost effectiveness of performing the review.

iii) When using established indices, the rate of adjustment shall be the sum of the indices established for the years involved in the review period, unless the rate of adjustment exceeds a maximum adjustment rate, or fails to reach a minimum rate of adjustment as specified in the respective lease. If no maximum adjustment rate or minimum rate of increase is specified in the lease, then the percent change will increase or decrease according to the above described rate of adjustment.

iv) The index/indices used by the division shall reflect the percent of change to be required in the base rental of applicable leases. The index/indices may be amended at any time during the first quarter of the calendar year using information from any or all of the following sources:

(A) Changes in assessed value for the most current year for the appropriate category of land as published by the State Tax Commission

(B) The applicable component of the CPI-U

(C) The applicable Implicit Price Deflators for the Gross National Product

(D) Data from market analyses of comparable leases

(E) Public comment

v) A separate index shall be established for each of the following lease types:

(A) Commercial/industrial
(B) Residential
(C) Agricultural
(D) Recreational

vi) For the purpose of this rule, the Military, Telecommunications, and Governmental lease types shall be adjusted using the Industrial Index.

vii) The adjusted rental amount as determined pursuant to this rule shall be rounded to the nearest number evenly divisible

by $10.

(b) Unit Development

Rental adjustments for unit development leases shall be based upon changes in the market value of the property or the applicable index as may be appropriate as determined by the division.

(c) Suspension, Deferral, and Waiver of Lease Rental Adjustment

The director may suspend, defer, or waive the adjustment of base rentals in specific instances when justified by natural disasters or periods of economic crises, based on a written finding that the suspension, deferral, or waiver is in the best interest of the beneficiaries.

R652-30-500. Application Procedures.

1. Submittal

Applications for surface leases may be submitted to the Salt Lake Office, or area offices during office hours.

2. Competitive Leasing

(a) The division may advertise a parcel of land as open and available for lease.

i) The advertising shall be done pursuant to R652-30-500(2)(d) and R652-30-500(2)(e), as well as any additional advertising the director deems appropriate and shall be considered as a substitute for the competitive advertising process described in R652-30-500(2)(b).

ii) Applications received in response to division advertising will be evaluated pursuant to R652-30-500(2)(g).

(b) Upon receipt of any special use lease application, the division shall solicit competing lease applications except as provided for under R652-30-500(3). If the subject parcel meets the established criteria for sale then applications to purchase shall also be solicited.

(c) The applicant may request an exemption from R652-30-500(2)(b) by petitioning the director to provide for rules exempting that particular class of applications from the competitive process. Pursuant to this rule, the following classes of leases are exempt from the requirements of R652-30-500(2):

i) Communication sites within division approved Communication Site Locations.

ii) Mineral and oil and gas extraction facilities when the division does not own the mineral estate.

(d) Competing applications will be solicited through publication at least once a week for three consecutive weeks in one or more newspapers of general circulation in the county in which the lease is offered. At least 30 days prior to auction or acceptance of a bid, certified notification will be sent to lessees/permittees of record, adjoining permittees/lessees and adjoining landowners. Notices will also be posted in the local governmental administrative building or courthouses.

(e) Notification and advertising shall include a general description of the parcel including township, range, and section, and any other information which may create interest in the parcel without violating the confidentiality of the initial application. The successful applicant shall bear the cost of the advertising.

(f) An applicant may claim that information provided to the division on the initial application except for the legal description and the lease type should be protected under Section 63G-2-305(1) or 63G-2-305(2). The claimant shall submit a written request for protected records status pursuant to R652-6-500(3). The appropriate information shall receive protected records status during the solicitation period.

(g) The division shall allow all applicants at least 20 days from the date of mailing of notice, as evidenced by the certified mail posting receipt (Postal Service Form 3800), within which to submit a sealed bid containing their proposal to lease, purchase or exchange the subject parcel. Applicants not submitting a proposal within the prescribed time period shall have their application(s) rejected. The sealed bid proposal for a lease shall contain the first year's rental. A sealed bid proposal for a sale shall contain 10% of the offer to purchase. These deposits are refundable if the applicant is not successful or if the applicant withdraws the application prior to the issuance of the record of decision. Competing bids are evaluated using the following criteria:

i) Income potential,

ii) Ability of proposed use to enhance adjacent state property,

iii) Proposed timetable for development,

iv) Ability of applicant to perform satisfactorily, and

v) Desirability of proposed use.

(h) The director shall select the preferred applicant based on R652-30-500(2)(g). If the preferred application is for a lease, it shall proceed through the review process as outlined in R652-30-500(5). If the preferred application is for an exchange, it shall be reviewed pursuant to R652-80-200.

(i) If a competing application received pursuant to R652-30-500(2) qualifies as a unit development lease as defined in R652-30-1100, the division shall extend the sealed bid proposal deadline to 120 days.

3. Non-competitive Leasing

Subsequent to completing public notification requirements of Subsection 65A-7-5(4)(c) and R361-1-4(E), the division may enter into surface leases through negotiation rather than a competitive process. The proposed use shall be evaluated using the criteria in R652-30-500(2)(g) with particular attention to its desirability in the context of contributing to the sovereign land management objectives in R652-2. This action shall be documented in a record of decision which shall be subject to consistency review pursuant to R652-9.

4. Application Requirements

(a) All applications shall be received with an application processing charge, a deposit to cover applicable advertising and appraisal costs, and the lease processing charge as established by the division which shall all be refunded if the subject parcel is withdrawn for planning purposes. The director may waive any of these charges when the application is to be processed non-competitively.

(b) The deposit to cover advertising, appraisal costs and the lease processing charge shall be forfeited if the lease is offered but not executed by the applicant.

5. Refunds and Withdrawals

(a) If an application for a surface lease is rejected, all monies tendered by the applicant, except the application fee, will be refunded.

(b) Should an applicant desire to withdraw the application, the applicant must make a written request. If the request is received prior to the time that the application is considered for formal action, all monies tendered by the applicant, except the application fee and any amounts expended on advertising or appraisals prior to the receipt of the withdrawal request, will be refunded. If the request for withdrawal is received after the application is approved, all monies tendered are forfeited to the division, unless otherwise ordered by the division for a good cause shown.

6. Application Review

(a) Upon receipt of an application, the division shall review the application for completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Incomplete applications not remedied within the 60-day period may be denied, and the application fee forfeited to the division.

(b) The lease must be executed by the applicant and returned to the division within 60 days from the date of applicant's receipt of the written lease. Leases not received within the 60-day period shall be subject to immediate cancellation without further notice.

R652-30-600. Special Use Lease Provisions.

Each lease shall contain provisions necessary to ensure responsible surface management, including those provisions enumerated under Section 65A-7-6 and the following provisions: the rights of the lessee, rights reserved to the lessor; the term of the lease; annual rentals and royalties; reporting of technical and financial data; reservation for mineral exploration and development and other compatible uses; operation requirements; lessee's consent to suit in any dispute arising under the terms of the lease or as a result of operations carried on under the lease; procedures of notification; transfers of lease interest by lessee; terms and conditions of lease forfeiture; and protection of the state from liability from all action of the lessee.

R652-30-610. Utah Lake Agricultural Leases.

The division will manage agricultural use on the bed of Utah Lake with substantial deference to the interests of immediate upland owners and existing individual boundary agreements. Notwithstanding Sections R652-30-400, 500 and 600 these leases will be issued in accordance with the following:

1. Agricultural leases will be negotiated for historical agricultural use on sovereign land.

2. Lease applications must be submitted to the division by October 1 annually for agricultural use the following season. The applicant shall specify the number of acres requested and provide proof of historical use satisfactory to the division. The director shall waive the application fee or credit the application fee against rental due.

3. Unless otherwise specified in a sovereign land boundary agreement agricultural leases shall be limited to a term of one year with an option to extend the lease for one year at a time. If a longer term is negotiated in a boundary agreement, the lessee shall apprise the division by October 1 annually of lessee's intent to use the land the following season.

4. Leases will be issued only to the immediate upland owner or to another person with the consent of the immediate upland owner.

5. The lessee may fence the sovereign lands under lease. The fence may extend lakeward only to the water's edge and must be withdrawn as the lake level rises.

6. The lease fee will be determined by the division and in consultation with interested parties, who are invited to provide any information that may be relevant in setting lease fees. The division's calculations will be based on acreage. The fee will be reviewed every three years and adjusted to reflect fair market value.

7. A lease issued pursuant to a boundary agreement shall terminate upon conveyance of the upland to another owner.

8. Crops must be harvested from sovereign land before October 1 annually. The land under lease shall be open to the public for waterfowl hunting, upland game hunting and traditional public uses.

9. No land leveling, ditching, or watercourse alteration on the sovereign land will be allowed.

10. Public trust values will be considered prior to issuance of a lease. Lands with significant wildlife, wetland or other values may be excluded from leasing.

11. Issuance of a lease does not exempt the lessee from jurisdictional authority and requirements administered by the US Army Corps of Engineers.

12. Agricultural practices which adversely affect water quality will not be allowed. Implementation of improper practices, as determined by the appropriate state or federal agency, shall subject the lease to termination.

R652-30-800. Bonding Provisions.

1. At the time of initial lease payment, the lessee may be required to post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.

2. All bonds posted on surface leases may be used for payment of all monies, rentals, and royalties due to the lessor, also for costs of reclamation and for compliance with all other terms and conditions of the lease, and rules pertaining to the lease. The bond shall be in effect even if the lessee has conveyed all or part of the leasehold interest to a sublessee, assignee, or subsequent operator until the lessee fully satisfies the lease obligations, or until the bond is replaced with a new bond posted by the sublessee or assignee.

3. Bonds may be increased in reasonable amounts, at any time as the division may order, provided lessor first gives lessee 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 division:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. However, the state will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "Utah Division of Forestry, Fire and State Lands and lessee, c/o lessee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division, the lessee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the lessee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the division.

R652-30-900. Lease Assignments and Subleases.

1. Any special use lease may be assigned or subleased to any person, firm, association, or corporation qualified to hold a state lease, provided, however, that all assignments and subleases are approved by the division; and no assignment or sublease is effective until approval is given. Any assignment or sublease made without such approval is avoidable at the division's option.

2. An assignment or sublease shall take effect the day of the approval of the assignment or sublease. On the effective date of any assignment or sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, 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 lease number, the land involved, and the name and address of the assignee, and the interest transferred.

4. An assignment shall be executed according to division procedures.

5. Additional occupants of a telecommunication facility must abide by all the requirements of this rule. In addition, the division shall charge each communication site sublessee an amount equal to 50% of the current rental being charged the lessee.

6. As a condition of approval of assignments of sublease the division shall require:

(a) The assignee to accept the most current applicable lease form unless continuation of the existing form is clearly in the best interests of the beneficiaries.

(b) The lessee to be acceptable to the lessor.

R652-30-1000. Lease Amendments.

1. Special use leases issued using a competitive process may be amended as to the following terms and conditions with the lessee's consent, and with prior notice to the division, upon the payment of all appropriate processing and other charges, and

based on a written finding that the amendment would be consistent with the sovereign land management objectives found in R652-2.

(a) Purpose of the lease;

(b) Term of the lease;

(c) Rental or royalty amount;

(d) Rental or royalty due date; and,

(e) Decrease or increase in contiguous acreage, provided that total amended acreage cannot exceed 125% of the original acreage. If the total amended acreage exceeds 125% of the original acreage, the amendment must be advertised pursuant to R652-30-500(2).

2. Special use leases not issued using a competitive process may be amended as to the following terms and conditions with the lessee's consent, and with prior notice to the division, upon the payment of all appropriate processing and other charges, and based on a written finding that the amendment would be consistent with the sovereign land management objectives found in R652-2.

(a) Purpose of the lease;

(b) Term of the lease;

(c) Rental or royalty amount;

(d) Rental or royalty due date; and,

(e) Decrease or increase in contiguous acreage, when the amendment to increase acreage is advertised pursuant to R652-30-500(2).

R652-30-1100. Unit Development Lease.

Leasing processes not specifically described under this section shall be administered using standard special use lease rules.

1. Applicant eligibility

The unit development lease may be issued at the discretion of the division when a complex relationship between numerous potential uses under the proposed lease indicate a planning and decision process requiring continuing division involvement to facilitate division management objectives. Parties continuing to have an interest in developing sovereign lands after pre-application discussions with the division may either file a letter of interest (R652-30-1200), or file an application for a unit development lease.

2. Application procedure

Individuals wishing to lease land under a unit development lease shall file the following material with the local division office:

(a) The appropriate application fee pursuant to R652-4.

(b) A form, as specified by the division, indicating tentative approval from city or county planning officials.

(c) The applicant's public disclosure statement, as specified by the division.

(d) The applicant's Qualifications and Financial Responsibility Statement, as specified by the division.

(e) A preliminary development plan, as defined in R652-1-200(18).

3. Application Review and Acceptance

Upon receipt of an application, the division will review the documents to determine completeness. Applicants submitting incomplete applications shall be allowed 60 days to provide the required data. Applications not remedied within the 60-day period shall be rejected with the application fee forfeited to the state. Upon acceptance of an application, the applicant shall have 120 days within which to submit a preliminary development plan. During this 120-day period, the division shall solicit competing applications pursuant to R652-30-500(2)(b) and contract for an appraisal of the subject parcel. The appraisal shall divide the parcel into units of similarly valued lands and shall establish a specific value for each unit. The cost of this appraisal shall be borne by the ultimate lessee of the parcel. The division will also notify those individuals or groups who have filed letters of interest.

4. Lease Approval

Upon acceptance of an application following the competitive process, the division shall review the application and make a recommendation to the director to approve or deny the lease.

R652-30-1200. Letter of Interest.

1. Parties having a continued interest in developing a particular parcel of sovereign land, but who are not ready to commence the development at this time, may notify the division by a letter of interest stating the nature of continued interest.

2. The letter of interest shall remain in effect for a period not to exceed two consecutive years. Prior to the expiration of the two-year period, the interested party will be advised that the letter of interest is about to expire and that the party has the opportunity to renew under the current rules and fees.

3. The interested party shall include an address which will be used by the division for all correspondence with that party.

4. The interested party shall submit a non-refundable fee of $100 for each contiguous tract which does not exceed 640 acres.

5. The right acquired by the fee paid is limited to the right to be notified by the division as described in R652-30-1200(6).

6. When the division receives an application for sale, lease, material permit or exchange for a parcel of land for which a current letter of interest is on file, the division shall notify by certified mail all parties having letters of interest on file, regarding the subject property and the applicant.

7. Parties who have submitted a letter of interest shall have 30 days from the date the notification was sent in which to respond by submitting a competing application pursuant to R652-30-500(2). If no application is received from the party having filed a letter of interest, it will be assumed that the party has no further interest in the subject property.

KEY: administrative procedures, leases
July 13, 2000 65A-7-1
Notice of Continuation April 2, 2007 65A-7-5(4)

R652. Natural Resources; Forestry, Fire and State Lands.
R652-60. Cultural Resources.
R652-60-100. Authority.

This rule implements Section 65A-2-2(1) which authorizes the Division of Forestry, Fire and State Lands to prescribe the management of cultural resources on sovereign lands. This rule outlines the manner by which the division shall, pursuant to Section 9-8-404, take into account the effect of sovereign land uses on any district, site, building, structure or specimen that is included in or eligible for inclusion in the State Register or National Register of Historic Places, and allow the State Historic Preservation Officer a reasonable opportunity to comment with regard to the undertaking.

R652-60-200. Definitions.

For purposes of this rule:

1. "Area of potential effects" means the geographic area or areas established by the division within which an undertaking may cause changes in the character or use of historic properties, if any such properties exist.

2. "Discovery property" means any site or archaeological resources that are encountered, found or otherwise made known during the course of land use conducted subsequent to approval of that use by the division.

3. "Historic property" means any prehistoric or historic district, site building or structure, or object included in, or eligible for inclusion in, the National Register of Historic Places. This term includes, for the purposes of this rule, artifacts, records, and remains that are related to and located within such historic properties.

4. "Interested persons" means those organizations and individuals that are concerned with the effects of an undertaking on historic properties and have expressed their concern to the division.

5. "Local government" means any city, county, township, municipality or other general purpose subdivision of the state.

6. "National Register" means the National Register of Historic Places, maintained by the United States Secretary of the Interior.

7. "Survey" means in addition to the definition given in Section 9-8-302(15), possible limited subsurface disturbance for the purpose of identifying the presence, extent, type and quality of subsurface archaeological resources.

8. "Undertaking" means any sovereign land use that can result in changes in the character or use of historic properties, if any such historic properties are located in the area of potential effects.

R652-60-400. Identifying Historic Properties.

1. Following the division's determination that a proposed sovereign land use constitutes an undertaking the division shall establish the undertaking's area of potential effects. Thereafter, the division shall review existing information about historic properties that may be affected by the undertaking. As part of this process, the division may seek information from the State Historic Preservation Officer (SHPO), Indian tribes, local governments, state or federal agencies or any other interested parties likely to have knowledge or concerns about cultural resources in the area. The division may delegate this collection of information to an appropriate person.

2. Based on this assessment, the division shall determine whether a field survey will be required to identify historic properties. The division shall notify the SHPO if a survey will not be required, or if the proposed survey is less than a Class III Cultural Resource Survey.

3. If the division determines that a field survey will be required, the division shall make a reasonable and good faith effort to identify historic properties that might be affected by an undertaking and shall gather sufficient information to evaluate the eligibility of these properties for the National Register.

R652-60-500. Evaluating Significance.

1. The division shall make a determination of the eligibility for the National Register for any site identified within the undertaking's area of potential effects.

2. The division shall consult the SHPO regarding the division's determination of eligibility. If the SHPO does not provide comment within 30 days of receipt, the SHPO is presumed to agree with the division's determination of eligibility.

3. If either no historic properties are present or the criteria for eligibility are not met for any identified sites, the division shall make a finding of No Historic Properties. This finding shall be referenced in writing when approving the proposed sovereign land use or other land use.

R652-60-600. Assessing Effects.

1. The division shall assess the effect of a proposed sovereign land use on historic properties in consultation with the SHPO. The division shall consider the views, if any, of interested persons in assessing the effect to historic properties. Based on this assessment, the division shall make a finding of effect and notify all interested persons of this finding.

2. Findings of Adverse Effect and No Adverse Effect may result in the requirement that a data recovery or treatment plan be prepared specifying the actions to be taken should the proposed use for sovereign lands be approved.

(a) The division may require that a data recovery, treatment or mitigation plan be prepared by the applicant.

(b) The director shall approve all data recovery, treatment or mitigation plans and assure their implementation.

R652-60-700. Planning for Discoveries.

1. If a discovery property is found during work associated with a sovereign land use work in the vicinity of the discovery property shall stop until such time as the discovery property has been evaluated and treated to the satisfaction of the division.

R652-60-800. Emergency Undertakings.

The division may waive cultural resource management considerations when responding to wildland fires, flood control and other emergency actions.

R652-60-900. Programmatic Agreements.

The division may enter into programmatic agreements with the SHPO, or with other state or federal agencies, and with local governments for compliance with Section 9-8-404 or other pertinent state or federal statutes. The division may also cooperate with federal agencies in federal programmatic agreements where practicable and appropriate.

R652-60-1000. Records.

1. The division shall submit one copy each of all site forms, survey and data recovery, treatment or mitigation reports prepared by the division to the SHPO.

2. Records and data containing site location information which could jeopardize the integrity of those sites shall be provided protected records status pursuant to Section 63G-2-305(26).

R652-60-1100. Ownership and Management of Collections.

Collections recovered from sovereign lands shall be owned by the state and managed according to state law and the rules of the Utah Museum of Natural History.

KEY: cultural resources
December 19, 1996 **65A-2-2(1)**
Notice of Continuation April 2, 2007 **9-8-305**

9-8-404

R657. Natural Resources, Wildlife Resources.
R657-2. Adjudicative Proceedings.
R657-2-1. Purpose and Authority.

(1) This rule sets forth the standards and procedures governing all adjudicative proceedings before the Wildlife Board and the division, except as provided in subsection (2), and specifically governs the following adjudicative proceedings:

(a) requests for agency action;

(b) declaratory orders brought pursuant to Section 63G-4-503;

(c) requests for species reclassification under Section R657-3;

(d) requests for a variance under Section R657-3;

(e) post-issuance requests for a variance or amendment to a license, permit, tag or certificate of registration;

(f) request for review of a division action taken to deny a certificate of registration under Section R657-3;

(g) requests for agency action brought to contest the division's determination of eligibility for issuance or renewal of a license, permit, tag, or certificate of registration;

(h) appeals of divisions actions taken pursuant to Section 23-16-4; and

(i) a petition brought requesting the making, amendment, or repeal of a rule brought pursuant to Section 63G-3-601.

(2)(a) Unless otherwise specifically provided, this rule does not govern actions taken under Sections 23-19-9 and R657-26 to suspend a wildlife license, permit, tag, or certificate of registration.

(b) The hearing officer or Wildlife Board hearing an appeal of a hearing officer's decision to revoke a person's license, permit, tag, or certificate of registration, or to suspend receipt of privileges granted thereunder, may use any of the provisions established in this rule in conducting an adjudicative proceeding to the extent such provisions do not conflict with any of the procedural provisions of Section 23-19-9 or R657-26 and where conducting the proceeding according to this rule would promote fairness and equity to the parties.

(3) All rights, powers, and authorities provided in Chapter 4, Title 63G are hereby reserved to the division and Wildlife Board in conducting adjudicative proceedings under this rule and to the extent this rule does not address a specific procedural matter, the provisions of Chapter 4, Title 63G shall govern.

R657-2-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 63G-4-103.

(2) In addition:

(a)(i) "Adjudicative proceeding" means:

(A) a division or Wildlife Board action or proceeding that determines the legal rights, duties, privileges, immunities, or other legal interests of one or more identifiable persons, including all division or Wildlife Board actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(B) judicial review of any action provided in Subsection (A).

(ii) "Adjudicative proceeding" does not mean any matter not governed by Title 63G, Chapter 4, Utah Administrative Procedures Act.

(b) "Assistant director" means the assistant director of the division.

(c) "Director" means the director of the division.

(d) "Division" means the Utah Division of Wildlife Resources.

(e) "Petitioner" means a person or entity who files a request for agency action initiating an adjudicative proceeding.

(f) "Presiding Officer" means the director, chairman of the Wildlife Board, or an individual or body of individuals designated by the director, the chairman of the Wildlife Board, or by statute or division rule to conduct an adjudicative proceeding.

(g) "Regional advisory council" means the entities created by Section 23-14-2.6.

(h) "Respondent" means any person or entity against whom a proceeding is initiated or whose property interest may be affected by a proceeding initiated by the division, the Wildlife Board or any other person.

R657-2-3. Construction - Deviation From Rule.

(1) This rule shall be construed in accordance with Title 63G, Chapter 4.

(2) This rule shall be liberally construed to secure a just, speedy, and economic determination of issues.

(3)(a) The presiding officer may, for good cause, deviate from the provisions of this rule if:

(i) the presiding officer finds that strict compliance with this rule is impractical or unnecessary; or

(ii) a deviation from the rule promotes the furtherance of justice or the statutory purposes for which the action is brought.

(b) All parties shall be notified by the presiding officer of any deviation from this rule.

R657-2-4. Computation of Time.

The time within which any act shall be done, as provided in this rule, shall be computed by excluding the first day and including the last, unless the last day is a Saturday, Sunday, or State holiday, in which case it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, or State holiday.

R657-2-5. Commencement of Adjudicative Proceedings.

(1) An adjudicative proceeding may be commenced by either:

(a) a notice of agency action, if the proceeding is commenced by the division or the Wildlife Board; or

(b) a request for agency action, if the proceeding is commenced by a person other than the division or Wildlife Board.

(2) A notice of agency action shall be filed and served according to the requirements of Section 63G-4-201(2).

(3) A request for agency action brought by a person other than the division or Wildlife Board shall be filed and served in accordance with the requirements of Section 63G-4-201(3) and R657-2-6.

R657-2-6. Request for Agency Action.

(1) A request for agency action must be filed with the presiding officer of the entity that has authority to provide relief to the petitioner. The presiding officer may refuse acceptance of any request for agency action if there is reason to believe:

(a) the request is frivolous or brought in bad faith;

(b) the matter has already been acted upon and further consideration is unnecessary;

(c) the relief sought is beyond the agency's jurisdiction; or

(d) the request fails to comply with the procedural requirements of this rule.

(2) At the time the request for agency action is filed, the petitioner shall also file any motions, affidavits, briefs, or memoranda in support of the request for agency action.

(3) The presiding officer shall review the request for agency action.

(a) If the request for agency action is made to the division, the person designated as the presiding officer shall take action upon the request within a reasonable time.

(b)(i) If the request for agency action is made to the Wildlife Board, and the request concerns a matter over which the Wildlife Board has authority, the presiding officer may:

(A) have the request for agency action placed on the

Wildlife Board's agenda for action;

(B) submit the request for agency action to the appropriate regional advisory council or councils, requesting the council or councils to hold public hearings, take input, and make recommendations to the Wildlife Board as provided in Section 23-14-2.6; or

(C) deny the request and notify the requesting party in writing of the denial and that the party may request a hearing before the Wildlife Board to challenge the denial.

(ii) In determining when to schedule the matter for hearing before the Wildlife Board, the presiding officer may consider the following:

(A) If the matter is general in nature, and the Wildlife Board's agenda allows, the matter may be brought at the next regularly-scheduled Wildlife Board meeting;

(B) If the matter involves a serious or irreparable harm to a person or entity that may be resolved by holding a hearing before the next regularly-scheduled meeting, the Wildlife Board may hold an emergency meeting; or

(C) If the matter involves an issue that is part of an annual decision making process, the matter may be scheduled at the next annual meeting where such decisions are made, but no later than one year after the date the request is received.

(4)(a) The presiding officer may schedule the request for agency action on the Wildlife Board agenda for action without regional advisory council input if:

(i) the presiding officer determines that the public interest in deciding the matter without seeking input from the regional advisory councils outweighs the benefit of considering recommendations of the regional advisory councils;

(ii) the request for agency action seeks a remedy that affects only one person or a small number of persons, thus making broad public input unnecessary; or

(iii) the delay associated with seeking regional advisory council input will result in serious or irreparable harm to the petitioner or the respondent, provided the petitioner or respondent has not been negligent in filing the request for agency action in a timely fashion.

(b) Upon a majority vote of the Wildlife Board, any request for agency action submitted to it by the presiding officer that has not been considered by the regional advisory councils may be referred to the regional advisory councils for the purpose of gathering input prior to the Wildlife Board taking further action.

(5) The petitioner shall provide a copy of the request for agency action to any person known by the petitioner to have a direct interest in the proceeding or who will be directly affected by its outcome.

R657-2-7. Designation of Adjudicative Proceedings.

(1) Except as otherwise provided in this rule or at the discretion of the presiding officer, all adjudicative proceedings before the division and the Wildlife Board are designated as informal.

(2) Any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding or a formal adjudicative proceeding to an informal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) Any party to an adjudicative proceeding, including the division, may by motion request a formal hearing.

R657-2-8. Pleadings.

(1) Pleadings shall consist of a notice of agency action, a request for agency action, responses, motions and affidavits, briefs, and memoranda of law and fact in support thereof.

(2) A notice of agency action, request for agency action, and any pleadings relative thereto must be double-spaced, typewritten or legibly handwritten, and presented on standard 8 1/2 by 11 inch paper. Pleadings filed relative to a notice of agency action or request for agency action shall contain a clear and concise statement of the matter that is the basis of the pleading, with an appropriate description of the relief sought.

(3) The presiding officer may allow pleadings to be amended at any time. Initiatory pleadings may be amended without leave of the presiding officer at any time before a responsive pleading has been filed. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

(4) Motions may be submitted either by written motion or oral argument and the filing of affidavits in support or contravention thereof may be permitted. A written motion must be accompanied by a supporting memorandum of fact and law.

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

(6) Exhibits must be clearly marked to show the party proffering the exhibit, and the exhibit number.

(7) All pleadings shall be submitted to the presiding officer at least 20 days prior to the date upon which the matter that is the subject of the pleadings will be decided.

(8) An original of all pleadings, affidavits, briefs, memoranda, and exhibits will be filed with the division. The presiding officer may direct any party to provide additional copies as needed.

(9)(a) Upon the issuance of a notice of agency action or after receipt of a request for agency action, the presiding officer shall provide notice to all parties of the pending adjudicative proceeding.

(b) Any response to a notice of agency action or request for agency action must be submitted within 30 days of the mailing date of the notice of agency action or the notice required under Subsection 63G-4-201(3)(d), which shall include:

(i) the docket number or other reference number;

(ii) the name of the adjudicative proceeding;

(iii) a statement of the relief that the respondent seeks;

(iv) a statement of the facts; and

(v) a statement summarizing the reasons that the relief requested should be granted.

(10) The presiding officer may extend the response time for good cause.

R657-2-9. Parties.

(1) Parties to an adjudicative proceeding shall be persons who have a statutory right to be parties and persons who have a legally-protected interest or right in the subject matter which may be affected by the proceeding.

(2) The division will be considered a party to all adjudicative proceedings conducted by the Wildlife Board.

R657-2-10. Appearances and Representation.

(1) Parties shall enter their appearances at the beginning of the hearing or at such time as may be designated by the presiding officer by stating:

(a) the party's full name and address; and

(b) the party's position or interest in the proceeding.

(2) Any individual or an agent designated by an individual, partnership, corporation, association, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character, or another agency, may represent his, her, or its interest in the

proceeding.

(3) Any party may be represented by an attorney or legal representative as authorized and permitted by the Utah State Bar and state law.

(4) Subject to the limitations imposed by the presiding officer to ensure the adjudicative proceeding is conducted in an orderly and efficient manner, each party to an adjudicative proceeding may participate in the hearing and may introduce evidence, examine and cross-examine each witness, make arguments, and participate generally in the proceeding.

R657-2-11. Notice and Service.

(1) Timely notice of all proceedings shall be given to all parties and any other person who, in the opinion of the presiding officer, has a direct interest in the proceeding.

(2) When a party is represented by an attorney or other authorized representative, service upon the attorney or representative shall constitute service upon the party.

(3) Any person desiring notification by mail from the Wildlife Board or division of specific matters may request to be notified by filing the name, address, telephone number, and specific matters for which the person seeks notification.

R657-2-12. Discovery.

(1)(a) Discovery for informal hearings is prohibited and the division or Wildlife Board may not issue subpoenas or other discovery orders.

(b) Upon motion by a party to a formal hearing, and for good cause shown, the presiding officer may authorize discovery against another party to a formal hearing, including the division, as provided in the Utah Rules of Civil Procedure.

(2) All parties may have access, upon request, to information contained in division files and all materials and information gathered in any investigation pertinent to the adjudicative proceeding, to the extent permitted under Title 63G, Chapter 2 - Governmental Records Access and Management Act and under Title 63G, Chapter 4 - Administrative Procedures Act.

(3) Subpoenas and other orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer at the presiding officer's discretion in the interest of just, fair, and economic decision making.

R657-2-13. Prehearing Procedure.

The presiding officer may, upon written notice to all parties of record, hold a prehearing conference to:

(1) formulate or simplify the issues;

(2) obtain admission of fact and documents that will avoid unnecessary introduction of evidence or other efforts of establishing proof of a matter asserted;

(3) arrange for the exchange of proposed exhibits; and

(4) agree to matters that may expedite the orderly conduct of the proceedings or its settlement.

R657-2-14. Continuance.

(1) Any party may, by filing a motion, request the presiding officer to continue an adjudicative proceeding, provided the motion is filed within a reasonable time prior to the date of the hearing and proper notice is given to the other parties to the proceeding. The presiding officer may grant such a request and continue the proceeding until the next regularly scheduled meeting, or another more convenient time, unless in the presiding officer's judgement, it would be contrary to the just and fair resolution of the proceeding.

(2) The Wildlife Board, on its own motion, or on the motion of the division, may order the continuance of any proceeding until the next regularly scheduled meeting of the Wildlife Board in order to allow adequate time for division staff to evaluate any evidence presented during a hearing.

R657-2-15. Intervention.

(1) A person may not intervene in an informal adjudicative proceeding, unless allowed by the presiding officer for good cause.

(2) A person may file a petition for an order granting leave to intervene in a formal adjudicative proceeding as provided in Section 63G-4-207 and in accordance with the following:

(a) Any petition to intervene or materials filed after the date a response is due may be considered at the next regularly scheduled meeting only upon separate motion of the intervenor made at or before the hearing for good cause shown.

(b) Any party to a formal adjudicative proceeding in which intervention is sought may make an oral or written response to the petition for intervention. The response shall:

(i) state the basis for opposition to intervention and may suggest limitations to be placed upon the participation of the intervenor if intervention is granted; and

(ii) be presented or filed at or before the hearing.

(3) The presiding officer will consider the petition for an order granting leave to intervene and any response in determining whether to allow a party to intervene.

(4) 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 in the hearing, the presiding officer may dismiss the intervenor from the proceeding.

(5) Where two or more intervenors have substantially the same interests and positions in the proceeding the presiding officer may at any time during the proceeding limit the number of intervenors who will be permitted to testify, cross-examine witnesses, or make and argue motions and objections.

R657-2-16. Hearings, Evidence, and Argument.

(1)(a) After the commencement of an adjudicative proceeding, the presiding officer may hold a hearing if:

(i) a hearing is required by statute or rule; or

(ii) a hearing is requested by a party within 30 days after the commencement of the adjudicative proceeding.

(b) The presiding officer may, at the presiding officer's discretion, initiate a hearing to determine matters within the presiding officer's authority.

(2) Notice of the hearing shall be served on all parties by regular mail at least 10 days prior to the hearing.

(3) If the hearing is informal, it shall be conducted in accordance with the provisions of Section 63G-4-203. If the hearing is formal it shall be conducted in accordance with the provisions of Section 63G-4-206.

(4)(a) An informal hearing may be conducted without adherence to the rules of evidence required in judicial proceedings. The Utah Rules of Evidence shall be used as a guide for evidentiary matters in formal hearings.

(b) The presiding officer may exclude irrelevant, immaterial, or unduly repetitious evidence from the hearing.

(c) The weight given to evidence shall be determined by the presiding officer.

(5) Hearsay evidence is admissible in informal and formal hearings consistent with Utah law governing the admissibility of such in administrative adjudicative proceedings.

(6) Documentary evidence may be received in the form of copies or excerpts and, upon request, parties shall be given an opportunity to compare the copy with the original.

(7) Upon the conclusion of taking evidence, the presiding officer may, in the presiding officer's discretion, permit the parties to make closing oral arguments.

R657-2-17. Burden of Proof.

The petitioner shall have the burden of proof by preponderance of the evidence in all adjudicative proceedings.

R657-2-18. Record of Hearing.

(1) The division or Wildlife Board may record any informal hearing. The division or Wildlife Board shall record formal hearings.

(2)(a) Any party, at the party's own expense, may have a reporter, approved by the division or Wildlife Board, prepare a transcript from the record of the hearing and shall furnish a transcript of the testimony to the division or Wildlife Board free of charge.

(b) This transcript shall be available at the Salt Lake division office to any party to the hearing.

R657-2-19. Failure to Appear - Default.

(1) When a party or the party's authorized representative to a proceeding fails to appear at a hearing after due notice has been given, the presiding officer may:

(a) continue the matter;

(b) enter an order of default as provided by Section 63G-4-209; or

(c) hear the matter in the absence of the defaulting party.

R657-2-20. Decisions and Orders.

(1) After the presiding officer has reached a final decision upon the adjudicative proceeding, the presiding officer shall issue a signed order in writing:

(a) in accordance with Section 63G-4-203(1)(c) for orders issued at the conclusion of an informal hearing; and

(b) in accordance with Section 63G-4-208 for orders issued at the conclusion of a formal hearing.

R657-2-21. Agency Review.

(1)(a) When a division action is taken by a division employee, other than the director acting as the presiding officer, any aggrieved party may seek review of the order.

(b) The request for review shall be made to the director in accordance with Section 63G-4-301(1).

(c) Except as provided in Section 63G-4-401(2), review by the director is a prerequisite for judicial review.

(2) Requests for review of an action within the statutory or regulatory purview of the division shall:

(a) be filed with the director within 30 days after the issuance of the order; and

(b) be sent to each party.

(3) The request for review shall be reviewed by the director or the assistant director, when designated by the director.

(4)(a) Unless otherwise provided by law, all reviews shall be based on the record before the presiding officer.

(b) In order to assist in review, parties, upon request, may be allowed to file briefs or other documents explaining their position.

(5) Parties are not entitled to a hearing on review unless:

(a) specifically allowed by statute; or

(b) the director grants a hearing to assist the review.

(6) Notice of any hearing shall be mailed to all parties within 10 days of the hearing.

(7)(a) Within a reasonable time after the filing of any response, other filings, or after any hearing, the director shall issue a written order on review and mail a copy of the order on review to each party.

(b) The order on review shall contain the items, findings, conclusions, and notices set forth in Subsection 63G-4-301(6)(c).

R657-2-22. Judicial Review.

(1) Any party aggrieved by final division or Wildlife Board action may obtain judicial review of such action pursuant to Sections 63G-4-401, 63G-4-402, and 63G-4-403, except where judicial review is expressly prohibited by statute.

(2) A petition for judicial review shall be filed within 30 days after the date the order constituting final agency action is issued.

(3) A party may seek judicial review of an action taken by the division or Wildlife Board only after exhausting all administrative remedies available, including those available through the Wildlife Board and the regional advisory councils, as required herein, unless a court of competent jurisdiction makes a finding that requiring exhaustion:

(a) would result in irreparable injury; or

(b) would serve no useful purpose.

R657-2-23. Declaratory Orders.

(1) Pursuant to Section 63G-4-503, any person may file a request for agency action requesting that the division or Wildlife Board issue a declaratory order determining the applicability of any statute, rule, or order within the primary jurisdiction of the division or Wildlife Board.

(2) A request for a declaratory order shall set forth:

(a) the specific statute, rule, or order which is in question;

(b) the specific facts for which the order is requested;

(c) the manner in which the person making the request claims the statute, rule, or order may affect him or her; and

(d) the specific questions for which a declaratory order is requested.

(3) The division or Wildlife Board may, in their discretion, decline to issue declaratory orders where they deem the facts presented to be conjectural, or where the public interest would best be served by not issuing such an order.

R657-2-24. Emergency Orders.

The division or Wildlife Board may issue an order on an emergency basis without complying with this rule under the circumstances and procedures set forth in Section 63G-4-502.

KEY: wildlife, administrative procedures
July 3, 2002 63G-4-203
Notice of Continuation May 7, 2007 23-14-2.1

R657. Natural Resources, Wildlife Resources.
R657-3. Collection, Importation, Transportation, and Possession of Zoological Animals.
R657-3-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah and in accordance with a memorandum of understanding with the Department of Agriculture and Food, Department of Health, and the Division of Wildlife Resources, this rule governs the collection, importation, exportation, transportation, and possession of animals and their parts.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, the Wildlife Board may allow the collection, importation, transportation, and possession of species of zoological animals under specific circumstances as provided in Rules R657-4 through R657-6, R657-9 through R657-11, R657-13, R657-14, R657-16, R657-19, R657-20 through R657-22, R657-33, R657-37, R657-40, R657-46 and R657-53. Where a more specific provision has been adopted, that provision shall control.

(4) Holding raccoons and coyotes in captivity is governed by the Department of Agriculture and Food under Section 4-23-11 and Rule R58-14. The importation of coyotes and raccoons into Utah is governed by the Wildlife Board and is prohibited under this rule.

(5) This rule does not apply to division employees acting within the scope of their assigned duties.

R657-3-2. Species Not Covered by This Rule.

The following species of domestic animals are not governed by this rule:

(1) Alpaca (Lama pocos);
(2) Ass and donkey (Equus asinus);
(3) Bison, privately owned (Bos bison);
(4) Camel (Camelus bactrianus and Camelus dromedarius);
(5) Cassowary (all species)
(6) Cat, including any domestic breed recognized by The International Cat Association (Felis catus);
(7) Cattle (Bos taurus and Bos indicus);
(8) Chicken (Gallus gallus);
(9) Chinchilla (Chinchilla laniger);
(10) Dog and dog hybrids (Canis familiaris);
(11) Ducks distinguishable morphologically from wild birds (Anatidae);
(12) Elk, privately owned (Cervus elaphus canadensis);
(13) Emu (Dromaius novaehollandiae);
(14) European ferret (Mustela putorius);
(15) Fowl (guinea) (Numida meleagris);
(16) Fox, privately owned, ranch-raised amber, blue and silver forms (Vulpes vulpes);
(17) Geese, distinguishable morphologically from wild geese (Anatidae);
(18) Gerbils (Meriones unguiculatus);
(19) Goat (Capra hircus);
(20) Hamster (Syrian or golden) (Mesocricetus auratus and Mesocricetus brandti);
(21) Hedgehog (white bellied)(Erinaceideae atelerix albiventris)
(22) Horse (Equus caballus and hybrids with Equus asinus);
(23) Llama (Lama glama);
(24) Mice (Mus musculus);
(25) Mink, privately owned, ranch-raised (Mustela vison);
(26) Ostrich (Struthio camelus);
(27) Peafowl (Pavo cristatus);
(28) Pig (guinea) (Cavia porcellus);
(29) Pigeon (Columba livia);
(30) Rabbit (European) (Oryctolagus cuniculus);
(31) Rats (Rattus norvegicus and Rattus rattus);
(32) Rhea (Rhea americana);
(33) Sheep (Ovis aries);
(34) Swine (Sus scrofa);
(35) Turkey, privately owned, pen-raised domestic varieties (Meleagris gallopavo). Domestic varieties means any turkey or turkey egg held under human control and which is imprinted on other poultry or humans and which does not have morphological characteristics of wild turkeys;
(36) Water buffalo (Bubalis arnee);
(37) Yak (Bos mutus); and
(38) Zebu (Bos indicus)

R657-3-3. Cooperative Agreements with Department of Health and Department of Agriculture and Food -- Agency Responsibilities.

(1) The division, the Department of Agriculture and Food, and the Department of Health work cooperatively through memorandums of understanding to:

(a) protect the health, welfare, and safety of the public;

(b) protect the health, welfare, safety, and genetic integrity of wildlife, including environmental and ecological impacts; and

(c) protect the health, welfare, safety, and genetic integrity of domestic livestock, poultry, and other animals.

(2) The division is responsible for:

(a) issuing certificates of registration for the collection, possession, importation, and transportation of zoological animals;

(b) maintaining the integrity of wild and free-roaming protected wildlife;

(c) determining the species of aquatic animals which may be imported into, possessed, and transported within the state;

(d) preventing the outbreak and controlling the spread of disease-causing pathogens among aquatic animals in public aquaculture facilities;

(e) preventing the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from public aquaculture facilities and private ponds to aquatic wildlife, other animals, and humans; and

(f) enforcing laws and rules made by the Wildlife Board governing the collection, importation, transportation, and possession of zoological animals.

(3)(a) The Utah Department of Agriculture and Food is responsible for eliminating, reducing, and preventing the spread of diseases among livestock, fish, poultry, wildlife, and other animals by providing standards for:

(i) the importation of livestock, fish, poultry, and other animals, including wildlife, as provided in Section R58-1-4;

(ii) the control of predators and depredating animals as provided in Title 4, Chapter 23, Agriculture and Wildlife Damage Prevention Act;

(iii) enforcing laws and rules made by the Wildlife Board governing species of aquatic animals which may be imported into the state or possessed or transported within the state that are applicable to aquaculture or fee fishing facilities;

(iv) preventing the outbreak and controlling the spread of disease-causing pathogens among aquatic animals in aquaculture and fee fishing facilities; and

(v) preventing the spread of disease-causing pathogens from aquatic animals in, to be deposited in, or harvested from aquaculture or fee fishing facilities to aquatic wildlife, or other animals, and humans.

(b) The Department of Agriculture and Food may make regulatory decisions concerning the collection, importation, transportation, and possession of zoological animals if a disease

is suspected of endangering livestock, fish, poultry, or other domestic animals.

(4) The Utah Department of Health is responsible for promoting and protecting public health and welfare and may make recommendations to the division concerning the collection, importation, transportation, and possession of zoological animals if a disease or animal is suspected of endangering public health or welfare.

R657-3-4. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Aquaculture" means the controlled cultivation of aquatic animals.

(3)(a) "Aquaculture facility" means any tank, canal, raceway, pond, off-stream reservoir, or other structure used for aquaculture. "Aquaculture facility" does not include any public aquaculture facility or fee fishing facility.

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

(4) "Aquatic animal" means a member of any species of fish, mollusk, or crustacean, including their gametes.

(5) "Captive-bred" means any privately owned zoological animal, which is born inside of and has spent its entire life in captivity and is the offspring of privately owned zoological animals that are born inside of and have spent their entire life in captivity.

(6) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of zoological animals, as provided in Rule R58-1.

(7) "CFR" means the Code of Federal Regulations.

(8) "CITES" means the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

(a) Appendix I of CITES protects threatened species from all international commercial trade; and

(b) Appendix II of CITES regulates trade in species not threatened with extinction, but which may become threatened if trade goes unregulated.

(c) CITES appendices are published periodically by the CITES Secretariat and reprinted by the U.S. Fish and Wildlife Service in 50 CFR 23.23, 2002, ed., which is incorporated herein by reference.

(9) "Collect" means to take, catch, capture, salvage, or kill any zoological animal within Utah.

(10) "Commercial use" means any activity through which a person in possession of a zoological animal:

(a) receives any consideration for that zoological animal or for a use of that zoological animal, including nuisance control and roadkill removal; or

(b) expects to recover all or any part of the cost of keeping the zoological animal through selling, bartering, trading, exchanging, breeding, or other use, including displaying the zoological animal for entertainment, advertisement, or business promotion.

(11) "Controlled species" means a species or subspecies of zoological animal that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(12) "Educational use" means the possession and use of a zoological animal for conducting educational activities concerning wildlife and wildlife-related activities.

(13) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection. The entry permit number must be written on the certificate of veterinary inspection before the importation of the zoological animal. The entry permit is valid only for 30 days after its issuance.

(14) "Export" means to move or cause to move any zoological animal from Utah by any means.

(15) "Fee fishing facility" means a body of water used for holding or rearing fish to provide fishing for a fee or for pecuniary consideration or advantage.

(16) "Import" means to bring or cause a zoological animal to be brought into Utah by any means.

(17) "Native species" means any species or subspecies of zoological animal that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(18) "Naturalized species" means any species or subspecies of zoological animal that is not native to Utah but has established a wild, self-sustaining population in Utah.

(19) "Noncontrolled species" means a species or subspecies of zoological animal that if taken from the wild, introduced into the wild, or held in captivity, poses no detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(20)(a) "Nonnative species" means a species or subspecies of zoological animal that is not native to Utah.

(b) "Nonnative species" does not include domestic animals or naturalized species of zoological animals.

(21)(a) "Ornamental fish" means fish that are raised or kept for their beauty rather than use, or that arouse interest for their uncommon or exotic characteristics, including tropical fish, goldfish, and koi.

(b) "Ornamental fish" does not include any species listed as prohibited or controlled in Sections R657-3-23.

(22) "Personal use" means the possession and use of a zoological animal for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(23) "Possession" means to physically retain or to exercise dominion or control over a zoological animal.

(24) "Prohibited species" means a species or subspecies of zoological animal that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-3-20(1)(b) or R657-3-36.

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

(26) "Scientific use" means the possession and use of a zoological animal for conducting scientific research that is directly or indirectly beneficial to wildlife or the general public.

(27) "Transport" means to move or cause to move any zoological animal within Utah by any means.

(28) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

(29)(a) "Zoological animal" means:

(i) native, naturalized, and nonnative species of animals, occurring in the wild, captured from the wild, or born or raised in captivity;

(ii) hybrids of any native, naturalized, or nonnative species or subspecies of animals; and

(iii) viable embryos or gametes of any native, naturalized, or nonnative species or subspecies of animals.

(b) "Zoological animal" does not include species listed as domestic in Subsection R657-3-2, or amphibians or reptiles as

defined in Rule R657-53.

R657-3-5. Liability.

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, and possession of the authorized zoological animal and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division, Department of Agriculture and Food, and Department of Health shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing zoological animals.

R657-3-6. Animal Welfare.

(1) Any zoological animal held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including the humane handling, care, confinement, transportation, and feeding, as provided in:

(a) 9 CFR Section 3 Subpart F, 2002 ed., which is adopted and incorporated by reference;

(b) Section 76-9-301; and

(c) Section 7 CFR 2.17, 2.51, and 371.2(g), 2002 ed., which are incorporated by reference.

(2) A person commits cruelty to animals under this section if that person intentionally, knowingly, or with criminal negligence, as defined in Section 76-2-103:

(a) tortures or seriously overworks an animal; or

(b) fails to provide necessary food, care, or shelter for any animal in that person's custody.

(3) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any zoological animal.

R657-3-7. Nuisance Birds -- Nuisance Porcupine, Striped Skunk, and Squirrel.

(1)(a) A person is not required to obtain a certificate of registration or a federal permit to kill American Crows or Black-billed Magpies when found committing, or about to commit, depredations upon ornamental or shade trees, agricultural crops, livestock, or wildlife, or when concentrated in such numbers and manner as to constitute a health hazard or other nuisance, provided:

(i) none of the birds killed pursuant to this section, nor their plumage, are sold or offered for sale; and

(ii) any person killing American Crows or Black-billed Magpies shall:

(A) allow any federal warden or conservation officer unrestricted access over the premises where American Crows or Black-billed Magpies are killed; and

(B) furnish any information concerning the control operations to the division or federal official upon request.

(b) A person may kill American Crows or Black-billed Magpies by any means, excluding bait, explosives or poison, and only on or over the threatened area.

(c) American Crows and Black-billed Magpies killed pursuant to this section shall be collected immediately and must be disposed of at a landfill that accepts wildlife carcasses or must be buried or incinerated.

(d) This subsection incorporates Section 50 CFR 21.42 and 21.43, 2002, ed., by reference.

(2)(a) A person may capture, transport, and kill or release a nuisance porcupine, striped skunk, or squirrel without obtaining a certificate of registration.

(b) A nuisance porcupine, striped skunk, or squirrel may be released only as follows:

(i) within 48 hours of capture;

(ii) within the county in which it was captured; and

(iii) in a location where it does not pose a risk to human health or safety, or create other conflict with humans, agriculture, or other animals.

R657-3-8. Collection, Importation, and Possession of Threatened and Endangered Species and Migratory Birds.

(1) The following species are prohibited from collection, possession, and importation into Utah without first obtaining a certificate of registration from the division, a federal permit from the U.S. Fish and Wildlife Service, and an entry permit number from the Department of Agriculture and Food if importing:

(a) any species which have been determined by the U.S. Fish and Wildlife Service to be endangered or threatened pursuant to the federal Endangered Species Act, as amended; and

(b) any species of migratory birds protected under the Migratory Bird Treaty Act.

(2) Federal laws and regulations apply to threatened and endangered species and migratory birds in addition to state and local laws.

R657-3-9. Release of Zoological Animals to the Wild -- Capture or Disposal of Escaped Wildlife.

(1)(a) Except as provided in Title 4, Chapter 37, the Aquaculture Act and Subsection R657-3-7(2), a person may not release to the wild or release into any public or private waters any zoological animal, including fish, without first obtaining authorization from the division.

(b) A violation of this section is punishable under Section 23-13-14.

(2) The division may seize or dispose of any illegally held zoological animal.

(3)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live zoological animal that escapes from captivity.

(b) The division may retain custody of any recaptured zoological animal until the costs of recapture or care have been paid by its owner or keeper.

R657-3-10. Inspection of Documentation, Facilities, and Zoological Animals.

(1) A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit:

(a) any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession;

(b) any zoological animal; or

(c) any device, apparatus, or facility used for activities covered by this rule.

(2) Inspection shall be made during reasonable hours.

R657-3-11. Certificate of Registration Required.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, or possessing any species of zoological animal or its parts classified as prohibited or controlled, except as otherwise provided by the Wildlife

Board or rules of the Wildlife Board as provided in Subsection R657-3-1(3).

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any species or subspecies of zoological animal classified as noncontrolled;

(ii) to export any species or subspecies of zoological animal from Utah, provided that the zoological animal is held in legal possession; or

(iii) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:

(A) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;

(B) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(C) the brine shrimp or brine shrimp eggs following possession are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.

(c) Applications for zoological animals classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the zoological animal meets the criteria provided in Subsections R657-3-20(1)(b) or R657-3-18(4)(b).

(2)(a) Certificates of registration are not transferable and expire December 31 of the year issued, except as otherwise designated on the certificate of registration.

(b) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

(c) Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(4) A single certificate of registration may authorize more than one activity.

(5)(a) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the zoological animal involved, including requirements for veterinary care, cage or holding pen sizes and standards, feeding requirements, social grouping requirements, and other requirements considered necessary by the division for the health and welfare of the zoological animal or the public.

(b) The authorizations on the face of the certificate of registration setting forth specific times, dates, places, methods of take, numbers and species of zoological animals, location of activity, authorization for certain circumscribed transactions, or other designated conditions are to be strictly construed and shall not be interpreted to permit similar or related matters outside the scope of strict construction.

(6)(a) Upon or before the expiration date of a certificate of registration, the holder must apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-3-14 in determining whether to issue the new certificate of registration.

(c) If an application is not made by the expiration date, live or dead zoological animals held in possession under the expired certificate of registration shall be considered unlawfully held and may be seized by the division.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of registration shall remain valid while the application is pending.

(7) Failure to submit timely, accurate, or valid reports as required under Section R657-3-16 and the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(8) A certificate of registration may be revoked as provided in Section 23-19-9 and Rule R657-26.

R657-3-12. Application Procedures -- Fees.

(1)(a) Applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) The application may require up to 45 days for review and processing.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies upon request if, in the opinion of the division, the activity is significantly beneficial to the division, wildlife, or wildlife management.

R657-3-13. Retroactive Effect on Possession.

A person lawfully possessing a zoological animal prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that zoological animal where the animal's species classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited. The certificate of registration shall be obtained within six months of the reclassification, or possession of the zoological animal thereafter shall be unlawful.

R657-3-14. Issuance Criteria.

(1) The following factors shall be considered before the division may issue a certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife, domestic livestock, poultry, and other animals;

(c) ecological and environmental impacts;

(d) the suitability of the applicant's holding facilities;

(e) the experience of the applicant for the activity requested; and

(f) ecological or environmental impact on other states.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of a zoological animal;

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including the requisite education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the zoological animal, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of a zoological animal:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that when considered with the functions and responsibilities of collecting, importing, possessing or propagating a zoological animal bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board;

(c) the applicant misrepresented or failed to disclose material information required in connection with the application; or

(d) holding the zoological animal at the proposed location violates federal, state, or local laws.

(5) The collection or importation and subsequent possession of a zoological animal shall be granted only upon a clear demonstration that the criteria established in this section have been met by the applicant.

(6) The division, in making a determination under this section, may use any information available that is relevant to the issuance of the certificate of registration, including independent inquiry or investigation to verify information or substantiate the qualifications asserted by the applicant.

(7) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(8) An appeal of the denial of an application may be made as provided in Section R657-3-37.

R657-3-15. Amendment to Certificate of Registration.

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-3-14, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-3-37.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) Zoological animals or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-3-16. Records and Reports.

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any zoological animal has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for two years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

(3) Failure to submit the appropriate records and reports may result in revocation or denial of a certificate of registration.

R657-3-17. Collection, Importation or Possession for Personal Use.

(1) A person may collect, import or possess live or dead zoological animals or their parts for a personal use only as follows:

(a) Certificates of registration are not issued for the collection, importation or possession of any live or dead zoological animals or their parts classified as prohibited.

(b) A certificate of registration is required for collecting, importing or possessing any live or dead zoological animals or their parts classified as controlled, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collecting, importing or possessing live or dead zoological animals or their parts classified as noncontrolled.

(2) Notwithstanding Subsection (1), a person may import or possess any dead zoological animal or its parts, except as provided in Section R657-3-8, for a personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag, certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-3-18. Collection, Importation or Possession of a Live Zoological Animal for a Commercial Use.

(1)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect or possess a live zoological animal for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, a certificate of registration or a memorandum of understanding with the division.

(b) Use of brine shrimp for culturing ornamental fish is not a commercial use if the brine shrimp eggs are not sold, bartered, or traded and no more than 200 pounds are collected annually.

(2)(a) A person may import or possess a live zoological animal classified as non-controlled for a commercial use or a commercial venture, except native or naturalized species of zoological animals may not be sold or traded unless they originate from a captive-bred population.

(b) Complete and accurate records for native or naturalized species must be maintained and available for inspection for two years from the date of transaction, documenting the date, name, phone number, and address of the person from whom the zoological animal has been obtained.

(3)(a) A person may not import or possess a live zoological animal classified as controlled for a commercial use or commercial venture, without first obtaining a certificate of registration.

(b) A certificate of registration will not be issued to sell or trade a native or naturalized species of zoological animal unless it originates from a captive-bred population.

(c) It is unlawful to transfer a live zoological animal classified as controlled to a person who does not have a certificate of registration to possess the zoological animal.

(d) Complete and accurate records must be maintained and available for inspection for two years from the date of transaction, documenting the date, name, phone number, and address of the person from whom the zoological animal has been obtained.

(e) Complete and accurate records must be maintained and available for inspection for two years from the date of transfer, documenting the date, name, address and certificate of registration number of the person receiving the zoological animal.

(4)(a) A certificate of registration will not be issued for importing or possessing a live zoological animal classified as prohibited for a commercial use or commercial venture, except as provided in Subsection (b).

(b) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import or possess live species of zoological animals classified as prohibited if, in the opinion of the division, the importation for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(c) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited species of zoological animals in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(5) An entry permit, and a certificate of veterinary inspection are required by the Department of Agriculture to import a live zoological animal classified as noncontrolled, controlled or prohibited.

R657-3-19. Collection, Importation or Possession of Dead Zoological Animals or Their Parts for a Commercial Use.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect, import or possess any dead zoological animal or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(2) The restrictions in Subsection (1) do not apply to the following:

(a) the commercial use of a dead coyote, jackrabbit, muskrat, raccoon, or its parts;

(b) a business entity that has obtained a certificate of registration from the division to conduct nuisance wildlife control or carcass removal is allowed; and

(c) dead zoological animals sold or traded for educational use.

R657-3-20. Collection, Importation or Possession for Scientific or Educational Use.

A person may collect, import or possess live or dead zoological animals or their parts for a scientific or educational use only as follows:

(1)(a) Certificates of registration are not issued for collecting, importing or possessing live or dead zoological animals classified as prohibited, except as provided in Subsection (b).

(b) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit institution, or a person involved in wildlife research to collect, import or possess live or dead zoological animals classified as prohibited if, in the opinion of the division, the scientific or educational use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(2) A person shall obtain a certificate of registration before collecting, importing or possessing live or dead zoological animals or their parts classified as controlled.

(3) A certificate of registration is not required to collect, import or possess live or dead zoological animals classified as noncontrolled.

R657-3-21. Classification and Specific Rules for Birds.

(1) The following birds are classified as noncontrolled for collection, importation and possession:

(a) Penguins, Spheniscidae Family, (All species);

(b) Megapodes (Mound-builders), Megapodiidae Family (All species);

(c) Coturnix quail, Phasianidae Family (Coturnix spp.);

(d) Buttonquails, Turnicidae Family (All species);

(e) Turacos (including Plantain eaters and Go-away-birds), Musophagidae Family (All species);

(f) Pigeons and Doves, Columbidae Family (All species not native to North America);

(g) Parrots, Psittacidae Family (All species not native to North America);

(h) Rollers, Coraciidae Family (All species);

(i) Motmots, Momotidae Family (All species);

(j) Hornbills, Bucerotidae Family (All species);

(k) Barbets, Capitonidae and Rhamphastidae Families (Capitoninae) (All species not native to North America;

(l) Toucans, Ramphastidae and Rhamphastidae Families (Ramphastinae) (All species not native to North America;

(m) Broadbills, Eurylaimidae Family (All species);

(n) Cotingas, Cotingidae Family (All species);

(o) Honeyeaters, Meliphagidae Family (All species);

(p) Leafbirds and Fairy-bluebirds, Irenidae Family (Irena spp., Chloropsis spp., and Aegithina spp.);

(q) Starlings, Sturnidae Family (All species, except European Starling);

(r) Babblers, Timaliidae Family (All species);

(s) White-eyes, Zosteropidae Family (All species);

(t) Sunbirds, Nectariniidae Family (All species);

(u) Sugarbirds, Promeropidae Family (All species)

(v) Weaver finches, Ploceidae Family (All species);

(w) Estrildid finches (Waxbills, Mannikins, and Munias) Estrildidae Family, (Estrildidae) (Estrildinae)(All species); and

(x) Vidua finches (Indigobirds and Whydahs) Viduidae Family, Estrildidae (Viduinae) (All species);

(y) Finches and Canaries, Fringillidae Family (All species not native to North America);

(z) Tanagers (including Swallow-tanager), Thraupidae Family (All species not native to North America); and

(aa) Icterids (Troupials, Blackbirds, Orioles, etc.), Icteridae Family (All species not native to North America, except Central and South American Cowbirds).

(2) The following birds are classified as noncontrolled for collection and possession, and controlled for importation:

(a) European Starling, Sturnidae Family (Sturnus vulgaris); and

(b) House (English) Sparrow, Passeridae Family (Passer domesticus).

(3) The following birds are classified as prohibited for collection and importation, and controlled for possession:

(a) Icteridae (Molothrus spp. and Scaphidura oryzivora).

(4) The following birds are classified as prohibited for collection, importation and possession:

(a) Ocellated turkey, Phasianidae Family, (Meleagris ocellata).

(5) All species and subspecies of birds and their parts, including feathers, not listed in Subsection (1) through Subsection (4):

(a) and not listed in Appendix I or II of CITES are classified as prohibited for collection and controlled for importation and possession;

(b) and listed in Appendix I of CITES are classified as prohibited for collection and importation and controlled for

possession;

(c) and listed in Appendix II of CITES are classified as prohibited for collection and controlled for importation and possession.

R657-3-22. Classification and Specific Rules for Crustaceans and Mollusks.

(1) Crustaceans are classified as follows:

(a) Asiatic (Mitten) Crab, Grapsidae Family (Eriocheir, All species) are prohibited for collection, importation and possession;

(b) Brine shrimp, Mysidae Family (All species) are classified as controlled for collection, and noncontrolled for importation and possession;

(c) Red-claw crayfish, Astacidae Family (Cherax quadricarinatus) is prohibited for collection, and controlled for importation and possession;

(d) Crayfish, Astacidae, Cambaridae and Parastacidae Families (All species except Cherax quadricarinatus) are prohibited for collection, importation and possession;

(e) Daphnia, Daphnidae Family (Daphnia lumholtzi) is prohibited for collection, importation and possession;

(f) Fishhook water flea, Cercopagidae Family (Cercopagis pengoi) is prohibited for collection, importation and possession; and

(g) Spiny water flea, Cercopagidae Family (Bythotrephes cederstroemii) is prohibited for collection, importation and possession.

(2) Mollusks are classified as follows:

(a) African giant snail, Achatinidae Family (Achatina fulica) is prohibited for collection, importation and possession;

(b) Brian head mountainsnail, Oreohelicidae Family (Oreohelix parawanensis) is controlled for collection, importation and possession;

(c) California floater, Anodontidae Family (Anodonta californiensis) is controlled for collection, importation and possession;

(d) Corrugated mountainsnail, Oreohelicidae Family (Oreohelix haydeni corrugata) is controlled for collection, importation and possession;

(e) Cummings' mountainsnail, Oreohelicidae Family (Oreohelix yavapai cummingsi) is controlled for collection, importation and possession;

(f) Deseret mountainsnail, Oreohelicidae Family (Oreohelix peripherica) is controlled for collection, importation and possession;

(g) Desert springsnail, Hydrobiidae Family (Pyrgulopsis deserta) is controlled for collection, importation and possession;

(h) Desert valvata, Valvatidae Family (Valvata utahensis) is prohibited for collection, importation and possession;

(i) Eureka mountainsnail, Oreohelicidae Family (Oreohelix eurekensis) is controlled for collection, importation and possession;

(j) Fat-whorled pondsnail, Lymnaeidae Family (Stagnicola bonnevillensis) is controlled for collection, importation and possession;

(k) Fish lake physa, Physidae Family (Physella microstriata) is controlled for collection, importation and possession;

(l) Fish springs marshsnail, Lymnaeidae Family (Stagnicola pilsbryi) is prohibited for collection, importation and possession;

(m) Glossy valvata, Valvatidae Family (Valvata humeralis) is controlled for collection, importation and possession;

(n) Kanab ambersnail, Succineidae Family (Oxyloma kanabense) is prohibited for collection, importation and possession;

(o) Lyrate mountainsnail, Oreohelicidae Family (Oreohelix haydeni) is controlled for collection, importation and possession;

(p) New Zealand Mudsnail, Hydrobiidae Family (Potamopyrgus antipodarum) is prohibited for collection, importation and possession;

(q) Quagga mussel, Dreissenidae Family (Dreissena bugenses) is prohibited for collection, importation and possession;

(r) Spruce snail, Thysanophoridae Family (Microphysula ingersolli) is controlled for collection, importation and possession;

(s) Thickshell pondsnail, Lymnaeidae Family (Stagnicola utahensis) is prohibited for collection, importation and possession;

(t) Utah physa, Physidae Family (Physella utahensis) is controlled for collection, importation and possession;

(u) Wet-rock physa, Physidae Family (Physella zionis) is controlled for collection, importation and possession;

(v) Yavapai mountainsnail, Oreohelicidae Family (Oreohelix yavapai) is controlled for collection, importation and possession; and

(w) Zebra mussel, Dreissenidae Family (Dreissena polymorpha) is prohibited for collection, importation and possession.

(x) Red-Rimmed Melania, Thiaridae Family (Melanoides tuberculatus) is prohibited for collection, importation and possession.

(y) Western Pearlshell, Margaritiferidae Family (Margaritifera falcata) is prohibited for collection, importation and possession.

(3) All native species and subspecies of crustaceans and mollusks not listed in Subsection (1) and (2) are classified as noncontrolled for collection, importation and possession.

(4) All nonnative species and subspecies of crustaceans and mollusks not listed in Subsection (1) and (2) are classified as prohibited for collection, importation and possession.

R657-3-23. Classification and Specific Rules for Fish.

(1) All species of fish listed in Subsections (2) through (30) are classified as prohibited for collection, importation and possession, except:

(a) Koi, Cyprinidae Family (Cyprinus carpio) is prohibited for collection, and noncontrolled for importation and possession;

(b) all species and subspecies of ornamental fish not listed in Subsections (2) through (30) are classified as prohibited for collection, and noncontrolled for importation and possession; and

(c) all species and subspecies of non-ornamental fish (native and/or nonnative) not listed in Subsections (2) through (30) are classified as prohibited for collection, and controlled for importation and possession.

(2) Carp, including hybrids, Cyprinidae Family, (All species, except Koi).

(3) Catfish:

(a) Flathead catfish, Ictaluridae Family (Pylodictus olivaris);

(b) Giant walking catfish (airsac), Heteropneustidae Family (All species);

(c) Labyrinth catfish (walking), Clariidae Family (All species); and

(d) Parasitic catfish (candiru, carnero) Trichomycteridae Family (All species).

(e) Blue catfish, Ictaluridae Family (Ictalurus furcatus).

(4) Herring:

(a) Alewife, Clupeidae Family (Alosa pseudoharengus); and

(b) Gizzard shad, Clupeidae Family (Dorosoma cepedianum).

(5) Killifish, Fundulidae Family (All species).

(6) Pike killifish, Poeciliidae Family (Belonesox belizanus).
(7) Minnows:
(a) Bonytail, Cyprinidae Family (Gila elegans);
(b) Colorado pikeminnow, Cyprinidae Family (Ptychocheilus lucius);
(c) Creek chub, Cyprinidae Family (Semotilus atromaculatus);
(d) Humpback chub, Cyprinidae Family (Gila cypha);
(e) Least chub, Cyprinidae Family (Iotichthys phlegethontis);
(f) Northern Leatherside chub, Cyprinidae Family (Lepidomeda copei);
(g) Southern Leatherside chub, Cyprinidae Family (Lepidomeda aliciae);
(h) Red shiner, Cyprinidae Family (Cyprinella lutrensis);
(i) Redside shiner, Cyprinidae Family (Richardsonius balteatus);
(j) Roundtail chub, Cyprinidae Family (Gila robusta);
(k) Sand shiner, Cyprinidae Family (Notropis stramineus);
(l) Utah chub, Cyprinidae Family (Gila atraria);
(m) Virgin River chub, Cyprinidae (Gila seminuda); and
(n) Virgin spinedace, Cyprinidae Family (Lepidomeda mollispinis).
(o) Emerald shiner, Cyprinidae Family (Notropis athernoides).
(p) Woundfin, Cyprinidae Family (Plagopterus argentissimus).
(8) Burbot, Lotidae Family (Lota lota).
(9) Suckers:
(a) Bluehead sucker, Catostomatidae Family (Catostomus discobolus);
(b) Desert sucker, Catostomatidae Family (Catostomus clarki);
(c) Flannelmouth sucker, Catostomatidae Family (Catostomus latipinnis);
(d) June sucker, Catostomatidae Family (Chasmistes liorus);
(e) Razorback sucker, Catostomatidae Family (Xyrauchen texanus);
(f) Utah sucker, Catostomatidae Family (Catostomus ardens); and
(g) White sucker, Catostomatidae Family (Catostomus commersoni).
(10) White perch, Moronidae Family (Morone americana).
(11) Cutthroat trout, Salmonidae Family (Oncorhynchus clarki)(All subspecies).
(12) Bowfin, Amiidae Family (All species).
(13) Bull shark, Carcharhinidae Family (Carcharhinus leucas).
(14) Drum (freshwater forms), Sciaenidae Family (All species).
(15) Gar, Lepidsosteidae Family (All species).
(16) Jaguar guapote, Cichlidae Family (Cichlasoma managuense).
(17) Lamprey, Petromyzontidae Family (All species).
(18) Mexican tetra, Characidae Family (Astyanax mexicanus, except blind form).
(19) Mooneye, Hiodontidae Family (All species).
(20) Nile perch, Centropomidae Family (Lates, luciolates) (All species).
(21) Northern pike, Esocidae Family (Esox lucius).
(22) Pirhana, Characidae Family (Serrasalmus, All species).
(23) Round goby, Gobiidae Family (Neogobius melanostomus).
(24) Ruffe, Percidae Family (Gymnocephalus cernuus).
(25) Snakehead, Channidae Family (All species).
(26) Stickleback, Gasterosteidae Family (All species).
(27) Stingray (freshwater), Dasyatidae Family (All species).
(28) Swamp eel, Synbranchidae Family (All species).
(29) Tiger fish, guavinus, Erythrinidae Family (Hoplias malabaricus).
(30) Tilapia, Cichlidae Family (Tilapia and Sarotherodon) (All species).

R657-3-24. Classification and Specific Rules for Mammals.
(1) Mammals are classified as follows:
(a) Monotremes (Platypus and Spiny anteaters), Ornithorhynchidae and Tachyglossidae Families (All species) are prohibited for collection, and controlled for importation and possession;
(b) Marsupials are classified as follows:
(i) Opossum, Didelphidae Family (Didelphis virginiana) is noncontrolled for collection, prohibited for importation and controlled for possession;
(ii) Sugar glider, Petauridae Family (Petaurus breviceps) is noncontrolled for collection, importation or possession;
(iii) Wallabies, Macropodidae Family (All species) are prohibited for collection, importation and possession;
(c) Bats and flying foxes (Chiroptera), All families (All species) are prohibited for collection, importation and possession;
(d) Insectivores (Insectivora) are controlled for collection, importation and possession;
(e) Hedgehogs and Tenrecs, Erinaceidae and Tenrecidae Families, except white bellied hedgehogs are controlled for collection, importation and possession;
(f) Shrews, Sorcidae Family (Sorex spp. and Notisorex spp.) are controlled for collection, importation and possession;
(g) Anteaters, Sloths and Armadillos (Xenartha), All families (All species) are prohibited for collection, and controlled for importation and possession;
(h) Aardvark (Tublidentata), Orycteropodidae Family (Orycteropus afer) is prohibited for collection, and controlled for importation and possession;
(i) Pangolins or Scaly Anteaters (Philodota), Manis spp., are prohibited for collection and importation, and controlled for possession;
(j) Tree shrews (Scandentia),Tupalidae Family (All species) are prohibited for collection, and controlled for importation and possession;
(k) Lagomorphs (Rabbits, Hares and Pikas) are classified as follows:
(i) Jackrabbits, Leporidae Family (Lepus spp.) are noncontrolled for collection, and controlled for importation and possession;
(ii) Cottontails, Leporidae Family (Syvilagus spp.) are prohibited for collection, and controlled for importation and possession;
(iii) Pygmy rabbit, Leporidae Family (Brachylagus idahoensis) is prohibited for collection, and controlled for importation and possession;
(iv) Snowshoe hare, Leporidae Family (Lepus americanus) is prohibited for collection, and controlled for importation and possession;
(v) Pika, Ochotonidae Family (Ochotona princeps) is controlled for collection, importation and possession;
(l) Elephant shrews (Macroscelidea), Macroscelididae Family (All species) are prohibited for collection, and controlled for importation and possession;
(m) Rodents (Rodentia) are classified as follows:
(i) Beaver, Castoridae Family (Castor canadensis) is controlled for collection, importation and possession;
(ii) Muskrat, Cricetidae Family (Ondatra zibethicus) are noncontrolled for collection, and controlled for importation and possession;

(iii) Deer mice and related species, Cricetidae Family (Peromyscus spp.) are controlled for collection, importation and possession;

(iv) Grasshopper mice, Cricetidae Family (Onychomys spp.) are controlled for collection, importation and possession;

(v) Heather vole, Cricetidae Family (Phenacomys intermedius) is controlled for collection, importation and possession;

(vi) Meadow vole, Cricetidae Family (Microtus pennsylvanicus) is noncontrolled for collection, and controlled for importation and possession;

(vii) Red-backed vole, Cricetidae Family (Clethrionomys gapperi) is controlled for collection, importation and possession;

(viii) Sagebrush vole, Cricetidae Family (Lemmiscus curtatus) is controlled for collection, importation and possession;

(ix) Other voles, Cricetidae Family (Microtus spp.) are controlled for collection, importation and possession;

(x) Western harvest mouse, Cricetidae Family (Reithrodontomys megalotis) is controlled for collection, importation and possession;

(xi) Woodrats, Cricetidae Family (Neotoma spp.) are controlled for collection, importation and possession;

(xii) Nutria, Myocastoridae Family (Myocastor coypus) is noncontrolled for collection, prohibited for importation and controlled for possession;

(xiii) Pocket gophers (all species), Geomyidae Family (Thomomys spp.) are noncontrolled for collection, and controlled for importation and possession;

(xiv) Pocket mice, Heteromyidae Family (Perognathus spp. and Chaetodipus intermedius) are controlled for collection, importation and possession;

(xv) Dark kangaroo mouse, Heteromyidae Family (Microdipodops pallidus) is controlled for collection, importation and possession;

(xvi) Kangaroo rats, Heteromyidae Family (Dipodomys spp.) are controlled for collection, importation and possession;

(xvii) Desert kangaroo rat, Heteromyidae Family (Dipodomys deserti) is controlled for collection, importation and possession;

(xviii) Merriam's kangaroo rat, Heteromyidae Family (Dipodomys merriami) is controlled for collection, importation and possession;

(xix) Ord's kangaroo rat, Heteromyidae Family (Dipodomys ordii) is controlled for collection, importation and possession;

(xx) Abert's squirrel, Sciuridae Family, (Sciurus aberti navajo) is prohibited for collection, importation and possession;

(xxi) Black-tailed prairie dog, Sciuridae Family (Cynomys ludovicianus) is controlled for collection, and prohibited for importation and possession;

(xxii) Gunnison's prairie dog, Sciuridae Family (Cynomys gunnisoni) is controlled for collection, importation and possession;

(xxiii) Utah prairie dog, Sciuridae Family (Cynomys parvidens) is prohibited for collection, importation and possession;

(xxiv) White-tailed prairie dog, Sciuridae Family (Cynomys leucurus) is controlled for collection, importation and possession;

(xxv) Chipmunks, except Yellow-pine chipmunk, Sciuridae Family (Tamias and Eutamias) are noncontrolled for collection, and controlled for importation and possesion;

(xxvi) Yellow-pine chipmunk, Sciuridae Family, (Tamias amoenus) is controlled for collection, importation and possession;

(xxvii) Northern flying squirrel, Sciuridae Family (Glaucomys sabrinus) is controlled for collection, importation and possession;

(xxviii) Southern flying squirrel, Sciuridae Family (Glaucomys volans) is prohibited for collection, importation and possession;

(xxix) Ground squirrel and rock squirrel, except nuisance squirrels, which are noncontrolled for collection, Sciuridae Family (Spermophilus spp. and Ammospermophilus leucurus) are controlled for collection, importation and possession;

(xxx) Red squirrel or chickaree, except for nuisance animals, which are noncontrolled for collection, Sciuridae Family (Tamiasciurus hudsonicus) are controlled for collection, importation and possesion;

(xxxi) Yellow-bellied marmot, Sciuridae Family, (Marmota flaviventris) is controlled for collection, importation and possesion;

(xxxii) Western jumping mouse, Zapodidae Family (Zapus princeps) is controlled for collection, importation and possession;

(xxxiii) Porcupine, Erethizontidae Family (Erethizon dorsatum) is controlled for collection, importation and possession;

(xxxiv) Other South American rodents, Degus and Octodontidae Families (All species) are prohibited for collection, importation and possession;

(xxxv) Dormice, Gliridae and Selevinidae Families (All species) are prohibited for collection, importation and possesion;

(xxxvi) African pouched rats, Muridae Family (All species) are prohibited for collection, importation and possession;

(xxxvii) Jirds, Muridae Family (Meriones spp.) are prohibited for collection, importation and possesion;

(xxxviii) Pygmy mice, Muridae Family (Mus triton) are prohibited for collection, importation and possession;

(xxxix) Spiny mice, Muridae Family (Acomys spp.) are prohibited for collection, importation and possesion;

(xl) Hyraxes (Hyracoidea), Procaviidae Family (All species) are prohibited for collection, and controlled for importation and possession;

(n) Hoofed mammals (Artiodactyla and Perissodactyla) are classified as follows:

(i) Bison or Buffalo (Wild and free ranging), Bovidae Family (Bison bison) is prohibited for collection, importation and possession;

(ii) Collared peccary or javelina, Tayassuidae Family (Pecari tajacu) is prohibited for collection, importation and possession;

(iii) Axis deer, Cervidae Family (Cervus axis) is prohibited for collection, importation and possession;

(iv) Caribou, wild and free ranging, Cervidae Family (Rangifer tarandus) is prohibited for collection, importation and possession;

(v) Caribou, captive-bred, Cervidae Family (Rangifer tarandus) is prohibited for collection, and controlled for importation and possession;

(vi) Elk, wild and free ranging, Cervidae Family (Cervus elaphus) is prohibited for collection, importation and possession;

(vii) Fallow deer, wild and free ranging, Cervidae Family (Cervus dama) is prohibited for collection, importation and possession;

(viii) Fallow deer, captive-bred, Cervidae Family (Cervus dama) is prohibited for collection, and controlled for importation and possession;

(ix) Moose, Cervidae Family (Alces alces) is prohibited for collection, importation and possession;

(x) Mule deer, Cervidae Family (Odocoileus hemionus) is prohibited for collection, importation and possession;

(xi) Red deer, Cervidae Family (Cervus elaphus) is prohibited for collection, importation and possession;

(xii) Rusa deer, Cervidae Family (Cervus timorensis) is prohibited for collection, importation and possession;

(xiii) Sambar deer, Cervidae Family (Cervus unicolor) is prohibited for collection, importation and possession;

(xiv) Sika deer, Cervidae Family (Cervus nippon) is prohibited for collection, importation and possession;

(xv) White-tailed deer, Cervidae Family (Odocoileus virginianus) is prohibited for collection, importation and possession;

(xvi) Muskox, wild and free ranging, Bovidae Family (Ovibos moschatus) is prohibited for collection, importation and possession;

(xvii) Muskox, captive-bred, Bovidae Family (Ovibos moschatus) is prohibited for collection, and controlled for importation and possession;

(xviii) Pronghorn, Antilocapridae Family (Antilocapra americana) is prohibited for collection, importation and possession;

(xix) Barbary sheep or Aoudad, Bovidae Family (Ammotragus lervia) is prohibited for collection, importation and possession;

(xx) Bighorn sheep (including hybrids) Bovidae Family (Ovis canadensis) are prohibited for collection, importation and possession;

(xxi) Dall's and Stone's sheep (including hybrids) Bovidae Family (Ovis dalli) are prohibited for collection, importation and possession;

(xxii) Exotic wild sheep (including hybrids), Bovidae Family (Including Mouflon, Ovis musimon; Asiatic or red sheep, Ovis orientalis; Urial, Ovis vignei; Argali, Ovis ammon; and Snow Sheep, Ovis nivicola) are prohibited for collection, importation and possession;

(xxiii) Rocky Mountain goat, Bovidae Family (Oreamnos americanus) is prohibited for collection, importation and possession;

(xxiv) Ibex, Bovidae Family (Capra ibex) is prohibited for collection, importation and possession;

(o) Carnivores (Carnivora) are classified as follows:

(i) Bears, Ursidae Family (Ursus, all species) are prohibited for collection, importation and possession;

(ii) Coyote, Canidae Family (Canis latrans) is prohibited for importation, and is controlled by the Utah Department of Agriculture for collection and possession;

(iii) Fennec fox, Canidae Family (Vulpes zerda) is prohibited for collection, importation and possession;

(iv) Gray fox, Canidae Family (Urocyon cinereoargenteus) is prohibited for collection, importation and possession;

(v) Kit fox, Canidae Family (Vulpes macotis) is prohibited for collection, importation and possession;

(vi) Red fox, Canidae Family (Vulpes vulpes) is noncontrolled for collection, and prohibited for importation and possession;

(vii) Gray wolf, except hybrids with domestic dogs, Canidae Family (Canis lupus) is prohibited for collection, importation and possession;

(viii) Wild Cats (including hybrids) Felidae Family (All species) are prohibited for collection, importation, and possession;

(ix) Bobcat, wild and free ranging, Felidae Family (Felis rufus) is prohibited for collection, importation and possession;

(x) Bobcat, captive-bred, Felidae Family (Felis rufus) is prohibited for collection, and controlled for importation and possession;

(xi) Cougar, Felidae Family (Felis (Puma) concolor) is prohibited for collection, importation and possession;

(xii) Lynx, wild and free ranging, Felidae Family (Felis lynx) is prohibited for collection, importation and possession;

(xiii) Lynx, captive-bred, Felidae Family (Felis lynx) is prohibited for collection, and controlled for importation and possession;

(xiv) Badger, Mustelidae Family (Taxidea taxus) is prohibited for collection, importation and possession;

(xv) Black-footed ferret, Mustelidae Family (Mustela nigripes) is prohibited for collection, importation or possession;

(xvi) Ermine or short-tailed weasel, Mustelidae Family (Mustela erminea) is prohibited for collection, importation and possession;

(xvii) Long-tailed weasel, Mustelidae Family (Mustela frenata) is prohibited for collection, importation and possession;

(xviii) Marten, wild and free ranging, Mustelidae Family (Martes americana) is prohibited for collection, importation and possession;

(xix) Marten, captive-bred, Mustelidae Family (Martes americana) is prohibited for collection, controlled for importation and possession;

(xx) Mink, except domestic forms, Mustelidae Family (Mustela vison) is prohibited for collection, importation and possession;

(xxi) Northern River Otter, Mustelidae Family (Lutra canadensis) is prohibited for collection, importation and possession;

(xxii) Striped skunk, except nuisance skunks, which are noncontrolled for collection, Mustelidae Family (Mephitis mephitis) is prohibited for collection, importation, and possession;

(xxiii) Western spotted skunk, Mustelidae Family (Spilogale gracilis) is prohibited for collection, importation, and possession;

(xxiv) Wolverine, Mustelidae Family (Gulo gulo) is prohibited for collection, importation and possession;

(xxv) Coatis, Procyonidae Family (Nasua spp. and Nasuella spp.) is prohibited for collection, importation and possession;

(xxvi) Kinkajou, Procyonidae Family (Potos flavus) is prohibited for collection, importation and possession;

(xxvii) Raccoon, Procyonidae Family (Procyon lotor) is prohibited for importation, and controlled by the Department of Agriculture for collection and possession;

(xxviii) Ringtail, Procyonidae Family (Bassariscus astutus) is prohibited for collection, importation and possession;

(xxix) Civets, Genets and related forms, Viverridae Family (All species) are prohibited for collection, importation and possession;

(p) Primates (Prosimians) (Lower Primates) are classified as follows:

(i) Lemurs, Lemuridae Family (All species) are prohibited for collection, importation and possession;

(ii) Dwarf and mouse lemurs, Cheirogaleidae Family (All species) are prohibited for collection, importation and possession;

(iii) Indri and sifakas, Indriidae Family (All species) are prohibited for collection, importation and possession;

(iv) Aye aye, Daubentonidae Family (Daubentonia madagasciensis) is prohibited for collection, importation and possession;

(v) Bush babies, pottos and lorises, Lorisidae Family (All species) are prohibited for collection, importation and possession;

(vi) Tarsiers, Tarsiidae Family (All species) are prohibited for collection, importation and possession;

(vii) Capuchin-like monkeys, Cebidae Family (All species) are prohibited for collection, importation and possession;

(viii) Marmosets and tamarins, Callitrichidae Family (All species) are prohibited for collection, importation and possession;

(ix) Old-world monkeys, which includes baboons and macaques, Cerpithecidae Family (All species) are prohibited for collection, importation and possession;

(x) Great apes (Gorilla, chimpanzee and orangutan), Pongidae Family (All species) are prohibited for collection, importation and possession;

(xi) Lesser apes (Siamang and gibbons), Hylobatidae Family (All species) are prohibited for collection, importation and possession;

(2) All species and subspecies of mammals and their parts, not listed in Subsection (1):

(a) and not listed in Appendix I or II of CITES are classified as prohibited for collection and controlled for importation and possession;

(b) and listed in Appendix I of CITES are classified as prohibited for collection and importation and controlled for possession;

(c) and listed in Appendix II of CITES are classified as prohibited for collection and controlled for importation and possession.

R657-3-25. Importation of Zoological Animals into Utah.

(1) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number before any zoological animal may be imported into Utah.

(2)(a) All live fish imported into Utah and not destined for an aquaculture facility or fee fishing facility must be accompanied by the following documentation:

(i) common or scientific names of fish;

(ii) name and address of the consignor and consignee;

(iii) origin of shipment;

(iv) final destination; and

(v) number of fish shipped.

(b) A person may import live fish destined for an aquaculture facility or fee fishing facility only as provided by Title 4, Chapter 37, Aquaculture Act and the rules promulgated thereunder.

(3) Subsection (2)(a) does not apply to fish or crayfish caught in Lake Powell, Bear Lake, or Flaming Gorge reservoirs under the authority of a valid fishing license and in accordance with Rule R657-13 and the proclamation of the Wildlife Board for taking fish and crayfish.

R657-3-26. Transporting Live Zoological Animals Through Utah.

(1) Any controlled or prohibited zoological animal may be transported through Utah without a certificate of registration if:

(a) the zoological animal remains in Utah no more than 72 hours; and

(b) the zoological animal is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) A certificate of veterinary inspection is required from the state of origin as provided in Rule R58-1 and proof of legal possession must accompany the zoological animal.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

R657-3-27. Importing Zoological Animals into Utah for Processing.

(1) A person shipping zoological animals directly to a state or federally regulated establishment for processing is not required to obtain a certificate of registration or certificate of veterinary inspection provided the animals or their parts are accompanied by a waybill or other proof of legal ownership describing the animals, their source, and indicating the destination.

(2) Any water used to hold or transport fish may not be emptied into a stream, lake, or other natural body of water.

R657-3-28. Transfer of Possession.

(1) A person may possess a zoological animal classified as prohibited or controlled only after applying for and obtaining a certificate of registration from the division as provided in this rule.

(2) Any person who possesses a zoological animal classified as prohibited or controlled may transfer possession of that zoological animal only to a person who has first applied for and obtained a certificate of registration for that zoological animal from the division.

(3) The division may issue a certificate of registration granting the transfer and possession of that zoological animal only if the applicant meets the issuance criteria provided in Section R657-3-14.

R657-3-29. Propagation.

(1) A person may propagate zoological animals classified as noncontrolled for possession.

(2) A person may propagate zoological animals classified as controlled for possession only after obtaining a certificate of registration from the division, or as otherwise authorized in Sections R657-3-30, R657-3-31, and R657-3-32.

(3) A person may not propagate zoological animals classified as prohibited for possession, except as authorized in Sections R657-3-30, R657-3-31 and R657-3-32.

R657-3-30. Propagation of Raptors.

(1) A person may propagate raptors only as provided in this section and Section 50 CFR 21.30, 2002, ed., which is incorporated by reference. All applicants for captive breeding permits must become familiar with this rule and the applicable federal regulations.

(2) A person must apply for a federal raptor propagation permit and a certificate of registration from the division to propagate raptors.

(3) If the applicant requests authority to use raptors taken from the wild, the regional director of the U.S. Fish and Wildlife Service in consultation with the avian program coordinator must determine the following:

(a) whether issuance of the permit would have significant effect on any wild population of raptors;

(b) whether suitable captive stock is available; and

(c) whether wild stock is needed to enhance the genetic variability of captive stock.

(4) Raptors may not be taken from the wild for captive breeding, except as provided in Subsection (3).

(5) A person must obtain authorization from the division before importing raptor semen into Utah or importing captive-raised raptors for sale. The authorization shall be noted on the certificate of registration.

(6) A person may sell a captive-bred raptor properly marked with a band approved by the U.S. Fish and Wildlife Service or issued by the U.S. Fish and Wildlife Service to a raptor breeder who has a valid federal and state license or to state and federally licensed general or master class falconer.

(7) A permittee may not purchase, sell or barter any raptor eggs, any raptors taken from the wild, any raptor semen collected from the wild, or any raptors hatched from eggs taken from the wild.

(8) Each captive bred raptor brought into Utah must be accompanied by a valid certificate of veterinary inspection issued by an accredited veterinarian from the state of origin.

(9) A permittee may use raptors held in possession for propagation in the sport of falconry only if such use is designated on both the propagation permit and the permittee's falconry permit.

(10) Raptors used for falconry on temporary loan to a breeding project, with the division's authorization and accompanied by a Form 3-186A, Migratory Bird Acquisition

and Disposition Report, provided by the U.S. Fish and Wildlife Service, must be included in the loaning falconer's bird number limitation as permitted in the license class designation.

(11)(a) Hybridization with the female of a species which is endangered or threatened is prohibited.

(b) Interspecific hybridization between species is authorized only if each raptor produced is either imprinted on humans or surgically sterilized.

(i) "Imprinted on humans" means hand-raised in isolation from the sight of other raptors from two weeks of age until it is fully feathered.

(c) Documentation of imprinting on humans required under Subsection (b) must be provided by the propagator.

(12) Raptors considered unsuitable for release to the wild from rehabilitation projects, and certified as not releasable by a licensed veterinarian, may be placed in a captive breeding project upon written request from an authorized breeder and with concurrence of the U.S. Fish and Wildlife Service and the division.

(13) A copy of the propagator's annual report of activities required by the U.S. Fish and Wildlife Service must be sent to the division as specified on the certificate of registration.

R657-3-31. Propagation of Bobcat, Lynx, and Marten.

(1)(a) A person may propagate captive-bred bobcat, lynx, or marten only after obtaining a certificate of registration from the division.

(b) The certificate of registration must be renewed annually.

(c) Renewal of a certificate of registration will be subject to submission of a report indicating:

(i) the number of progeny produced;

(ii) the animal's disposition; and

(iii) a certificate of inspection by a licensed veterinarian verifying that the animals are being maintained under healthy and nutritionally adequate conditions.

(2)(a) Any person engaged in propagation must keep at least one male and one female in possession.

(b) Live bobcat, lynx, and marten may not be obtained from the wild.

(c) Bobcat, lynx, and marten held for propagation shall not be maintained as pets and shall not be declawed or defanged.

(3) The progeny and descendants of any bobcat, lynx, or marten may be pelted or sold.

(4)(a) If any bobcat, lynx, or marten is sold live to a person residing in Utah, the purchaser must have first obtained a certificate of registration from the division and must show proof of this fact to the seller.

(b) The offense of selling or transferring a live bobcat, lynx, or marten to a person who has not obtained a certificate of registration shall be punishable against both the transferor and the transferee.

(5)(a) Each pelt must have attached to it a permanent possession tag before being sold, bartered, traded, or transferred to another person.

(b) Permanent possession tags may be obtained at any regional division office and shall be affixed to the pelt by a division employee.

(6) The progeny of bobcat, lynx, or marten may not be released to the wild.

(7) Nothing in this section shall be construed to allow a person holding a certificate of registration for propagation to use or possess a bobcat, lynx, or marten for any purpose other than propagation without express authorization on the certificate of registration.

R657-3-32. Propagation of Caribou, Fallow Deer, Musk-ox, and Reindeer.

(1)(a) A person may propagate captive-bred caribou, fallow deer, musk-ox, or reindeer only after obtaining a certificate of registration from the division.

(b) Any person engaged in the propagation of caribou, fallow deer, musk-ox, or reindeer must submit an annual report identifying the disposition of each animal held in possession during the year.

(2)(a) If any live caribou, fallow deer, musk-ox, or reindeer is sold, traded, or given to another person as a gift in Utah, the purchaser must have first obtained a certificate of registration from the division and must show proof of this fact to the seller.

(b) The offense of selling or transferring a live caribou, fallow deer, musk-ox, or reindeer to a person who has not obtained a certificate of registration shall be punishable against both the transferor and the transferee.

(3) If, at any time, the division determines that the possession or propagation of caribou, fallow deer, musk-ox, or reindeer has a significantly detrimental effect to the health of any population of wildlife, the division may:

(a) terminate the authorization for propagation; and

(b) require the removal or destruction of the animals at the owner's expense.

R657-3-33. Violations.

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-3-34. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of zoological animals;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Public Services Section;

(e) the state veterinarian or his designee; and

(f) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-3-35 and R657-3-36.

R657-3-35. Request for Species Reclassification.

(1) A person may make a request to change the classification of a species or subspecies of zoological animal provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

(3)(a) The application shall include:

(i) the petitioner's name, address, and phone number;

(ii) the species or subspecies for which the application is made;

(iii) the name of all interested parties known by the petitioner;

(iv) the current classification of the species or subspecies;
(v) a statement of the facts and reasons forming the basis for the reclassification; and
(vi) copies of scientific literature or other evidence supporting the change in classification.
(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.
(3)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.
(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.
(4)(a) At the next available Wildlife Board meeting the Wildlife Board shall:
(i) consider the committee recommendation; and
(ii) any information provided by the petitioner or other interested parties.
(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-3-14.
(5) A change in species classification shall be made in accordance with Title 63G, Chapter 4, Administrative Rulemaking Act.
(6) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-3-36. Request for Variance.
(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of a zoological animal classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.
(2)(a) A request for variance shall include the following:
(i) the name, address, and phone number of the person making the request;
(ii) the species or subspecies of zoological animal and associated activities for which the request is made; and
(iii) a statement of the facts and reasons forming the basis for the variance.
(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.
(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.
(4) At the next available Wildlife Board meeting the Wildlife Board shall:
(a) consider the committee recommendation; and
(b) any information provided by the person making the request.
(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-3-14.
(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.
(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.
(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request before its issuance.
(7) A request for variance shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-3-37. Appeal of Certificate of Registration Denial.
(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.
(2) The request must be made within 30 days after the date of the denial.
(3) The request shall include:
(a) the name, address, and phone number of the petitioner;
(b) the date the request was mailed;
(c) the species or subspecies of zoological animals and the activity for which the application was made; and
(d) supporting facts and other evidence applicable to resolving the issue.
(4) The committee shall review the request within a reasonable time after it is received.
(5) Upon reviewing the application and the reasons for its denial, the committee may:
(a) overturn the denial and approve the application; or
(b) uphold the denial.
(6) The committee may overturn a denial if the denial was:
(a) based on insufficient information;
(b) inconsistent with prior action of the division or the Wildlife Board;
(c) arbitrary or capricious; or
(d) contrary to law.
(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.
(b) The notice shall include information that a person may seek Wildlife Board review of that decision.
(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.
(b) The request must include the information provided in Subsection (3).
(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.
(b) The Wildlife Board may:
(i) overturn the denial and approve the application; or
(ii) uphold the denial.
(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.
(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

KEY: wildlife, animal protection, import restrictions, zoological animals

May 8, 2008	**23-14-18**
Notice of Continuation March 11, 2008	**23-14-19**
	23-20-3
	23-13-14
	63G-7-101 et seq.

R657. Natural Resources, Wildlife Resources.
R657-12. Hunting and Fishing Accommodations for People With Disabilities.
R657-12-1. Purpose and Authority.

Under authority of Sections 23-14-18, 23-19-1, 23-19-36, 23-20-12 and 63G-3-201, this rule provides the standards and procedures for a person with disabilities to:

(1) obtain a certificate of registration for taking wildlife from a vehicle;

(2) obtain a fishing license as authorized under Section 23-19-36(1);

(3) obtain a certificate of registration to participate in companion hunting;

(4) obtain a certificate of registration to receive a limited entry season extension;

(5) obtain a certificate of registration to receive a general deer or elk season extension;

(6) obtain a certificate of registration to hunt with a crossbow or draw-lock; or

(7) obtain a certificate of registration to use telescopic sights on a weapon when otherwise prohibited.

R657-12-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Blind" means the person:

(i) has no more than 20/200 visual acuity in the better eye when corrected; or

(ii) has, in the case of better than 20/200 central vision, a restriction of the field of vision in the better eye which subtends an angle of the field of vision no greater than 20 degrees.

(b) "Crutch" means any mobility aid or assistive technology device, including a cane, crutch, walker, long or short braces, or other prosthetic or orthotic device which aids in mobility.

(c) "Draw-lock" means a mechanical device used to hold and support the draw weight of a conventional or compound bow at any increment of draw until released by the archer using a trigger mechanism attached to the device.

(d) "Loss of either or both lower extremities" means the permanent loss of use or the physical loss of one or both legs or a part of either or both legs which materially impedes a person's mobility.

(e) "Telescopic sights" means an optical or electronic sighting system that magnifies the natural field of vision beyond 1X and is used to aim a firearm, bow or crossbow.

(f) "Upper extremity disabled" means a person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be physically unable to use a legal hunting weapon or fishing device.

R657-12-3. Providing Evidence of Disability for Obtaining a Fishing License.

(1) A resident may receive a free fishing license under Section 23-19-36(1) by providing evidence the person is blind, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities.

(2) A person may obtain this license at any division office.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(a); or

(d) a signed statement by a licensed physician verifying the person is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-4. Obtaining Authorization to Hunt from a Vehicle.

(1) A person who is paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities, and who possesses a valid license or permit to hunt protected wildlife may receive a certificate of registration to take protected wildlife from a vehicle pursuant to Section 23-20-12.

(2)(a) Applicants for the certificate of registration must provide evidence of disability as provided in Subsections R657-12-3(3)(a), (b), or (d).

(b) Certificates of registration may be renewed annually.

(3) Wildlife may be taken from a vehicle under the following conditions:

(a) Only those persons with a valid hunting license or permit and a certificate of registration allowing them to hunt from a vehicle may discharge a firearm or bow from, within, or upon any motorized terrestrial vehicle;

(b) Shooting from a vehicle on or across any established roadway is prohibited;

(c)(i) Firearms must be carried in an unloaded condition, and a round may not be placed in the firearm until the act of firing begins, except as authorized in Title 53, Chapter 5, Part 7 of the Utah Code; and

(ii) Arrows must remain in the quiver until the act of shooting begins; and

(d) Certificate of registration holders must be accompanied by, and hunt with, a person who is physically capable of assisting the certificate of registration holder in recovering wildlife.

(4) Certificate holders must comply with all other laws and rules pertaining to hunting wildlife, including state, federal, and local laws regulating or restricting the use of motorized vehicles.

R657-12-5. Companion Hunting and Fishing.

(1) A person may take protected wildlife for a person who is blind, upper extremity disabled or quadriplegic provided the blind, upper extremity disabled or quadriplegic person:

(a) satisfies hunter education requirements as provided in Section 23-19-11 and Rule R657-23;

(b) possesses the appropriate license, permit and tag;

(c) obtains a Certificate of Registration from the division authorizing the companion to take protected wildlife for the blind, upper extremity disabled or quadriplegic person; and

(d) is accompanied by a companion who has satisfied the hunter education requirements provided in Section 23-19-11 and Rule R657-23.

(2) A person who is blind may obtain a Certificate of Registration from the Division by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that the applicant is blind as defined in Section R657-12-2(2)(a).

(3)(a) A person who is upper extremity disabled or quadriplegic may obtain a Certificate of Registration from the division upon submitting evidence of the disability.

(b) The division shall accept the following as evidence of an applicant's disability:

(i) obvious physical disability demonstrating the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d); or

(ii) a signed statement by a licensed physician verifying that the applicant is quadriplegic or upper extremity disabled as defined in Section R657-12-2(2)(d).

(4) The hunting or fishing companion must be accompanied by the blind, upper extremity disabled or

quadriplegic person at all times while hunting or fishing, at the time of take, and while transporting the protected wildlife.

R657-12-6. Special Season Extension for Disabled Persons - Limited Entry Hunts.

(1) A person may obtain a Certificate of Registration from a division office requesting an extension of 30 days for any limited entry hunt, provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit, and tag.

(2) The division shall not issue a Certificate of Registration for a 30-day extension on any limited entry hunt where the extension will violate federal law.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-7. Special Season Extension for Disabled Persons - General Deer and Elk Hunts.

(1) A person may obtain a Certificate of Registration from a division office to hunt an extended general deer or elk season as provided in Subsection (2), provided the person requesting the extension:

(a) is blind, quadriplegic, upper extremity disabled, paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or who has lost either or both lower extremities;

(b) satisfies the hunter education requirements as provided in Section 23-19-11 and Rule R657-23; and

(c) obtains the appropriate license, permit and tag.

(2)(a) The extended general deer season may occur five days prior to the general season deer hunt date published in the proclamation of the Wildlife Board for taking big game.

(b) The extended general spike bull elk season may occur five days after the general season spike bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(c) The extended general any bull elk season may occur concurrently with the general youth any bull elk hunt published in the proclamation of the Wildlife Board for taking big game.

(3) The division shall accept the following as evidence of disability:

(a) obvious physical impediment;

(b) use of any mobility device described in Section R657-12-2(2)(b);

(c) a signed statement by a licensed ophthalmologist, optometrist, or a physician verifying the person is blind as defined under Section R657-12-2(2)(a); or

(d) a signed statement by a licensed physician verifying the person is quadriplegic, upper extremity disabled as defined under Section R657-12-2(2)(d), paraplegic, or otherwise permanently disabled so as to be permanently confined to a wheelchair or the use of crutches, or has lost either or both lower extremities.

R657-12-8. Crossbows and Draw-Locks.

(1)(a) A person who has a permanent physical impairment due to injury or disease, congenital or acquired, which renders the person so severely disabled as to be unable to use conventional archery equipment may receive a certificate of registration to use a crossbow or draw-lock to hunt big game, cougar, bear, turkey, waterfowl or small game during the respective archery or any weapon hunting seasons as provided in the applicable proclamations of the Wildlife Board for taking protected wildlife.

(b) The division shall accept the following as evidence of eligibility to use a crossbow or draw-lock:

(i) obvious physical disability, as provided in Subsection (1)(a), demonstrating the applicant is eligible to use a crossbow or draw-lock; or

(ii) provides a physician's statement confirming the disability as defined in Subsection (1)(a).

(2)(a) Any crossbow used to hunt big game, cougar, bear, turkey, waterfowl or small game must have:

(i) a stock that is at least 18 inches long;

(ii) a minimum draw weight of 125 pounds for big game, bear and cougar, or 60 pounds for turkey, waterfowl and small game;

(iii) a draw length that is at least 18 inches from the front of the crossbow to the back of the string in a cocked position; and

(iv) a positive safety mechanism.

(b) Arrows or bolts used must be:

(i) at least 18 inches long; and

(ii) must have a broadhead with two or more sharp cutting edges that cannot pass through a 7/8 inch ring for big game, cougar, bear or turkey.

(3) The following equipment or devices may not be used:

(a) arrows with chemically treated or explosive arrowheads;

(b) a bow with an attached electronic range finding device; or

(c) a bow with an attached telescopic sight, except as provided in R657-12-9.

(4) Arrows or bolts carried in or on a vehicle where a person is riding must be in an arrow quiver or a closed case.

(5) A drawn and cocked crossbow or bow with a draw-lock may not be carried in or on a vehicle.

(6) Conventional bows equipped with a draw-lock and used to hunt big game must conform with the minimum draw weights, and arrow and broadhead restrictions contained in R657-5.

R657-12-9. Telescopic Sights.

(1) A person who has a permanent vision impairment leaving them with worse than 20/40 corrected visual acuity in the better eye may receive a Certificate of Registration to use telescopic sights; if in the professional opinion of the eye care provider telescopic sights will sufficiently mitigate the effects of the disability to enable the person to:

(a) adequately discern between lawful and unlawful wildlife species and species genders; and

(b) safely discharge a firearm or bow in the field.

(2) A person with a qualified vision impairment may obtain a Certificate of Registration from the Division to use telescopic sights by submitting a signed statement by a licensed ophthalmologist, optometrist or physician verifying that:

(a) the applicant has a permanent vision impairment resulting in worse than 20/40 corrected visual acuity in the better eye; and

(b) telescopic sights will sufficiently mitigate the effects of the vision impairment to enable the applicant to:

(i) adequately discern between lawful and unlawful wildlife species and species genders; and

(ii) safely discharge a firearm or bow in the field.

KEY: wildlife, wildlife law, disabled persons
January 22, 2008 23-20-12
Notice of Continuation September 10, 2007 63G-3-201

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, livewell or any other place of storage.

(y) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(z) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(aa) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Spearfishing (underwater)" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other devise to propel a pointed shaft to take fish from under the surface of the water.

(hh) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(ii)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full bag and possession limit.

R657-13-4. Fishing Contests.

(1) All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler may fish with two poles anywhere on Bear Lake that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one bag limit may be taken and held in possession even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Only Utah and Arizona residents are allowed to purchase reciprocal permits to fish both sides of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except when using a valid second pole permit in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license, or while fishing for crayfish without the use of fish hooks. A second pole permit is not required when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir or Lake Powell.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With a Second Pole.

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily bag or possession limit.

(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to a valid Utah one day, seven day or annual fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset.

(2) Use of artificial light is unlawful while engaged in underwater spearfishing.

(3) Free shafting is prohibited while engaged in underwater spearfishing.

(4) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Jordanelle Reservoir, Ken's Lake,

Lake Powell, Lost Creek Reservoir, Pineview Reservoir (with the exception of tiger muskie), Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, Willard Bay Reservoir and Yuba Reservoir are open to taking game and nongame fish by means of underwater spearfishing from June 1 through November 30. These are the only waters open to underwater spearfishing for game and nongame fish, except as provided in Subsection (8) below.

(5) Lake Powell is open to taking carp and striped bass by means of underwater spearfishing from January 1 through December 31.

(6) The bag and possession limit for underwater spearfishing is the same as the bag and possession limit applied to anglers using other techniques in the waters listed in Subsection (4) above and as identified in the annual Utah Fishing Proclamation issued by the Utah Wildlife Board.

(7) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (4) above and as provided in Section R657-13-14.

(8) Carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted, except when underwater spearfishing.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(f) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);
(b) Bluehead sucker (Catostomus discobolus);
(c) Colorado pikeminnow (Ptychocheilus lucius);
(d) Flannelmouth sucker (Catostomus latipinnis);
(e) Gizzard shad (Dorosoma cepedianum);
(f) Grass carp (Ctenopharyngodon idella);
(g) Humpback chub (Gila cypha);
(h) June sucker (Chasmistes liorus);
(i) Least chub (Iotichthys phlegethontis);
(j) Leatherside chub (Snyderichthys copei);
(k) Razorback sucker (Xyrauchen texanus);
(l) Roundtail chub (Gila robusta);
(m) Virgin River chub (Gila seminuda);
(n) Virgin spinedace (Lepidomeda mollispinis); and
(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park

upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, dipnets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(4).

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Panguitch Lake and Jordanelle Reservoir, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Bag and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

KEY: fish, fishing, wildlife, wildlife law

May 8, 2008	**23-14-18**
Notice of Continuation October 11, 2007	**23-14-19**
	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-22. Commercial Hunting Areas.
R657-22-1. Purpose and Authority.

Under authority of Section 23-17-6, this rule provides the procedures and requirements for establishing, maintaining, and operating a CHA.

R657-22-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "CHA" means Commercial Hunting Area.

(b) "Commercial hunting area" means a parcel of land where pen-raised or propagated game birds are released for the purpose of allowing hunters to take them for a fee.

(c) "Game bird" means, for the purpose of this rule only, all species of partridge, pheasant, and quail authorized for release on a CHA.

(d) "Operator" means a person, group, or business entity, including their agents, employees and contractors, that manages, owns, administers, or oversees the activities and operations of a CHA. Operator further includes any person, group or business entity that employs or contracts another to serve or act as an operator.

R657-22-3. Application for a Certificate of Registration.

(1)(a) A certificate of registration is required before any person may operate a CHA.

(b) An application for a CHA certificate of registration must be completed and returned to the regional office where the proposed CHA is located by May 1.

(2)(a) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(b) Discovery of property after issuance of the CHA certificate of registration, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The application must be accompanied by:

(i) County Recorder Plat maps, or equivalent maps, dated by receipt of purchase within 30 days of submitting the CHA application, depicting boundaries and ownership of all property within the CHA; and

(ii) U.S. Geological Survey topographical maps, no smaller scale than 7 1/2 minutes, with the proposed boundaries clearly marked;

(iii) evidence of ownership of the property, such as a copy of a title, deed, or tax notice that provides evidence the applicant is the owner of the property described; or

(iv) a lease agreement for the period of the CHA certificate of registration, listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(v) the address of any propagation or game bird holding facility not located on the CHA property; and

(vi) the annual CHA certificate of registration fee for the first year of operation.

(4) The division may return any application that is incomplete, completed incorrectly, or that is not accompanied by the information required in Subsection (3).

(5)(a) Review and processing of the application may require up to 45 days.

(b) More time may be required to process an application if the applicant requests authorization from the Wildlife Board for a variance to this rule.

(6) Applications are not accepted for a CHA that is within 1/4 mile of any existing state wildlife or waterfowl management area without requesting a variance from the Wildlife Board.

(7) The division may deny any application or impose provisions on the CHA certificate of registration that are more restrictive than this rule in the interest of wildlife or wildlife habitat.

(8) Commercial Hunting Area certificates of registration are effective from the date issued through June 30 of the third consecutive year.

(9) The annual CHA certificate of registration fee for the second and third years of operation must be submitted when invoiced.

(10) Rights granted by a CHA certificate of registration are not transferable or assignable.

R657-22-4. Renewal of Certificate of Registration.

(1) A certificate of registration may be renewed by completing a renewal application and paying a CHA certificate of registration renewal fee.

(2)(a) Renewal applications must be completed and submitted to the division regional office in which the CHA is located by May 1 immediately prior to the June 30 expiration date identified on the current CHA certificate of registration.

(b) Any application that does not clearly and legibly verify ownership or lease by the applicant as required in Subsection (3), of all property for which the application applies shall be returned to the applicant.

(c) Discovery of property during the CHA certificate of registration period, which is not approved by its owner or lessee to be included in the CHA, shall immediately void the CHA certificate of registration.

(3)(a) The renewal application must be accompanied by:

(i) a lease agreement extending through the period of the CHA certificate of registration being applied for listing the name, address and telephone number of the lessor, that provides evidence the applicant is the lessee of the hunting or shooting rights of the property described;

(ii) an annual report as provided in Subsection R657-22-6(2); and

(iii) any change in property ownership differing from ownership identified in the CHA certificate of registration immediately preceding the current application, including updated maps as provided in Subsection R657-22-3(3)(a) if the CHA boundaries change.

R657-22-5. Conditions for Approval Initial and Renewal Applications.

(1) Initial and renewal applications may be denied by the division if the applicant or operator, or any of its agents or employees:

(a) violated any provision of this rule , the Wildlife Resources Code, a CHA certificate of registration, or the CHA application;

(b) obtained or attempted to obtain a CHA certificate of registration by fraud, deceit, falsification, or misrepresentation;

(c) is employed, contracted through writing or verbal agreement, assigned, or requested to apply and act as the operator by a person, group, or business entity that will directly or indirectly benefit from the CHA, but would otherwise be ineligible under this rule or by virtue of suspension under Section 23-19-9 to operate a CHA if they applied directly as the operator; or

(d) engaged in conduct that results in the conviction of, a plea of no contest to, a plea held in abeyance, or a diversion agreement to a crime of moral turpitude, or any other crime that when considered with the functions and responsibilities of a CHA operator bears a reasonable relationship to the operator's or applicant's ability to safely and responsibly operate a CHA.

(2) If an application is denied, the division shall state the reasons in writing within 30 days of denial.

R657-22-6. Records and Reports -- Annual Report.

(1) The operator of a CHA shall maintain complete and accurate records of:

(a) the number, species, and source of any game birds purchased or propagated;

(b) health certificates for all game birds purchased from outside the state of Utah;

(c) the number, species and date the game birds are released; and

(d) the number, species and date of game birds taken within the CHA boundary, including wild game birds; and

(e) copies of the bill of sale issued to hunters and any other person who purchases game birds.

(2) Each operator must submit an annual report on a form provided by the division within 30 days of the close of the season or at the time of renewal, including:

(a) the number of game birds by species that were released and the total number of game birds taken by hunters or sold;

(b) the date, source, and number of the game birds purchased; and

(c) the number of game birds by species held in possession on April 15.

(3) All records must be maintained on the hunting premises or the principal place of business for three years and must be available for inspection by the division.

(4) Falsifying or fabricating any record or report is prohibited and may result in forfeiture of CHA opportunities.

R657-22-7. Boundary Marking.

(1) The CHA area must be posted:

(a) at least every 300 feet along the outer boundary of all hunted areas; and

(b) on all corners, streams, rivers, drainage divides, roads, gates, trails, rights-of-way, dikes, canals, and ditches crossing the boundary lines.

(2) Each sign used to post the property must be at least 8-1/2 by 11 inches and must clearly state:

(a) the name of the CHA as designated on the CHA certificate of registration;

(b) the words "No Trespassing"; and

(c) wording indicating the sign is located on the CHA boundary.

(3)(a) If the CHA operator fails to renew a CHA certificate of registration or a renewal application is denied, all signs shall be immediately removed.

(b) The division may remove and dispose of any signs that are not removed within 30 days after the termination of the CHA certificate of registration.

(4) Commercial hunting area activities may only be conducted on property properly posted and specifically authorized in the CHA certificate of registration.

(5) Commercial hunting area operators may not post or otherwise restrict public access on public roads, right-of-ways, or easements within the CHA.

R657-22-8. Acreage Requirements.

(1)(a) The minimum acreage accepted for a CHA is 160 acres in a single, connected tract.

(b) The maximum acreage accepted for a CHA is 1,920 acres in a single, connected tract.

(2) A CHA may not be established closer than 1/4 mile of a wildlife management area, or waterfowl management area, unless otherwise allowed by a variance of the Wildlife Board.

(3) The Wildlife Board may allow a variance to the acreage requirements provided in Subsection (1) if no more than 1,920 acres are to be used for hunting at any one time.

R657-22-9. Bill of Sale Required.

(1) The operator of a CHA shall issue a bill of sale to each person who has taken a game bird from the CHA.

(2) The bill of sale shall be issued prior to the transportation of any bird from the CHA.

(3) The bill of sale must include:

(a) the person's name;

(b) the date the game birds were taken or purchased;

(c) the species, number of game birds, and sex of the game birds; and

(d) the name of the CHA where the game birds were taken or purchased.

R657-22-10. Importation.

(1) A CHA certificate of registration allows the importation of live game birds provided the operator first obtains a valid certificate of veterinary inspection covering each imported game bird, and further receives an import permit from the Utah Department of Agriculture and Food consistent with the requirements of Rule R58-1.

(2) The health certificate must contain an entry permit number from the Department of Agriculture as provided in Section R58-1-4.

R657-22-11. Disease Protocol.

(1) The division may:

(a) investigate any reported disease and take any necessary action to control a contagious or infectious disease affecting domestic animals, wildlife, or public health; or

(b) order a veterinarian or certified pathologist's report of a suspected disease at the operator's expense, and may order quarantine, immunization, testing, or other sanitary measures.

(2)(a) The division may order the destruction and disposal of any game bird found to have an untreatable disease which poses a potential threat or health risk to domestic poultry, humans, or wildlife, as determined by the division, the Department of Agriculture, or the Department of Health.

(b) Actions taken pursuant to Subsection (a) shall be:

(i) at the operator's expense; and

(ii) accomplished by following procedures acceptable to the division that ensure the disease is not transmitted to wildlife, domestic animals, or humans.

(3)(a) Commercial hunting area operators must take reasonable precautions to prevent and control the spread of infectious diseases among pen-raised game birds under their control including the requirements as provided in Subsection (b) and Section R657-22-10.

(b) Commercial hunting area operators must obtain a statement from a veterinarian that the birds have been tested for Salmonella pullorum or come from a source flock that participates in the National Poultry Improvement Plan (NPIP).

(c) Commercial hunting area operators who have a current CHA certificate of registration must comply with the requirement in Subsection (b) within six months from the effective date of this rule.

R657-22-12. Authorized Species.

The only game birds that may be released or propagated under the authority of a CHA certificate of registration are species of partridge, pheasant, or quail, including any subspecies.

R657-22-13. Inspection of Game Birds, Premises, and Records.

(1)(a) Certificates of registration are issued upon the express condition that the operator agrees to permit the division and public health and safety officials to enter and inspect the premises, facilities, and all required records and health certificates to ensure the CHA is in compliance with this rule and other applicable laws.

(b) Commercial hunting area operators must allow the division and public health and safety officials reasonable access

to conduct the inspections authorized in Subsection (1)(a).

(2) Inspections shall be made during reasonable hours.

R657-22-14. Restrictions on Release and Harvest.

(1)(a) Except as provided in Subsection R657-22-16(2)(e), game birds raised or held in possession under this rule may be released only on the CHA property.

(b) Each game bird released must be healthy, capable of flight, and free of disease.

(c) A person may not retard or restrict a game bird's ability to fly or run by clipping, brailling, blinding, pinioning, harnessing, or drugging.

(2) At least 100 game birds of each authorized species, or as approved by the Wildlife Board, or otherwise stated on the CHA certificate of registration, shall be released on the CHA during the current operating year.

(3)(a) Operators may not allow the harvest of more than 85% of each species released, except as provided in Subsection (b).

(b) There is no limit to the percentage of game birds that may be harvested that are not, in the opinion of the division, established as a wild population in the vicinity of the CHA. Any variance to Subsection (a) shall be indicated on the CHA certificate of registration.

(4) Only those game birds obtained from the following sources may be released or held in possession on a CHA:

(a) an aviculturist, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule; or

(c) a source located outside of Utah provided the game birds are imported as provided in Rule R58-1.

(5) Protected wildlife not authorized for release on the CHA may be hunted only during their respective seasons as provided in the rules and proclamations of the Wildlife Board.

R657-22-15. Recapture.

(1)(a) Trapping game birds alive or retrapping game birds that have been released is permitted only:

(i) within the CHA area boundaries;

(ii) from September 1 through April 2; and

(iii) for wild species listed on the CHA certificate of registration as not established in the area.

(b) Any game bird that escapes from the CHA becomes the property of the state of Utah and may not be recaptured.

(2) Any game bird trapped alive may not be recounted or added to the total number of birds released when computing the number which may be taken as provided in Subsection R657-22-14(3).

R657-22-16. Propagation.

(1) The CHA certificate of registration allows the propagation of those species of game birds held in possession as indicated on the CHA certificate of registration.

(2) Any game birds held in possession under this rule must be released on the CHA or may be sold:

(a) to a private wildlife farm, certified as provided in Rule R657-4;

(b) a CHA, certified under this rule;

(c) to a person located outside of Utah;

(d) to a person for consumption; or

(e) for use in training dogs or the sport of falconry as provided in Rule R657-46.

(3)(a) If a CHA game bird is held in possession at any location other than that listed on the application or transferred alive to any other location, prior authorization must be obtained from the division or must be authorized on the CHA certificate of registration.

(b) Authorization for the possession of live game birds for any primary purpose other than being released to allow hunters to take them for a fee may be obtained under the provisions of Rule R657-4 or Rule R657-46.

R657-22-17. Season Dates.

(1)(a) Hunting on CHA areas is permitted from September 1 through March 31.

(b) The Wildlife Board may authorize a variance to the dates provided in Subsection (a) if:

(i) wild game birds do not nest within the location of the CHA or surrounding areas; and

(ii) there are no detrimental effects to other species of wildlife.

(2) If September 1 falls on a Sunday, the season will open on August 31.

(3) The director may extend the season up to fifteen days, provided wild nesting game birds are not adversely affected.

R657-22-18. Hunting Hours and Hunter Requirements.

(1) Game birds may be taken on a CHA only one-half hour before sunrise through one-half hour after sunset, except on a CHA located adjacent to a state wildlife or waterfowl management area, game birds may be taken one-half hour before sunrise through sunset.

(2) Any person hunting within the state on any CHA must meet hunter education requirements as provided in Section 23-17-6.

R657-22-19. Suspension.

The division may suspend a CHA certificate of registration for a CHA as authorized under Section 23-19-9 and Rule R657-26.

KEY: game birds, wildlife, wildlife law
May 8, 2007 **63G-4-203**
Notice of Continuation May 7, 2007 **23-17-6**

R657. Natural Resources, Wildlife Resources.
R657-26. Adjudicative Proceedings for a License, Permit, or Certificate of Registration.
R657-26-1. Purpose and Authority.

Under authority of Subsection 23-19-9(14), this rule provides the procedures and standards for:

(1) the suspension of the privilege of applying for, purchasing and exercising the benefits conferred by a license or permit; and

(2) the suspension of a certificate of registration.

R657-26-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Intentionally" as defined in Section 76-2-103.

(b) "Knowingly" as defined in Section 76-2-103.

(c) "Party" means the division, Wildlife Board, or respondent.

(d) "Presiding officer" means the hearing officer appointed by the division director to conduct suspension proceedings.

(e) "Recklessly" as defined in Section 76-2-103.

(f) "Respondent" means a person against whom a suspension proceeding is initiated.

(g) "Single Criminal episode" means all conduct, which is closely related in time and is incident to an attempt or an accomplishment of a single criminal objective as defined in 76-1-401.

R657-26-3. Commencement of Suspension Proceedings.

(1)(a) Each adjudicative proceeding shall be commenced by the presiding officer filing a notice of agency action.

(2) The notice of agency action shall be filed and served according to the requirements provided in Section 63G-4-201(2).

(3) All suspension proceedings conducted by the presiding officer are designated as informal adjudications. The presiding officer may convert the hearing to a formal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

R657-26-4. Procedures for Suspension Proceedings.

(1)(a) An answer or other pleading responsive to the allegations in the notice of agency action does not need to be filed by the respondent.

(b) If an answer to the notice of agency action is filed, the answer shall include:

(i) the name of the respondent;

(ii) the case number or other reference number;

(iii) the facts surrounding the allegations;

(iv) a response to the allegations that the violation was committed knowingly, intentionally or recklessly; and

(v) the date the answer was mailed.

(2) The respondent may access any relevant information contained in the division's files and all materials and information gathered in the investigation of the respondent, to the extent permitted by law.

(3) Discovery and intervention is prohibited.

R657-26-5. Hearings.

(1)(a) The presiding officer shall provide the respondent with an opportunity for a hearing.

(b) A hearing shall be held if the division receives a written request for a hearing from the respondent within 20 calendar days after the date the notice of agency action is issued.

(2) The respondent, or a person designated by the respondent to appear on the respondent's behalf, may testify at the hearing and present any relevant information or evidence.

(3) Hearings shall be open to the public.

(4) After reviewing all the information provided by the parties, the presiding officer may suspend the respondent's license, permit or certificate of registration privileges in accordance with Section 23-19-9.

(5)(a) The type of license, permit or certificate of registration privilege suspension imposed shall be within the following categories:

(i) all fishing licenses and permits;

(ii) all furbearer and bobcat licenses and permits;

(iii) all hunting licenses and permits for big game;

(iv) all hunting licenses and permits for small game and wild turkey permits. Any person suspended for small game will be eligible to purchase an alternate hunting license to apply for and obtain big game, cougar, and bear permits but will not be issued a hunting license valid to take small game;

(v) all permits to take and pursue cougar and bear;

(vi) all falconry permits and falconry certificates of registration;

(vii) certificates of registration of a type specified; or

(viii) all hunting licenses, permits and certificates of registration;

(ix) all licenses, permits and certificates of registration issued by the division.

(b) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity for which the person was participating in when the violation occurred.

(c) The presiding officer may suspend the license, permit or certificate of registration privileges most closely associated with the activity that involved the unlawful taking of protected wildlife for which no season has been established.

(d) If the violation involves acts that occurred while participating in an activity regulated by Title 23, which include more than one of the types of license or permit privileges as provided in Subsection (a), the presiding officer may suspend the license, permit or certificate of registration privileges for all categories that apply.

(e) The presiding officer may impose a suspension of all privileges to hunt protected wildlife or all privileges to take protected wildlife if the violations are found by the presiding officer to be conspicuously bad or offensive. This may include, but are not restricted to, the violations described in Subsection (e)(i) through Subsection (e)(viii).

(i) Any violation which could result in suspension that involves taking, in a single criminal episode, four times the legal bag limit of any protected fish species.

(ii) Any violation which could result in suspension that involves taking, in a single criminal episode, three times the legal bag limit of any small game species or waterfowl.

(iii) Any violation which could result in suspension that involves a once-in-a-lifetime species.

(iv) Any violation which could result in suspension that occurs out of season or in a closed area for the species illegally taken and involves a trophy animal.

(v) Three or more felony or class A misdemeanor violations under Section 23-20-4 in a seven-year period, regardless of suspension periods previously imposed.

(vi) Any violation which could result in suspension that involves the unlawful taking, in a single criminal episode, of two or more big game animals.

(vii) Any violation which could result in suspension that involves the unlawful taking, in a single criminal episode, of two or more cougar or bear.

(viii) Any violation subject to Section 23-19-9 that further violates an existing order of revocation or suspension recognized by the Utah Division of Wildlife Resources.

(ix) Any violation which involves the unlawful taking of

big game for pecuniary gain.

(6) The director shall appoint a qualified person as a presiding officer in accordance with Section 23-19-9(9).

(7) The presiding officer may suspend privileges to take protected wildlife up to but not to exceed the limits as defined in Utah Code Sections 23-19-9-(4) and (5). The presiding officer will take into account any aggravating or mitigating circumstances when deciding the length of a suspension period.

(8) The presiding officer may suspend privileges based on two or more separate criminal episodes either concurrently or consecutively.

(9) The presiding officer may suspend privileges previously suspended by a court, presiding officer or the Wildlife Board either concurrently or consecutively.

(10) The courts may suspend, in criminal sentencing, a person's privilege to apply for, purchase, or exercise the benefits conferred by a license, permit, or certificate of registration in accordance with Section 23-19-9(10).

(11) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

R657-26-6. Issuance of Decision and Order.

(1) Within a reasonable time after the close of the adjudicative proceeding, the presiding officer shall issue a signed, written order that states:

(a) the decision;

(b) the reasons for the decision;

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

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

(2) The decision and order shall be based on facts appearing in division files and on the testimony and facts presented in evidence at the hearing.

(3)(a) A copy of the decision and order shall be promptly mailed to all parties.

(b) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

R657-26-7. Default.

(1) The presiding officer may enter an order of default against the respondent if the respondent fails to participate, either in writing or in person, in the adjudicative proceeding.

(2) Upon considering the order of default, the presiding officer shall review the investigative file to determine the elements for suspension are satisfied and shall issue and order of default that:

(a) include a statement of the grounds for default;

(b) makes a finding of all relevant issues required in Utah Code Section 23-19-9; and

(c) mail a copy of the order to all parties.

(i) If the mailed copy is returned as undeliverable and the division has otherwise made good faith efforts to deliver the decision and order to the respondent, the presiding officer shall publish notice of the decision in at least one newspaper or state publication with general circulation throughout the state.

(3)(a) A defaulted party may seek to have the presiding officer set aside the default order, and any order in the adjudicative proceeding issued subsequent to such default, by following the procedures outlined in the Utah Rules of Civil Procedure.

(b) A motion to set aside a default order and any subsequent order shall be made in writing to the presiding officer.

(c) A defaulted party may seek Wildlife Board Review under Section R657-26-8 only on the decision of the presiding officer on the motion to set aside the default.

R657-26-8. Wildlife Board Review - Procedure.

(1)(a) A person may file an appeal of a presiding officer's decision with the Wildlife Board.

(b) The appeal must be in writing and the respondent shall send a copy of the appeal by mail to the chair of the Wildlife Board and each of the parties.

(2) The appeal must be received within 30 calendar days after the issuance of the presiding officer's decision and order.

(3) The appeal shall:

(a) be signed by the respondent or the respondent's legal counsel;

(b) state the grounds for appeal and the relief requested; and

(c) state the date upon which it was mailed.

(4)(a) Within 30 calendar days after the mailing date of the appeal, any party may file a written response with the Wildlife Board.

(b) A copy of the response shall be sent by mail to the chair of the Wildlife Board and each of the parties.

(5) The Wildlife Board may hold a de novo formal hearing in accordance with the provisions of Section 63G-4-204 through Section 63G-4-208. The Wildlife Board may convert the hearing to an informal hearing anytime before a final order is issued if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(6) At the conclusion of the hearing, the Wildlife Board may:

(a) affirm the decision;

(b) vacate or remand the decision;

(c) amend the type of suspension ordered by the presiding officer; or

(d) amend the suspension period not to exceed the statutory maximums.

(7) The Wildlife Board chair may vote in an adjudicative proceedings decision, and any Wildlife Board decision shall be supported by a majority of the voting members present.

(8)(a) Within a reasonable time after the close of the formal hearing, the chair of the Wildlife Board shall issue a written order that affirms, vacates or remands the decision or amends the type of suspension ordered by the hearing officer.

(b) The order on review shall be signed by the chair of the Wildlife Board and mailed to each party.

(c) The order on review shall contain:

(i) a designation of the statute permitting review;

(ii) a statement of the issues reviewed;

(iii) findings of fact as to each of the issues reviewed;

(iv) conclusions of law as to each of the issues reviewed;

(v) whether the decision of the presiding officer is to be affirmed, reversed, modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

(vi) a notice of any right of further administrative reconsideration; and

(vii) the time limits applicable to any review.

R657-26-9. Reinstatement of a License, Permit, or Certificate of Registration.

(1) A presiding officer may reinstate a person's license, permit, or certificate of registration suspended under Section 23-19-9.5 upon receiving a written request for reinstatement.

(2) The person making the request shall include:

(a) the person's name, phone number, and mailing address;

(b) the number of the license, permit, or certificate of registration that was suspended or revoked;

(c) the date the violation occurred;
(d) the date the request was mailed;
(e) the state in which the violation occurred;
(f) a copy of a receipt from the court where the violation was processed stating the violation is no longer outstanding; and
(g) the person's signature.

(3) Within a reasonable time of receiving the request, the presiding officer shall issue a written order stating whether the request is granted or denied and the reasons for the decision.

(4) If a presiding officer denies a person's request for reinstatement, the person may submit a request for reconsideration by following the procedures provided in Section 63G-4-302.

KEY: wildlife, suspensions, violations
August 7, 2007 **23-13-2**
Notice of Continuation August 21, 2006 **23-14-1**
23-14-19
23-19-9
23-20-14
63G-4-302
63G-4-203

R657. Natural Resources, Wildlife Resources.
R657-27. License Agent Procedures.
R657-27-1. Purpose and Authority.

Under Section 23-19-15, this rule provides the application procedures, standards, and requirements for wildlife license agents.

R657-27-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Agent hunting and fishing licenses online" means the web application that allows an license agent to print wildlife documents on license paper.

(b) "Bond" means a surety bond to remain in full force and effect continuously and indefinitely, until canceled.

(c) "Computer hardware" means electronic equipment the division deems necessary to perform the minimum required functions of the division's online license sales application system that may include a central processing unit, cables, or router.

(d) "Deactivated license agent or deactivated" means a license agent that holds license agent status but is temporarily precluded from selling wildlife documents for failure to comply with this rule or any other laws or agreements regulating license agent activity.

(e) "License agent" means a person authorized by the division to sell wildlife documents.

(f) "License Agent Application" means a written request to be authorized by the division to sell wildlife documents.

(g) "License Agent Authorization" means an agreement between the division and a license agent, allowing a license agent to sell wildlife documents.

(h) "License paper" means paper designated by the division for the sole purpose of printing specified licenses or permits through the agent hunting and fishing licenses online sales system.

(i) "Location" means the building or structure from which a license agent is authorized to sell wildlife documents.

(j) "Presiding officer" means the hearing officer designated by the director of the division.

(k) "Remuneration" means money that a license agent receives for each wildlife document sold as provided in Section 23-19-15.

(l) "Wildlife documents" means licenses, permits and tags preprinted by the division or printed by the license agent on license paper.

R657-27-3. License Agent Application.

(1) License agent applications may be obtained from the Licensing Section in the Salt Lake Office or downloaded from the division's website.

(2) License agent applications shall be considered from any person located within Utah or in close proximity to Utah.

(3) Applications shall be processed within 30 business days.

(4) The applicant must:

(a) complete and return the application to the Licensing Section in the Salt Lake Office; and

(b) pay a non refundable application fee.

(5) A separate application and application fee must be submitted for each location where wildlife documents will be sold.

(6) The division may provide assistance to new and existing license agents as provided in Subsection R657-27-4(1)(b),(1)(c) or (1)(d).

R657-27-4. License Agent Eligibility - Reasons for Application Denial - Term of Authorization.

(1) A new license agent must meet the criteria provided in Subsection (a), except as provided in Subsection (b) or (c).

(a) A license agent must:

(i) successfully complete a division-sponsored training session;

(ii) provide and maintain approved computer hardware capable of processing and printing licenses and permits in a permanent, clear, and a legible manner; and

(iii) sign a supplemental wildlife documents sales agreement as provided in Section R657-27-16.

(b) The division may provide a printer as required in Subsection (a)(ii) provided the license agent's projected sales is estimated to be at least one-thousand dollars per year or a satisfactory volume per year as determined by the division.

(c) The division may provide assistance up to one-thousand dollars for computer hardware required in Subsection (a)(ii) provided:

(i) there is not a current, eligible license agent within 45 miles, or a convenient distance as determined by the division, of the proposed license agent location; and

(ii) the estimated sales revenue from the proposed location will recover the cost of the computer hardware within six months of providing the computer hardware.

(d) The division may provide assistance for a data line connection and the associated ongoing expense of the data line connection provided:

(i) there is not a current, eligible license agent within 45 miles, or a convenient distance as determined by the division, of the proposed license agent location; and

(ii) the division anticipates the monthly cost for the data line connection to be less than 20 percent of the estimated monthly collection from the license agent.

(e) The division shall annually review the ongoing expenses for a data line connection to ensure the license agent is eligible for the assistance allowed in Subsection (d).

(f) A license agent must remain a license agent for the division for at least six months to retain the computer hardware or printer as provided in Subsections (b) or (c).

(2) Use of the agent hunting and fishing licenses online system must be used in compliance with the users manual provided by the division.

(3) The division shall send the applicant a written notice stating the reason for denial.

(4) If the division approves the license agent application, a license agent authorization shall be sent to the applicant.

(5) The license agent authorization is not effective until:

(a) it is signed and notarized by the applicant; and

(b) signed by the director.

(6)(a) The license agent authorization must be received by the Licensing Section in the Salt Lake Office within 30 business days of being mailed to the applicant.

(b) A separate application, application fee, and license agent authorization is required for each location where wildlife documents will be sold.

(7) Each license agent authorization shall be established for a term of five years.

(8) The division may deny a license agent application for any of the following reasons:

(a) A sufficient number of license agents already exist in the area;

(b) The applicant does not have adequate security including a safe or locking cabinet in which to store wildlife documents or license paper;

(c) The applicant has previously been authorized to sell wildlife documents or possess license paper and the applicant:

(i) failed to comply with the license agent authorization or any provision of statute or rule governing license agents; or

(ii) was deactivated or revoked by the division as a license agent;

(d) The applicant provided false information on the license

agent application;

(e) The applicant has been convicted of a wildlife related violation; or

(f) The applicant has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

R657-27-5. Bond Requirement.

(1) After approval, but before the license agent authorization is executed, the division may require the applicant to post a reasonable bond payable to the division in an amount determined by the division.

(2) The division may require any existing license agent to obtain a reasonable bond in an amount determined by the division after providing the license agent 30 business days written notice.

(3) The division may require a reasonable increase in the amount of the bond after providing the license agent 30 business days written notice.

R657-27-6. License Agent Obligations.

(1) Each license agent must:

(a) comply with the requirement and provisions provided in Section 23-19-15;

(b) keep wildlife documents or license paper secure and out of the public view during business hours;

(c) keep wildlife documents or license paper in a safe or locked cabinet after business hours;

(d) display all signs and distribute proclamations provided by the division;

(e) have all sales clerks and management staff available for sales training;

(f) maintain a License Agent Manual provided by the division and make it available to the license agent's staff, including supplemental manuals and addendums; and

(g) retain agent copies of licenses and permits for 12 months following the month of sale, at which time agent copies of licenses and permits must be destroyed by burning, shredding or submitting to the division.

(2) If a license agent becomes delinquent on reporting or remission of proceeds Subsection (2)(a), (2)(b) or (2)(c) shall apply.

(a) The license agent must immediately submit all reports when due along with the remission of required proceeds.

(b) If the license sales report is submitted in accordance with Subsection (1)(a) but funds are not submitted with the report then the following applies:

(i) A repayment plan may be structured in an agreement that will allow repayment in equal monthly installments for up to six months at a payment level that will provide repayment of the principal along with an annual percentage interest rate (APR) of 12 percent. This APR shall be calculated back to the date that the payment should have been received in accordance with Subsection (1)(a);

(ii) If the ongoing monthly report and proceed submissions are not received for the future months, from the month of the agreement in accordance with Subsection (1)(a), then any agreement made in Subsection (2)(b)(i) may be terminated and all outstanding balances and accrued interest shall become due immediately, along with a penalty of 20 percent of the unpaid balance. Interest shall continue to accumulate on any unpaid balance, including the penalty, at the APR;

(iii) Activate the bond and collect all remaining funds in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent; or

(iv) If the license agent enters into an agreement with the division as provided in Subsection (2)(b)(i), and then violates the terms of that agreement, the division may begin the revocation process in accordance with Section R657-27-11.

(c) Nothing in this rule shall be construed as requiring the division to offer a repayment agreement to a license agent delinquent on report submissions or proceeds remissions before taking action to revoke license agent status.

(d) If the license agent does not submit a monthly report as provided in Subsection (1)(a), or if the license agent does not immediately pay the delinquent funds or fails to execute and abide by the terms of a repayment agreement as provided in Subsection (2)(b), the division may:

(i) change the license agent's status to deactivated;

(ii) withhold issuing additional wildlife document inventory;

(iii) withhold access to the agent hunting and fishing licenses online sales system;

(iv) collect the license agent's inventory of wildlife documents and license paper, and determine unaccounted inventory of wildlife documents and license paper;

(v) assess a monetary penalty for each wildlife document and piece of license paper unaccounted for as provided in Subsection R657-27-7(2);

(vi) take action to revoke license agent status;

(vii) create a receivable from the license agent that equals the amount due as determined in Subsection (1)(a) and charge a 20 percent late penalty on the entire balance, and accumulate the unpaid balance, included penalties, at a 12 percent APR from the due date of the earliest date in which a license agent failed to submit a report in accordance with Subsection (1)(a); or

(viii) activate the bond and collect all available funds remaining in accordance with Section R657-27-5 and hold any remaining unpaid balances of penalty, ongoing interest, and principle amounts as a receivable from the license agent.

(e) A deactivated license agent that has not been revoked may regain active status by paying all due balances in full, and providing a bond, provided the license agent is otherwise in compliance with this rule or any other laws or agreements regulating license agent activity.

R657-27-7. Lost or Stolen Wildlife Documents or License Paper.

(1) The license agent must act as bailee for purposes of safeguarding all wildlife documents or license paper issued to the license agent by the division.

(2)(a) The license agent must remit full payment, less remuneration, to the division for any wildlife documents lost, stolen, or unaccounted for unless otherwise relieved for good cause by the director.

(b) The license agent must remit full payment for lost, stolen, or unaccounted license paper in the amount of $10 per sheet of license paper.

(c) Payments made to the division for any wildlife documents or license paper that are lost or unaccounted may be refunded if the wildlife documents or license paper are returned to the Licensing Section in the Salt Lake office by June 30 of the current state fiscal year.

R657-27-8. Audits.

(1) License agents are subject to an audit without prior notification anytime during normal business hours to assess financial and procedural compliance with statute, rule, and the terms of the license agent authorization.

(2) The division shall provide a written report to the license agent of any finding of noncompliance within five days of the completion of the audit.

R657-27-9. Checks Returned for Non-sufficient Funds.

If a check from a license agent is returned to the division for non-sufficient funds, the division may:

(1) require a license agent to remit payment for wildlife documents in the form of a cashiers check or money order;

(2) change the license agent status to deactivated;

(3) activate the bond; or

(4) submit the license agent's account to the Utah Office of Debt Collection for collection activity.

R657-27-10. Change of Business Ownership.

(1) License agent authorizations are nontransferable.

(2) The license agent must notify the division of any anticipated change of ownership of the license agent's business at least 30 business days prior to the change of ownership.

(3) Prior to change of ownership, unless otherwise directed by the division in writing, the license agent must:

(a) remit payment for all wildlife documents sold minus remuneration; and

(b) return all unsold wildlife documents or license paper to the division.

R657-27-11. Revocation of License Agent Authorization.

(1) The presiding officer may revoke a license agent authorization pursuant to Chapter 4, Title 63G, Utah Administrative Procedures Act, if the presiding officer determines that the license agent or the license agent's employee:

(a) violated the terms of the license agent authorization;

(b) violated the terms of any supplemental wildlife document sales agreements with the division;

(c) fails to maintain a bond in accordance with Section R657-27-5;

(d) is found to have committed fraud regarding wildlife documents or license paper;

(e) violated any provision of Title 23, Wildlife Resources Code;

(f) violated any rule promulgated under Title 23, Wildlife Resources Code; or

(g) has been convicted, pleaded guilty, pleaded no contest, or entered into a plea in abeyance to a criminal offense that bears a reasonable relationship to the license agent's ability to competently and responsibly perform the functions of a license agent.

(2) The presiding officer may hold a hearing to determine matters relating to the license agent revocation if the license agent makes a written request for a hearing within 20 days after the notice of agency action is issued.

R657-27-12. Termination of License Agent Authorization by the License Agent.

(1) A license agent may terminate a license agent authorization by submitting a written request to the Licensing Section in the Salt Lake Office.

(2) Any request for termination must state the requested date of termination.

(3) On or before the effective date of termination the license agent must:

(a) discontinue selling wildlife documents;

(b) return all unsold wildlife documents or license paper to the division; and

(c) return to the division any signs, proclamations or other information provided by the division.

(4) On or before the 10th day of the month following the date of termination the license agent must remit payment for all wildlife documents minus remuneration to the division.

R657-27-13. Renewal Application of a License Agent Authorization.

(1) At the end of the five-year term of authorization to sell wildlife documents, the division shall provide a renewal notice and renewal application to the license agent.

(2)(a) The license agent must complete and return the renewal application to the Licensing Section in the Salt Lake Office within 30 business days of being mailed to the license agent.

(b) The division will not charge a renewal application fee.

(3) If the license agent fails to return the renewal application within 30 business days of being mailed, the division may:

(a) confiscate wildlife document inventories;

(b) not provide new wildlife document inventories; or

(c) interrupt use of the agent hunting and fishing licenses online system.

(2) The division may deny a license agent renewal application for any of the reasons provided in Section R657-27-4(1).

R657-27-14. Violation.

It is unlawful for a license agent to sell wildlife documents in violation of:

(1) the License Agent Authorization; or

(2) any supplemental wildlife document sales agreements executed with the division.

R657-27-15. Distribution of Preprinted Licenses and Permits.

(1) The division shall determine, in its sole discretion, the types and numbers of preprinted licenses and permits issued to a license agent.

(2) Certain licenses or permits may not be available for sale by a license agent.

R657-27-16. Supplemental Wildlife Document Sales Agreement.

(1) Upon approval of a license agent authorization, the division may enter into a supplemental wildlife document sales agreement with the license agent.

(2)(a) The license agent must:

(i) complete all information indicated in the agreement; and

(ii) sign and date the agreement.

(b) The agreement must be returned by mail or hand-delivery to any division office and must be received no later than the date indicated under the terms on the agreement form. Facsimiles will not be accepted.

(c) Agreements received after the date indicated on the agreement form may be returned.

(4)(a) The division may not enter into an agreement with any license agent who was given reasonable notice of the time period for entering into the agreement and fails to return a complete agreement to the division.

(b) The division may notify a license agent who has made an error in completing the agreement form and may afford an opportunity for correction. However, if the division is unable to contact the license agent within two weeks following the filing date indicated on the agreement and correct the error, the agreement shall be void and the license agent may not receive authorization to sell the wildlife documents covered by the supplemental agreement.

(5) By signing the agreement, the license agent agrees to abide by the terms of the agreement.

R657-27-17. License Agent Authorization and Supplemental Agreements Subject to Change.

(1) A license agent authorization or supplemental agreement issued or renewed by the division under this rule is a privilege and not a right. The license agent authorization or supplemental agreement authorizes the license agent to sell

wildlife documents subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, or the State of Utah.

(2) A license agent authorization or supplemental agreement does not guarantee or otherwise legally entitle the license agent to any of the following:

(a) a minimum number of wildlife documents;

(b) a particular type or types of wildlife documents;

(c) access to any particular wildlife document distribution system; or

(d) any other right or opportunity advantageous to the license agent.

(3) The procedures, processes and opportunities outlined in this rule regulating license agents and the distribution of wildlife documents are all subject to future change, including discontinuation, by the division and the Wildlife Board.

KEY: licensing, wildlife, wildlife law, rules and procedures
May 8, 2007 23-19-15
Notice of Continuation April 4, 2007

R657. Natural Resources, Wildlife Resources.
R657-29. Government Records Access Management Act.
R657-29-1. Purpose and Authority.

(1) This rule prescribes where and to whom requests for information shall be directed and provides procedures for access to division records as allowed under Subsection 63G-2-204(2).

(2) Specific procedures for requesting division records are provided in Chapter 2, Title 63, Government Records Access and Management Act.

R657-29-2. Definitions.

(1) Terms used in this rule are defined in Section 63G-2-103.

(2) In addition:

(a) "Department" means the Department of Natural Resources.

(b) "Division" means the Division of Wildlife Resources

(c) "Records officer" means the individual located in the Salt Lake division office designated by the director of the division to work with state archives in the care, maintenance, scheduling, designation, classification, disposal, and preservation of records.

R657-29-3. Allocation of Responsibility Within the Division.

The division is considered a governmental entity and the director of the division is considered the head of the governmental entity.

R657-29-4. Requesting Information.

(1) A person making a request for any private, controlled or protected record shall furnish the division with a written request as provided in Subsection 63G-2-204(1) on a form provided by the division.

(2)(a) A request for any record shall be made only to the records officer in the Salt Lake division office located at 1594 West North Temple, Salt Lake City, Utah 84114.

(b) Response to a request submitted to any person other than the records officer in the Salt Lake division office may be delayed.

(3)(a) The records officer shall respond to each request according to Section 63G-2-204.

(b) Under authority of Subsection 63G-2-201(5)(b) the director may, in his discretion, disclose records that are private under Subsection 63G-2-302(2) or protected under Section 63G-2-305 to persons other than those specified in Section 63G-2-202 or 63G-2-206 if he determines there is no interest in restricting access to the record, or that the interests favoring access outweighs the interest favoring restriction of access.

R657-29-5. Requests for Access for Research Purposes.

(1) Access to private or controlled records for research purposes is allowed under Section 63G-2-202(8).

(2) Requests for access to private or controlled records for research purposes may be made to the records officer in the Salt Lake division office.

R657-29-6. Intellectual Property Records.

(1) The division may duplicate and distribute an intellectual property right that is owned by the division in accordance with Section 63G-2-201(10).

(2) Decisions with regard to these rights shall be made by the records officer in the Salt Lake division office.

(3) Any request regarding the duplication and distribution of such materials shall be made in writing to the records officer in the Salt Lake division office.

R657-29-7. Fees.

(1) The division, pursuant to Section 63G-2-203, may charge a reasonable fee to cover the actual cost of duplicating a record or compiling a record in a form other than that maintained by the division.

(2) The division shall establish fees in accordance with Subsection 63J-1-303.

(3) Fees must be paid at the time of the request or before the records are provided to the requester.

(4) The records officer may fulfill a record request without charge according to the guidelines established in Subsection 63G-2-203(3).

(5) Requests for a fee waiver may be made to the records officer in the Salt Lake division office.

R657-29-8. Denials.

(1) If the records officer denies a request in whole or in part, he shall send a notice of denial to the requester either in person or by sending the notice to the requester's address.

(2) The notice of denial shall contain the information required in Subsection 63G-2-205(2).

R657-29-9. Appeal of Access Determination.

(1) Any person aggrieved by an access determination made by the records officer, including a person not a party to the division proceeding may, within 30 days after the determination, appeal the determination by submitting a notice of appeal in writing to the department executive director.

(2) The notice of appeal shall contain the information provided in Subsection 63G-2-401(2).

(3) Upon receiving the notice of appeal, the department executive director shall make a determination according to the guidelines and within the time periods specified in Section 63G-2-401.

R657-29-10. Appeal of Request to Amend a Record.

(1) Any individual contesting the accuracy or completeness of any public, private, or protected record concerning him may request the division amend the record according to the guidelines specified in Subsection 63G-2-603(2).

(2) The request to amend shall be considered a request for agency action as prescribed in Subsection 63G-4-201 and the adjudicative proceeding shall be conducted informally according to the procedures prescribed in Section 63G-4-203 and R657-2, Adjudicative Proceedings.

(3) Any request to amend a record must be made to the records officer in the Salt Lake division office on a form provided by the division.

KEY: government documents, freedom of information, public records
July 3, 2002 63G-2-204
Notice of Continuation May 3, 2007

R657. Natural Resources, Wildlife Resources.
R657-34. Procedures for Confirmation of Ordinances on Hunting Closures.
R657-34-1. Purpose and Authority.

(1) Under the authority of Sections 23-14-1, 23-14-18, and 23-14-19, this rule provides the standards and procedures for a political subdivision within a community to obtain confirmation from the Wildlife Board to close an area to hunting for reasons of safety.

(2) If a political subdivision of the state adopts an ordinance or policy concerning hunting, fishing, or trapping that conflicts with Title 23, Wildlife Resources Code of Utah, or rules promulgated pursuant thereto, state law shall prevail.

R657-34-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition, "Political subdivision" means any municipality, city, county, or other governmental entity which is legally separate and distinct from the state.

R657-34-3. Information Gathering.

(1) Prior to making a request to the Wildlife Board to close an area to hunting, the political subdivision shall hold a public hearing within its boundaries for the purpose of disclosing the proposed ordinance or policy and gathering public comment.

(2) The political subdivision shall compile a written summary of the hearing, including the date of the hearing, number of persons in attendance, and public comment.

(3) At least 45 days prior to the Wildlife Board meeting in which the request for a hunting closure shall be made, the political subdivision shall submit the following information to the director of the division:

(a) a draft copy of the proposed ordinance or policy;

(b) a plat map showing the boundaries of the area in which the political subdivision is requesting the closure and the boundaries of the political subdivision;

(c) the safety reasons for the proposed closure; and

(d) the written summary of the public hearing as required in Subsection (2).

(4) The purpose of this section is to provide sufficient information to allow the division to conduct a technical evaluation of the impacts the closure may have on division objectives, administrative rules, game depredation, wildlife management, and public interests.

(5) As the division conducts a technical evaluation of the impacts the closure may have regarding public interests, the division shall gather information and broad input from the appropriate regional advisory councils and the officials of the pertinent political subdivision.

R657-34-4. Wildlife Board Confirmation.

(1) At least 20 days prior to the Wildlife Board meeting in which the request for closure is to be made, the director of the division shall submit the following information to the chairman of the Wildlife Board:

(a) a copy of any information received from the political subdivision, including the information provided in Subsection R657-34-3(3);

(b) the technical evaluation prepared by the division; and

(c) the division's recommendations regarding the closure.

(2) The Wildlife Board shall consider the request for closure in an open public meeting.

(3)(a) At or within a reasonable time after the hearing, the chairman of the Wildlife Board shall notify the political subdivision in writing that the requested closure is confirmed or denied.

(b) If the Wildlife Board denies the requested closure, the notification shall include the reasons for the decision.

(4) If the requested closure is denied, the political subdivision may submit a request for reconsideration of the decision by following the procedures provided in Sections R657-2-16 or R657-2-22. The request for reconsideration is not a prerequisite for judicial review.

(5) The closure shall become effective concurrently with the proposed ordinance or policy.

KEY: wildlife, hunting closures, game laws
July 2, 2003 23-14-1
Notice of Continuation May 8, 2008 23-14-18

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 8, 2008

R657. Natural Resources, Wildlife Resources.
R657-42. Fees, Exchanges, Surrenders, Refunds and Reallocation of Wildlife Documents.
R657-42-1. Purpose and Authority.

(1) Under the authority of Sections 23-19-1 and 23-19-38 the division may issue wildlife documents in accordance with the rules of the Wildlife Board.

(2) This rule provides the standards and procedures for the:

(a) exchange of permits;
(b) surrender of wildlife documents;
(c) refund of wildlife documents;
(d) reallocation of permits; and
(e) assessment of late fees.

R657-42-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and the applicable rules and proclamations of the Wildlife Board.

(2) In addition:

(a) "Alternate drawing lists" means a list of persons who have not already drawn a permit and would have been the next person in line to draw a permit.

(b) "Deployed or mobilized" means that a person provides military or emergency services in the interest of national defense or national emergency pursuant to the demand, request or order of their employer.

(c) "Landowner association operator" for purposes of this rule, means:

(i) a landowner association or any of its members eligible to receive limited entry landowner permits as provided in Rule R657-43; or

(ii) Cooperative Wildlife Management Unit (CWMU) landowner association or its designated operator as provided in Rule R657-37.

(d) "Wildlife document" means any license, permit, tag, or certificate of registration issued by the division.

R657-42-3. Exchanges.

(1)(a) Any person who has obtained a general buck deer or a general bull elk permit may exchange that permit for any other available general permit if both permits are for the same species and sex.

(b) A person must make general buck deer and general bull elk permit exchanges at any division office prior to the season opening date of the permit to be exchanged.

(2) Any person who has obtained a cougar harvest objective unit permit may exchange that permit for any other available cougar harvest objective unit permit as provided in Rule R657-10.

(3) Any person who has obtained a limited entry bear any weapon or limited entry bear archery permit may exchange that permit for a limited entry bear archery or limited entry bear any weapon permit, respectively.

(4) Any person who has obtained a Dedicated Hunter Permit may exchange that permit for any other available Dedicated Hunter Permit as provided in Rule R657-38.

(5) The division may charge a handling fee for the exchange of a permit.

R657-42-4. Surrenders.

(1) Any person who has obtained a wildlife document and decides not to use it, may surrender the wildlife document to any division office.

(2) Any person who has obtained a wildlife document may surrender the wildlife document prior to the season opening date of the wildlife document for the purpose of:

(a) waiving the waiting period normally assessed and reinstating the number of bonus points, including a bonus point for the current year as if a permit had not been drawn, if applicable;

(b) reinstating the number of preference points, including a preference point for the current year as if a permit had not been drawn, if applicable; or

(c) purchasing a reallocated permit or any other permit available for which the person is eligible.

(3) A CWMU permit must be surrendered prior to the applicable season opening date provided by the CWMU operator, except as provided in Section R657-42-11.

(4) Dedicated hunter participants must surrender their permits prior to the general archery deer season, except as provided in Section R657-38-6.

(5) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-5. Refunds.

(1) The refund of a license, certificate of registration or permit shall be made in accordance with:

(a) Section 23-19-38 and Rule R657-50;
(b) Section 23-19-38.2 and Subsection (3); or
(c) Section 23-19-38 and Subsection (4).

(2)(a) An application for a refund may be obtained from any division office.

(b) All refunds must be processed through the Salt Lake Division office.

(3) A person may receive a refund in accordance with Subsection (3) for a wildlife document if that person was deployed or mobilized on or after September 11, 2001, in the interest of national defense or national emergency and is thereby completely precluded from participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) the refund request is made to the division within one year of the end of the hunting or fishing season authorized by the wildlife document;

(b) the person surrenders the wildlife document to the division, or signs an affidavit stating the wildlife document is no longer in the person's possession; and

(c) the person verifies that the deployment or mobilization completely precluded them from participating in the activity authorized by the wildlife document, except as provided in Subsection (5); and

(d) the person provides military orders, or a letter from an employment supervisor on official public health or public safety organization letterhead stating:

(i) the branch of the United States Armed Forces, or name of the public health organization or public safety organization from which they were deployed or mobilized; and

(ii) the nature and length of their duty while deployed or mobilized.

(4) The division may issue a refund for a wildlife document if the person to whom it was issued dies prior to participating in the hunting or fishing activity authorized by the wildlife document, provided:

(a) The person legally entitled to administer the decedent's estate provides the division with:

(i) picture identification;

(ii) letters testamentary, letters of administration, or such other evidence establishing the person is legally entitled to administer the affairs of the decedent's estate;

(iii) a photocopy of the decedent's certified death certificate; and

(iv) the wildlife document for which a refund is requested.

(5) The director may determine that a person did not have the opportunity to participate in an activity authorized by the wildlife document.

(6) The division may reinstate a bonus point or preference point, whichever is applicable, and waive waiting periods, if applicable, when issuing a refund in accordance with this

Section.

R657-42-6. Reallocation of Permits.

(1)(a) The division may reallocate surrendered limited entry, once-in-a-lifetime and CWMU permits.

(b) The division shall not reallocate resident and nonresident big game general permits.

(2) Permits shall be reallocated through the Salt Lake Division office.

(3)(a) Any limited entry, once-in-a-lifetime or public CWMU permit surrendered to the division shall be reallocated through the drawing process by contacting the next person listed on the alternate drawing list or as provided in Subsection (b).

(b) A person who is denied a permit due to an error in issuing permits may be placed on the alternate drawing list to address the error, if applicable, in accordance with the Rule R657-50.

(c) The alternate drawing lists are classified as private and therefore, protected under the Government Records Access Management Act.

(d) The division shall make a reasonable effort to contact the next person on the alternate list by telephone or mail.

(e) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit, does not accept the permit or the division is unable to contact that person, the reallocation process will continue until the division has reallocated the permit or the season closes for that permit.

(4) If the next person, who would have drawn the limited entry, once-in-a-lifetime or public CWMU permit has obtained a permit, that person may be required to surrender the previously obtained permit in accordance with Section R657-42-4(2) and any other applicable rules and proclamations of the Wildlife Board.

(5) Any private CWMU permit surrendered to the division will be reallocated by the landowner through a voucher, issued to the landowner by the division in accordance with Rule R657-37.

(6)(a) The division may allocate additional general deer permits and limited entry permits, if it is consistent with the unit's biological objectives, to address errors in accordance with Rule R657-50.

(b) The division shall not allocate additional CWMU and Once-In-A-Lifetime permits.

(c) The division may extend deadlines to address errors in accordance with Rule R657-50.

R657-42-7. Reallocated Permit Cost.

(1) Any person who accepts the offered reallocated permit must pay the applicable permit fee.

(2) The division may not issue a refund, except as provided in Section R657-42-5.

R657-42-8. Accepted Payment of Fees.

(1) Personal checks, business checks, money orders, cashier's checks, and credit or debit cards are accepted for payment of wildlife documents.

(2) Personal or business checks drawn on an out-of-state account are not accepted.

(3) Third-party checks are not accepted.

(4) All payments must be made payable to the Utah Division of Wildlife Resources.

(5)(a) Credit or debit cards must be valid at least 30 days after any drawing results are posted.

(b) Checks, and credit or debit cards will not be accepted as combined payment on single or group applications.

(c) If applicable, if applicants are applying as a group, all fees for all applicants in that group must be charged to one credit or debit card.

(d) Handling fees and donations are charged to the credit or debit card when the application is processed.

(e) Application amendment fees must be paid by credit or debit card.

(f) Permit fees may be charged to the credit or debit card prior to the posting date of the drawings, if successful.

(g) The division shall not be held responsible for bank charges incurred for the use of credit or debit cards.

(6)(a) An application is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The division charges a returned check collection fee for any check returned unpaid.

(7)(a) A license or permit is voidable if the check is returned unpaid from the bank or the credit or debit card is invalid or refused.

(b) The Division may make attempt to contact the successful applicant by phone or mail to collect payment prior to voiding the license or permit.

(c) The Division shall reinstate the applicant's bonus points or preference points, whichever is applicable, and waive waiting periods, if applicable, when voiding a permit in accordance with Subsection (b).

(d) A permit which is deemed void in accordance with Subsection (b) may be reissued by the Division to the next person listed on the alternate drawing list.

(8)(a) A license or permit received by a person shall be deemed invalid if payment for that license or permit is not received, or a check is returned unpaid from the bank, or the credit or debit card is invalid or refused.

(b) A person must notify the division of any change of credit or debit card numbers if the credit or debit card is invalid or refused.

(9) Hunting with a permit where payment has not been received for that permit constitutes a violation of hunting without a valid permit.

(10) The division may require a money order or cashier's check to correct payment for a license, permit, or certificate of registration.

(11) Any person who fails to pay the required fee for any wildlife document, shall be ineligible to obtain any other wildlife document until the delinquent fees and associated collection costs are paid.

R657-42-9. Assessment of Late Fees.

(1) Any wildlife application submitted under the Utah Administrative Code Rules provided in Subsection (a) through (e), within 30 days of the applicable application deadline established in such rules, in the proclamations of the Wildlife Board, or by the division may be processed only upon payment of a late fee as provided by the approved fee schedule.

(a) R657-52, Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs;

(b) R657-21, Cooperative Wildlife Management Units for Small Game;

(c) R657-22, Commercial Hunting Areas;

(d) R657-37, Cooperative Wildlife Management Units for Big Game; or

(e) R657-43, Landowner Permits.

(2) Any person who fails to report their Big Game hunt information pursuant to R657-5 Taking Big Game, within 30 calendar days of the ending season date for their once-in-a-lifetime, premium limited entry, limited entry, or cooperative wildlife management unit hunt may apply for a Big Game permit or bonus point in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Big Game application period established in the proclamation of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number as listed in the

Big Game proclamation.

(c) The accepted method of payment of fee is only a credit or debit card.

(3) Any person who fails to report their Swan hunt information pursuant to R657-9-7, within 30 calendar days of the ending season date for their Swan hunt may apply for a Swan permit in the following year provided:

(a) the survey is completed and submitted to the division at least 5 days prior to the close of the Swan application period established in the proclamation of the Wildlife Board.

(b) the late fee established in the approved fee schedule is paid to the Division through the 1-800 number as listed in the Waterfowl proclamation.

(c) The accepted method of payment of fee is only a credit or debit card.

R657-42-10. Duplicates.

(1) If an unexpired wildlife document is destroyed, lost or stolen, a person may obtain a duplicate from a division office or online license agent, for a duplicate fee as provided in the fee schedule.

(2) The division may waive the fee for a duplicate unexpired wildlife document provided the person did not receive the original wildlife document.

(3) To obtain the duplicate wildlife document, the applicant may be required to complete an affidavit testifying to such loss, destruction or theft.

R657-42-11. Surrender of Cooperative Wildlife Management Unit or Limited Entry Landowner Permits.

(1) A person who has obtained a CWMU or limited entry landowner permit may surrender the permit after the deadline provided in Subsection R657-42-4(3) for CWMU permits and after the season opening date for limited entry landowner permits for the purpose of:

(a) death in accordance with Section 23-19-38, Subsection (2) and Section R657-42-5(4);

(b) injury or illness in accordance with Section 23-19-38 and Subsection (2);

(c) deployment or mobilization in the interest of national defense or national emergency in accordance with Section 23-19-38.2 and Subsection (2); or

(d) an error occurring in issuing the permit in accordance with Subsection (2) and Rule R657-50.

(2)(a) The permittee and the landowner association operator must sign an affidavit stating that the permittee has not participated in any hunting activity.

(b) The permittee and landowner association operator signatures must be notarized.

(c) The affidavit and unused permit must be submitted to the division.

(3)(a) The division may reissue a voucher to a landowner association operator, or reallocate a surrendered permit in accordance with Section 23-19-38 and as provided in Subsections (b) and (c).

(b) The division may reallocate a surrendered permit:

(i) originally issued by the division through the big game drawing process in accordance with Section R657-42-6; or

(ii) originally issued by the division through a voucher redemption in the form of a new voucher issued to the landowner association operator.

(c) Reissuance of vouchers or reallocation of permits under this section may only occur in the year in which the surrendered permit was valid.

KEY: wildlife, permits

May 8, 2008	**23-19-1**
Notice of Continuation May 8, 2008	**23-19-38**
	23-19-38.2

R657. Natural Resources, Wildlife Resources.
R657-45. Wildlife License, Permit, and Certificate of Registration Forms.
R657-45-1. Purpose and Authority.

Under authority of Sections 23-14-19 and 23-19-2 the Wildlife Board has established this rule for prescribing the forms of a Wildlife License, Permit, and Certificate of Registration.

R657-45-2. Information Listed on the License, Permit, and Certificate of Registration Forms.

(1) A License, Permit, and Certificate of Registration issued for hunting or fishing shall be made upon forms and in the manner prescribed by the Wildlife Board.

(2) The License, Permit, and Certificate of Registration forms shall include the licensee's customer identification number, name, date of birth, address, and any other information the Division of Wildlife may request.

KEY: license, permit, certificate of registration
May 8, 2008 23-19-2
Notice of Continuation May 8, 2008

R657. Natural Resources, Wildlife Resources.
R657-48. Wildlife Species of Concern and Habitat Designation Advisory Committee.
R657-48-1. Authority and Purpose.

(1) Pursuant to Sections 23-14-19 and 63-34-5(2)(a) of the Utah Code, this rule:

(a) establishes the Wildlife Species of Concern and Habitat Designation Advisory Committee;

(b) defines its purpose and relationship to local, state and federal governments, the public, business, and industry functions of the state;

(c) defines the Utah Sensitive Species List; and

(d) defines the procedure for:

(i) the designation of wildlife species of concern as part of a process to preclude listing under the ESA; and

(ii) review, identification and analysis of wildlife habitat designation and management recommendations relating to significant land use development projects.

R657-48-2. Definitions.

(1) The terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Committee" means the Wildlife Species of Concern and Habitat Designation Advisory Committee.

(b) "Conservation species" means wildlife species or subspecies that are currently receiving special management under a conservation agreement developed or implemented by the state to preclude the need for listing under the ESA.

(c) "Department" means the Department of Natural Resources.

(d) "Division" means the Division of Wildlife Resources within the Department.

(e) "ESA" means the federal Endangered Species Act.

(f) "Executive Director" means Executive Director of the Department.

(g) "Habitat identification material" means maps, data, or documents prepared by the Division in the process of specifying wildlife habitat.

(h) "Management recommendations" means determinations of, amount of, level of intensity, timing of, any restrictions, conditions, mitigation, or allowances for activities proposed for a project area pursuant to this rule.

(i) "NEPA" means the National Environmental Policy Act as defined in 42 U.S.C. Section 4321-4347.

(j) "Interested Person" means an individual, firm, association, corporation, limited liability company, partnership, commercial or trade entity, any agency of the United States Government, the State of Utah, its departments, agencies and political subdivisions.

(k) "Project area" means the geographical area covered by a significant land use development.

(l) "Proposed wildlife habitat designation" means identified habitat in a project area undergoing review pursuant to this rule.

(m) "Significant land use development" means any project or development identified as such by the Executive Director, or as approved through petition as described in Section R657-48-5.

(n) "Wildlife habitat designation document" means the written decision of the Executive Director after following the provisions of this rule for wildlife habitat designation and management recommendations for a project area.

(o) "State sensitive species" means:

(i) wildlife species or subspecies listed under the ESA, and now or previously present in Utah;

(ii) wildlife species or subspecies de-listed under the ESA during the past six months that are now or were previously present in Utah;

(iii) wildlife species or subspecies now or previously present in Utah that are currently proposed by the U.S. Fish and Wildlife Service for listing under ESA;

(iv) candidate wildlife species or subspecies under the ESA now or previously present in Utah;

(v) wildlife species or subspecies removed from the ESA candidate list during the past six months that are now or were previously present in Utah;

(vi) conservation species; or

(vii) wildlife species of concern.

(p) "Wildlife habitat designation" means the wildlife habitat identification within a project area issued pursuant to this rule.

(q) "Wildlife habitat identification" means the description, classification and assignment by the Division of any area of land or bodies of water as the habitat, range or area of use, seasonally, historically, currently, or prospectively of or by any species of game or non-game wildlife in the State of Utah.

(r) "Wildlife species of concern" means a wildlife species or subspecies within the state of Utah for which there is credible scientific evidence to substantiate a threat to continued population viability.

(s) "Wildlife species of concern designation" means the decision to bestow wildlife species of concern status on a wildlife species or subspecies, or remove wildlife species of concern status from a wildlife species or subspecies, pursuant to this rule.

(t) "Utah Sensitive Species List" means the list of all current state sensitive species.

R657-48-3. Department Responsibilities.

(1) There is established a Wildlife Species of Concern and Habitat Designation Advisory Committee within the Department of Natural Resources.

(2) The Department shall provide staff support, arrange meetings, keep minutes, and prepare and distribute final recommendations.

R657-48-4. Committee Membership and Procedure.

(1) Committee membership shall consist of:

(a) the Executive Director of the Department;

(b) the Director of the Utah Public Lands Policy Coordinating Office or a designee;

(c) the Director of the Division or a designee;

(d) the Director of the Division of Oil, Gas and Mining or a designee;

(e) the Director of the Division of Water Resources or a designee; and

(f) any other Department Division heads or designees as determined by the Executive Director of the Department.

(2) The Executive Director shall serve as chair.

(3) Three members, consisting of the Executive Director, the Division Director and the Director of the Division of Oil, Gas and Mining, shall constitute a quorum for meetings of the Committee.

(4) The Committee shall meet as specified by the Executive Director.

(5) The following procedure shall be used for submitting review items to the Executive Director for inclusion on the Committee agenda:

(a) the Division Director shall submit for committee review all proposed wildlife species of concern designations; and

(b) the Division Director shall submit for committee review any proposed or existing wildlife habitat designations and corresponding management recommendations within a project area.

(i) The Division shall support its proposals for wildlife species of concern designations, wildlife habitat designations and management recommendations with:

(A) studies, investigations and research supporting the need for the designations and the potential impacts of each proposal;

(B) field survey and observation data; and

(C) federal, state, local and academic information on habitat, historical distribution, and other data or information collected in accordance with generally accepted scientific techniques and practices.

(6) The Department will provide an analysis of potential impacts of the proposed designations and the existing social and economic needs of the affected communities and interests.

R657-48-5. Public Participation and Setting of Meeting Agenda.

(1) An interested person may petition the Executive Director for a hearing before the Committee to designate a project as a significant land use development for purposes of this rule.

(2) The Executive Director shall act to approve or disapprove a petition or extension request within 14 calendar days.

(3)(a) The agenda shall consist of items determined by the Executive Director, and copies shall be sent to Committee members and other interested persons as requested.

(b) The agenda shall be distributed at least 28 calendar days prior to the meeting.

(c) Requests to receive notices and agendas must be submitted in writing to the Executive Director's Office as provided in Subsection R657-48-9(1).

(4) Any interested person may:

(a) submit comments on proposed wildlife species of concern and wildlife habitat designations;

(i) comments must be submitted in writing to the Executive Director for review and must be submitted at least seven calendar days prior to the meeting;

(b) request an extension of up to 30 calendar days to review a proposed Committee action; or

(c) request to make an oral presentation before the Committee.

(i) An interested person seeking to make a presentation before the Committee concerning any matter under review, must submit a written request and supporting documentation to the Executive Director at least 14 calendar days prior to the meeting.

R657-48-6. Committee Review Actions.

(1) In conducting a review of issues, the Committee may:

(a) require additional information from the Division, the Department or interested persons;

(b) require the Division or interested persons to make presentations before the Committee or provide additional documentation in support or opposition of the recommendation;

(c) schedule additional meetings where public interest or agency concern merits additional discussion;

(d) undertake additional review functions as needed; or

(e) consider the need for involvement of other persons or agencies, or whether other action may be needed.

(2) Following the Committee's review and recommendation, the Executive Director shall:

(a) make a final determination and, if warranted, recommend the approval of any or all proposed wildlife species of concern designations to the Wildlife Board; or

(b) in the case of proposed wildlife habitat designations, make a final determination.

(3) The Executive Director's decision will be announced at that meeting, or the next formal meeting, on the proposed wildlife species of concern designations or habitat designations, unless an alternative time is required by federal or state law, or rule.

R657-48-7. Wildlife Species of Concern Designation Process.

(1) A wildlife species of concern designation shall be made only after the Executive Director, following consideration of the Committee's recommendations, has made a formal written recommendation to the Wildlife Board, and after that Board has considered:

(a) the Executive Director's recommendation, and all comments on such recommendation; and

(b) all data, testimony and other documentation presented to the Committee and the Wildlife Board pertaining to such proposed designation.

(2) All wildlife species of concern designations shall be made:

(a) pursuant to the procedures specified in this rule; and

(b) as an independent public rulemaking pursuant to the Administrative Rulemaking Act, Title 63G, Chapter 4 of the Utah Code.

(3) With each proposed wildlife species of concern designation, the accompanying analysis shall include either a species status or habitat assessment statement, a statement of the habitat needs and threats for the species, the anticipated costs and savings to land owners, businesses, and affected counties, and the inclusion of the rationale for the proposed designation.

(4) The Wildlife Board may approve, deny or remand the proposed wildlife species of concern designation to the Executive Director.

(5) Until a proposed wildlife species of concern designation is finalized, the proposed designation may not be used or relied upon by any governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife species of concern designations as part of the administrative record and make such information available, subject to the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

(7) The Division shall maintain the Utah Sensitive Species List and update the list as necessary to maintain consistency with Subsection R657-48-2(2)(o) as the statuses of sensitive species change due to one or more of the following:

(a) wildlife species of concern or other wildlife species are listed under ESA;

(b) wildlife species are de-listed under ESA;

(c) wildlife species' names change due to taxonomic revisions;

(d) new wildlife species of concern are designated pursuant to this rule;

(e) wildlife species of concern status is removed from species pursuant to this rule;

(f) conservation agreements are developed and implemented for species;

(g) conservation agreements become invalid;

(h) species become candidates for listing under ESA;

(i) species lose candidate status under ESA;

(j) species are formally proposed for listing under ESA by the U.S. Fish and Wildlife Service; or

(k) species lose proposed status under ESA.

(8) If a species designated as a wildlife species of concern is listed under ESA, is proposed for listing under ESA, becomes a candidate for listing under ESA, or becomes a conservation species, the changed species status will be reflected in the Utah Sensitive Species List. If the species subsequently loses its ESA status or the conservation agreement becomes invalid, the species will revert to wildlife species of concern status.

R657-48-8. Wildlife Habitat Designations and Management Recommendations.

(1) Wildlife habitat designations and management

recommendations for project areas will be made pursuant to the procedures specified by this rule.

(2) Any Department or Division map, identification of habitat, document or other material that is provided or released to, or used by any persons, including federal agencies, which includes wildlife habitat designations that have been adopted under this rule will so indicate.

(3) A proposed wildlife habitat designation and management recommendation shall be adopted by the Executive Director only after the Executive Director, following consideration of the Committee's recommendations, has considered all data, testimony and other documentation presented to the Committee pertaining to such proposed designation.

(4) Until a final determination on a proposed wildlife habitat and management recommendation has been made by the Executive Director, the proposed wildlife habitat or management recommendations may not be used or relied upon by any other governmental agency, interested person, or entity as an official or unofficial statement of the state of Utah.

(5) A Wildlife Habitat Designation document developed for the purpose of this rule, having been completed by the Executive Director, shall be attached to the wildlife habitat identification materials and made available for public review or copying upon request.

(6) The Division shall maintain all data collected and other information relied upon in developing proposed wildlife habitat designations and management recommendations as part of the administrative record, and make this information available in accordance with the Government Records Access and Management Act as defined in Section 62-2-101, for public review and copying upon request.

R657-48-9. Distribution.

(1) The Division shall send by mail or electronic means a copy of a proposed wildlife species of concern designation or wildlife habitat and management determination established under this rule to the following:

(a) any person who has requested in writing that the Division provide notice of any proposed wildlife species of concern designations or proposed wildlife habitat and management recommendations under this rule; and

(b) county commissions and tribal governments, which have jurisdiction over lands that are covered by a proposed wildlife habitat designation and management recommendation and of lands inhabited by a species proposed to be designated as a wildlife species of concern under this rule.

(2) Wildlife species of concern designations, wildlife habitat designations or management recommendations may not be used by governmental entities as a basis to involuntarily restrict the private property rights of landowners and their lessees or permittees.

KEY: species of concern, habitat designation
August 8, 2006 23-14-19
Notice of Continuation May 24, 2006 63-34-5(2)(a)

R657. Natural Resources, Wildlife Resources.
R657-52. Commercial Harvesting of Brine Shrimp and Brine Shrimp Eggs.
R657-52-1. Purpose and Authority.

(1) Under authority of Sections 23-14-3, 23-14-18, 23-14-19, Sections 23-15-7 through 23-15-9, and 23-19-1(2), this rule provides the procedures, standards, and requirements for commercially harvesting brine shrimp and brine shrimp eggs.

(2) The objective of this rule is to protect, manage, and conserve the brine shrimp resource based upon the best available data and information and adequately preserve the Great Salt Lake ecosystem while recognizing the economic value of allowing the harvest of brine shrimp and brine shrimp eggs and maintaining a sustainable brine shrimp population.

R657-52-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Alternate seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs in the absence of the primary seiner.

(b) "Certificate of registration marker" means a floating or mounted marker conforming to the specifications set forth in Subsection R657-52-16(2) and (3), which must be displayed at a harvest location before harvest activity commences.

(c) "Harvest" means to gather or collect brine shrimp or brine shrimp eggs and reduce it to possession.

(d) "Harvest location" means the location where the gathering or harvesting of brine shrimp or brine shrimp eggs takes place. A harvest location is a 300 yard radius from the location of the Certificate of Registration marker as required under Subsection R657-52-16(8).

(e) "Helper" means a person aiding a certificate of registration holder in the harvesting, transporting, or selling of brine shrimp or brine shrimp eggs, including any employee, agent, family member, or volunteer.

(f) "Helper card" means a card authorizing a person to act as a helper.

(g) "Primary seiner" means the person in charge of and responsible for supervising a crew of helpers harvesting brine shrimp and brine shrimp eggs.

(h) "Purchase" means to buy, acquire, or obtain from sale, exchange, barter, or trade brine shrimp or brine shrimp eggs for pecuniary consideration or advantage.

(i) "Wildlife registration office" means the division office in Salt Lake responsible for processing applications and issuing certificates of registration.

R657-52-3. Certificate of Registration Required.

(1) A person may not harvest, possess, or transport brine shrimp or brine shrimp eggs without first obtaining a certificate of registration and a helper card for each individual assisting that person.

(2)(a) The division may issue a certificate of registration authorizing a person to harvest brine shrimp and brine shrimp eggs.

(b) A separate certificate of registration and the corresponding certificate of registration marker is required for each harvest location.

(c) The original copy of the certificate of registration must be present at the harvest location while harvesting brine shrimp or brine shrimp eggs.

(3) A certificate of registration under this rule is not required:

(a) to harvest 200 pounds or less of brine shrimp or brine shrimp eggs, during a single calendar year, for culturing ornamental fish, provided the brine shrimp eggs are not sold, bartered, or traded;

(i) a certificate of registration is required, however, under Rule R657-3 for the activities described in Subsection (a);

(b) for the retail sale of brine shrimp or brine shrimp eggs imported into Utah, provided the product is clearly labeled as to its out-of-state origin;

(c) to process lawfully acquired brine shrimp or brine shrimp eggs;

(d) to sell brine shrimp or brine shrimp eggs, provided the brine shrimp or brine shrimp eggs were taken in accordance with the provisions of this rule by a person who has obtained a certificate of registration or as provided in rule R657-3; or

(e) to collect, transport or possess brine shrimp and brine shrimp eggs for personal use, provided:

(i) the brine shrimp and brine shrimp eggs are collected, transported and possessed together with water in a container no larger than one gallon;

(ii) no more than a one gallon container of brine shrimp and brine shrimp eggs, including water, is collected during any consecutive seven day period; and

(iii) the brine shrimp or brine shrimp eggs are not released live into the Great Salt Lake, Sevier River or any of their tributary waters.

(4) Certificates of registration are not transferable, except as provided in Section R657-52-7.

(5) Any certificate of registration issued to a business or any other commercial organization shall be void upon the termination of the business or organization or upon bankruptcy.

(6) Certificates of registration that may become available for issuance through revocation, expiration, nonrenewal, or surrender may either be retired by the division or reallocated to eligible persons and entities through random drawings conducted at the Division of Wildlife Resources, Salt Lake City office.

(7) All persons or entities applying for a certificate of registration to harvest brine shrimp and brine shrimp eggs made available for issuance through Subsection (6) shall satisfy the following requirements:

(a) submit a certificate of registration application to the wildlife registration office consistent with the requirements set forth in R657-52-5; and

(b) submit a cashiers check to the division in the established fee amount for each certificate of registration applied for.

(8)(a) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(b) Any person accepting a certificate of registration under this rule acknowledges the necessity for close regulation and monitoring by the division.

(9) Any certificate of registration issued or renewed by the division under this rule to harvest brine shrimp or brine shrimp eggs is a privilege and not a right. The certificate of registration authorizes the holder to harvest brine shrimp or brine shrimp eggs subject to all present and future conditions, restrictions, and regulations imposed on such activities by the division, the Wildlife Board, the state of Utah, or the United States.

(10) A certificate of registration to harvest brine shrimp or brine shrimp eggs does not guarantee or otherwise legally entitle the holder to any of the following:

(a) a minimum harvest quota in any given season or seasons;

(b) a quota or percentage of the harvestable surplus as determined by the division;

(c) a particular harvesting or processing method;

(d) a particular harvest season duration, commencement date, or termination date;

(e) access to any particular area or site on the Great Salt Lake or on other waters in the state, regardless of historical

authorization or use;

(f) marina access on the Great Salt Lake or elsewhere in the state, regardless of historical authorization or use;

(g) an increase, stabilization, or reduction in the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs;

(h) an exclusive opportunity to harvest;

(i) a particular quantity or quality of brine shrimp or brine shrimp eggs;

(j) a particular water condition or salinity level conducive to brine shrimp production, brine shrimp egg production, or harvest success;

(k) any particular level of protection for brine shrimp or brine shrimp eggs from disease, pesticides, or predators; or

(l) any other right or management philosophy beneficial to harvesting or production of brine shrimp and brine shrimp eggs.

(11) The procedures and processes outlined in this rule regulating the harvest of brine shrimp and brine shrimp eggs are all subject to change as the division and the Wildlife Board gather greater information and data on the impact current harvest regulations have on the sustainability of brine shrimp populations, the Great Salt Lake ecosystem, and the economic viability of the industry.

R657-52-4. Certificate of Registration Availability.

(1) The Wildlife Board, after considering the best available biological data and other information received from the division and the public, has determined that:

(a) a limitation on the number of certificates of registration issued by the division to harvest brine shrimp and brine shrimp eggs is currently necessary to protect the brine shrimp resource and the Great Salt Lake ecosystem;

(b) additional research and scientific data is necessary to adequately understand the dynamics of the brine shrimp populations, the Great Salt Lake ecosystem, and the impact harvesting has on the sustainability of the resource;

(c) given the current number of certificates of registration, the need for additional scientific data, and the increasing efficiency in the industry's ability to harvest large quantities of brine shrimp and brine shrimp eggs in short periods, the issuance of additional certificates at this point in time may compromise the division's ability to effectively regulate the harvest to avoid jeopardizing resource sustainability; and

(d) given these factors and the harvest restrictions adopted in this rule, a total of 79 certificates of registration may be issued.

R657-52-5. Application for Certificate of Registration.

(1) Applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at division offices and must be submitted to the division between May 1 through May 31. Applications may be submitted by mail if postmarked no later than midnight on the last day of the application period.

(2)(a) If an application for a certificate of registration is made in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(b) All commercial organization applicants shall provide with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(3)(a) Completed applications must be submitted to the wildlife registration office.

(b) The division may return any application that is incomplete or completed incorrectly.

(4) The application review process may require up to 45 days.

(5) The division may deny issuing a certificate of registration to any applicant for any of the following reasons:

(a) the applicant has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(6) The division may limit the number of certificates of registration issued or deny any application in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application is approved, the division shall issue the applicant a certificate of registration that specifies, among other things:

(a) the name, address and phone number of the applicant;

(b) the name, address and phone number of the responsible person;

(c) the water and locations where brine shrimp and brine shrimp eggs may be harvested;

(d) the certificate of registration's expiration date; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Sections R657-52-12 and R657-52-13.

R657-52-6. Certificate of Registration Renewal.

(1) Each certificate of registration to harvest brine shrimp and brine shrimp eggs issued under this rule may be renewed by the division on an annual basis consistent with the provisions in this section.

(2) Persons or business entities issued certificates of registration by the division in the harvest year immediately preceding the harvest year for which renewal is sought will have a preference for the same number of certificates of registration, provided the applicant satisfies the renewal criteria for each certificate of registration.

(3) The annual expiration date of a certificate of registration shall be shown on the certificate of registration. A certificate of registration that is not renewed prior to the expiration date shown on the certificate of registration automatically expires.

(a) A certificate of registration automatically expires prior to the expiration date shown on the certificate of registration upon the dissolution of a holder that is a partnership, corporation, or other business entity.

(b) Upon the death of a certificate of registration holder that is a natural person, the estate may attempt to sell the harvest operation and petition the division, under Section R657-52-7, to transfer the certificate of registration to the respective buyer.

(c)(i) Failure to annually renew a certificate of registration by satisfying all the renewal criteria outlined in this rule prior to the expiration date shown on the certificate of registration shall automatically deprive the prospective holder of a renewal preference in succeeding years.

(ii) Preference forfeiture results whether unsuccessful renewal is the consequence of automatic expiration, applicant neglect, or division denial.

(iii) Failure to renew in years where the harvest of brine shrimp or brine shrimp eggs is closed for regulatory or management purposes will result in preference forfeiture.

(d) Expiration of a certificate of registration is not an adjudicative proceeding under Title 63G, Chapter 4 of the Utah Administrative Procedures Act.

(4) Renewal applications for certificates of registration to harvest brine shrimp and brine shrimp eggs are available at the division's wildlife registration office in Salt Lake City.

(a) Completed renewal applications shall be submitted to the wildlife registration office between May 1 and May 31 of each year. Applications are considered "submitted" for purposes of this rule when hand delivered to the wildlife registration office on or before the application deadline, or when mailed to the wildlife registration office and postmarked no later than midnight on the last day of the application period.

(b) Where a certificate of registration renewal application is submitted in the name of a commercial organization, the applicant must specify the person responsible for that entity.

(c) The commercial organization applicant must provide, on or with the renewal application, a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(d) The division may return any application that is incomplete or completed incorrectly.

(e) Applications for renewal that are filed within the prescribed time period set in this rule but returned as incomplete or completed incorrectly may be granted where the errors are corrected and the application resubmitted to the wildlife registration office within 30 days from the date the initial application was rejected.

(f) The application review process may require up to 45 days.

(5) The criteria for certificate of registration renewal are as follows:

(a) the applicant was issued a certificate of registration to harvest brine shrimp and brine shrimp eggs in the immediate harvest season preceding the application for renewal;

(b) the applicant has accurately and completely filled out the division's renewal application and submitted it to the division within the time period prescribed in this rule;

(c) the applicant has submitted with the renewal application a cashiers check for the established fee amount for each certificate of registration; and

(d) the applicant satisfies all other requirements prerequisite to receiving an initial certificate of registration to harvest brine shrimp or brine shrimp eggs as found in R657-52-5.

(6) The division may refuse to renew a certificate of registration for any of the following reasons:

(a) the applicant has failed to submit any report required by the division in writing, or any report required by this rule or the Wildlife Board;

(b) the applicant has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife;

(c) the applicant has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board Order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(d) where the division determines that renewal may significantly damage or is not in the interest of wildlife, wildlife habitat, serving the public, or public safety.

(7) If an application for renewal is approved, the Division shall issue the applicant a new certificate of registration that may specify:

(a) the species and amounts of protected aquatic wildlife that may be harvested or sold;

(b) the water and locations where protected aquatic wildlife may be harvested;

(c) the equipment that may be used;

(d) the hours during which protected aquatic wildlife may be harvested; and

(e) any restriction imposed on the applicant in addition to the provisions of this rule.

(8) Any applicant who has been refused renewal of a certificate of registration may submit a request for agency action to the Wildlife Board, in care of the Division of Wildlife Resources, within 30 days following notification of the refusal to renew. The format and content of the request for agency action and any subsequent proceedings initiated thereunder shall comply with Rule R657-2.

(9) Certificates of registration for harvesting brine shrimp and brine shrimp eggs are valid only during the harvest season as provided in Subsections R657-52-12 and R657-52-13.

R657-52-7. Certificate of Registration Transfers.

(1) Pursuant to Section 23-19-1(2), a person may not lend, transfer, sell, give or assign a certificate of registration to harvest brine shrimp and brine shrimp eggs belonging to the person or the rights granted thereby, except as authorized hereafter.

(2) "Business entity" for purposes of this section means any person, proprietorship, partnership, corporation, or other commercial organization that has been issued a certificate of registration by the division to harvest brine shrimp and brine shrimp eggs.

(3)(a) The division may authorize, consistent with the requirements of this section, the transfer of a valid certificate of registration to harvest brine shrimp and brine shrimp eggs from the lawful holder to an other person or entity in the following instances:

(i) where any transaction or occurrence will cause the name of the business entity recorded as the certificate of registration holder to change from that specifically identified on the certificate of registration;

(ii) where any transaction or occurrence will cause the business entity recorded as the certificate of registration holder to permanently reorganize, dissolve, lapse, or otherwise cease to exist as a legal business entity under the laws of the State of Utah or the jurisdiction where the business entity was organized; or

(iii) where any transaction or occurrence effectively transfers a certificate of registration to harvest brine shrimp and brine shrimp eggs in violation of Section 23-19-1(2).

(b) written approval from the division for any certificate of registration transfer permitted under this rule shall be obtained prior to any transfer of the certificate of registration or the rights granted thereunder.

(c) Transferring or selling an ownership interest in a business entity holding a certificate of registration to harvest brine shrimp and brine shrimp eggs does not require division approval provided the transfer of ownership does not cause the business entity to temporarily or permanently change its name, reorganize, dissolve, lapse, or otherwise cease to exist as a legally recognized business entity under the laws of the State of Utah.

(4) Obtaining division approval to transfer a certificate of registration to harvest brine shrimp and brine shrimp eggs shall be initiated by application to the division, as provided in Subsections (a) through (e).

(a) Complete the application prescribed by the division and submit it to the division's wildlife registration office.

(b) Applications may be submitted any time during the year.

(c) Annual applications and fees for certificates of registration renewal shall be submitted between May 1 and May 31, regardless whether a transfer application is contemplated or pending.

(d) If an application to transfer a certificate of registration identifies a business entity as the transferee, the transferee must designate a person responsible for that entity.

(i) The transferee shall provide on or with the application a written statement designating the responsible person as its legal agent in all matters before the division relating to brine shrimp and brine shrimp egg harvesting.

(e) The division may return any application that is incomplete or completed incorrectly.

(5) The division shall respond to the application to transfer a certificate of registration within 20 days of receipt in one of the following forms:

(a) a letter approving the application;

(b) a letter denying the application and identifying the reasons for denial;

(c) a letter identifying deficiencies in the application and requesting additional information from the applicant; or

(d) a letter notifying the applicant that the division requires additional time to process and consider the application with an explanation of the extenuating circumstances necessitating the extension.

(6) The division shall deny an application to transfer a certificate of registration where any of the following exists:

(a) the proposed transferee fails to satisfy all the requirements necessary to obtain an original certificate of registration; or

(b) the applicant transferor fails to demonstrate that the certificate of registration will be transferred in connection with the sale or transfer of the entire brine shrimp harvest operation or the harvesting equipment ordinarily required to effectively utilize a certificate of registration.

(i) Business entities holding no harvesting equipment may be approved for a certificate of registration transfer only where the entire business entity and brine shrimp harvest operation is transferred along with all certificates of registration held by the business entity.

(ii) Business entities changing the official name maintained on division records as the certificate of registration holder shall simply establish that the entity's ownership and business structure will not materially differ under the new business name.

(7) The division may deny authorizing a certificate of registration transfer to any proposed transferee for any of the following reasons:

(a) the applicant transferee has previously been issued a certificate of registration and has failed to submit any report required by this rule, the division, or the Wildlife Board;

(b) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in an administrative proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife; or

(c) the applicant transferee has been found guilty, pleaded guilty or pleaded no contest in a criminal proceeding to violating any rule, statute, proclamation, or Wildlife Board order relating to the harvest, possession, or sale of protected aquatic wildlife.

(8)(a) If a transfer application is approved, the division shall accept the surrender of the transferor's certificate of registration and reissue it to the proposed transferee within 10 business days of the surrender consistent with the requirements prescribed in this rule.

(b) The proposed transferee may not begin harvesting brine shrimp or brine shrimp eggs until it has received a certificate of registration from the division issued in its name, and only then in conformance with all applicable laws, rules, and orders of the Wildlife Board and division.

(c) In receiving a certificate of registration transferred under this section, the transferee assumes no additional privileges or opportunities with respect to harvesting brine shrimp and brine shrimp eggs than those formerly possessed by the transferor.

R657-52-8. Primary and Alternate Seiners.

(1)(a) A primary seiner or an alternate seiner must be present at each harvest location and directly supervise the harvest activity.

(b) A primary or alternate seiner does not have to be present while transporting brine shrimp or brine shrimp eggs from the harvest location.

(c) A primary seiner and an alternate seiner card are issued with the certificate of registration and are transferable within the entity holding the certificate of registration.

(d) The primary or alternate seiner must have a primary or alternate seiner card in possession at the harvest location.

R657-52-9. Use of Helpers.

(1)(a) Except as hereafter provided in Subsection (2), any person aiding the certificate of registration holder, a primary seiner, or alternate seiner in harvesting brine shrimp and brine shrimp eggs shall be in possession of a helper card.

(b) Three individual helper cards are issued with the certificate of registration.

(c) A helper card shall be deemed to be in possession if it is on the person or on the boat from which the person is working.

(2)(a) A helper card is not required of any person engaged only in the retail sale or transportation of brine shrimp or brine shrimp eggs.

(b) A person directing harvest operations from a plane for a certificate of registration holder does not have to have a helper card.

(c) The driver of a truck transporting brine shrimp or brine shrimp eggs from the lake to a storage or processing plant does not have to have a helper card. Any crew member loading brine shrimp and brine shrimp eggs into a truck must have a helper card in possession.

(3) Helper cards are issued in the name of the certificate of registration holder and are transferable among individuals assisting the certificate of registration holder.

(4)(a) A helper may assist in the harvest of brine shrimp and brine shrimp eggs only while working under the direct supervision of a primary or alternate seiner.

(b) For purposes of this rule, "direct supervision" means to be physically present, either on a boat with the helper or within close proximity so as to be able to provide direct instructions to the helper.

(5) Twelve additional helper cards for each certificate of registration may be obtained from the wildlife registration office at any time during the year.

R657-52-10. Records - Report of Activities.

(1) Any person or business entity issued a certificate of registration to harvest brine shrimp and brine shrimp eggs shall keep accurate records of the weight harvested and to whom the product is sold.

(2) The records required under Subsection (1) shall be retained for at least five years and must be available for inspection upon division request.

(3) Certificate of registration holders shall submit the following reports to the Great Salt Lake Ecosystem Project office for each certificate of registration:

(a) A weekly harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day of the reporting week. The reports must be prepared by a person working for the reporting company, and the reports must be received or postmarked by Monday of each week.

(b) A daily harvest report documenting the total amount of brine shrimp and brine shrimp eggs, by raw weight, harvested each day. The report shall be filed no later than 12 hours after the end of the previous calendar day. The report may be filed utilizing a voice mail system linked to a dedicated phone

number provided or the report may be filed by fax to a dedicated phone number. The report must be prepared or given by a person working for the reporting company.

(c) A weekly report of all landing receipts prepared pursuant to Section R657-52-14 during the reporting week. The report must be prepared or given by a person working for the reporting company, and must be received by the division or postmarked by Monday of each week.

(4) Report forms may be obtained from the division.

R657-52-11. Species of Protected Aquatic Wildlife That May Be Harvested.

(1) A certificate of registration issued under this rule may authorize the holder to commercially harvest only brine shrimp and brine shrimp eggs.

(2) Any species of protected aquatic wildlife caught other than brine shrimp and brine shrimp eggs must be immediately returned alive and unharmed to the water from which it was harvested.

R657-52-12. Harvest Season and Hours.

(1)(a) Except as provided in Subsections R657-52-13(4) and (5), a certificate of registration is valid for harvesting brine shrimp and brine shrimp eggs only during the harvest season beginning October 1 and ending January 31. If October 1 falls on a Sunday, the harvest season shall begin on the following Monday.

(b) In the interest of the wildlife resources of the Great Salt Lake, the harvest season may be delayed up to 10 days provided the harvesting companies are notified seven days in advance of the delay.

(c) After the season has opened, harvesting may be suspended two times during the season, for up to seven days each time, in the interest of the wildlife resources of the Great Salt Lake, provided the harvesting companies are notified at least 24 hours in advance of the suspension date.

(2) Brine shrimp and brine shrimp eggs may be harvested 24 hours a day during any open harvest season by those possessing a valid certificate of registration for such activities.

(3) When the harvest season is suspended or closed, all harvest activity shall cease at official sunset on the designated date of closure.

R657-52-13. Areas of Harvest and Special Season Dates.

(1) The division may authorize the harvest of brine shrimp and brine shrimp eggs from:

(a) the Great Salt Lake and surrounding areas, including ponds operated in a normal manner for mineral extraction; and

(b) the Sevier River.

(2) The area east of the north-south line from the tip of Promontory Point south along the east shore of Fremont and Antelope Islands and along the dike extending from the south end of Antelope Island to the south shore of the Great Salt Lake is closed to the commercial harvesting of brine shrimp and brine shrimp eggs.

(3) Except as provided in Subsections (4) and (5), brine shrimp and brine shrimp eggs may be harvested only during the harvest season as described in Section R657-52-12.

(4)(a) Any person who has a valid certificate of registration may cumulatively collect up to 25 pounds of brine shrimp eggs between March 1 and the official opening date of the brine shrimp harvest season, as declared by rule or the division, for purposes of conducting research.

(b) For the purpose of conducting research, a person may not collect more than one pound of brine shrimp eggs during a single day regardless of the number of certificates of registration issued to that person.

(c) Brine shrimp and brine shrimp eggs collected for research under the authority of this section may not be sold, traded, or bartered.

(5)(a) Any person possessing a valid certificate of registration to harvest brine shrimp and brine shrimp eggs may do so from mineral extraction ponds located along the shores of the Great Salt Lake any time during the year.

(b) A pond may not be built or manipulated for the purpose of culturing or harvesting brine shrimp or brine shrimp eggs.

(c) Brine shrimp or brine shrimp eggs may not be introduced into the Great Salt Lake or any pond. Brine shrimp and brine shrimp eggs must enter into the pond during normal mineral extraction processes.

(6) All brine shrimp and brine shrimp eggs which have been harvested and placed in containers shall be transported from the lake or lakeshore not later than 21 days after the close of the harvest season. No brine shrimp or brine shrimp eggs may be removed from the surface of the beach or water and placed in a container after the season is closed. Containers filled prior to the close of the harvest season with brine shrimp or brine shrimp eggs may be transported from the lake or lakeshore after the close of the harvest season, provided transportation occurs no later than 21 days following the closure.

R657-52-14. Transportation.

(1) When brine shrimp and brine shrimp eggs are transported away from the lakeshore to a processing plant, a landing receipt form must be prepared and be in possession of the transport driver before leaving the loading site.

(a) The landing receipt shall include:

(i) the harvesters' certificate of registration numbers;

(ii) the certificate of registration holder's name;

(iii) the harvest dates;

(iv) the harvest areas;

(v) the landing dates;

(vi) the container numbers and weights as determined by certified scales for lake harvested brine shrimp and brine shrimp eggs;

(vii) the container numbers and weight estimates for shore harvested brine shrimp and brine shrimp eggs; and

(viii) the names of the individuals who landed and weighed the product.

(2) The driver of a truck transporting brine shrimp product away from the lakeshore is not required to possess a helper card while engaged in that activity.

(3) Any person loading brine shrimp product into a truck to transport from the lakeshore shall possess a helper card.

R657-52-15. Identification of Equipment.

(1)(a) Any boat used for harvesting operations must be identifiable from the air, water and land with either the company name, company initials or certificate of registration number. A camp or base of operations located on or near the shoreline must be marked so it is visible from the air and land with either the company name, company initials, or certificate of registration number. Boat markings denoting the company name, company initials or certificate of registration number, must be visible from a distance of 500 yards when on the lake.

(b) The letters or numbers shall be visible at all times, written clearly and shall meet the following requirements:

(i) letters or numbers on the top of a boat shall be at least 36 inches in height;

(ii) letters or numbers used on the sides of a boat shall be at least 24 inches in height, except that boats with inflatable hulls may use letters and numbers that are 12 inches in height;

(iii) letters or numbers used on a camp or base of operations sign shall be at least 24 inches in height; and

(iv) all letters and numbers used for identification purposes shall be of reflective white tape with a solid black

background.

(c) Identification may be done with a magnetic sign placed on top of and the sides of the vehicle or boat.

(d) Each continuous segment of boom that may be coupled together shall be marked to denote the company's name, initials, or certificate of registration number. The markings shall consist of letters or numbers at least three inches in height.

(e) All containers filled or partially filled with brine shrimp or brine shrimp eggs and left unattended on the shore or in a vehicle parked on the shore shall be individually marked with either the company name, company initials or certificate of registration number under which the product was harvested. Each container shall be marked as follows:

(i) the company name, company initials or the certificate of registration number shall be permanently and legibly marked at a visible location on the exterior surface of the container; or

(ii) the company name, company initials or the certificate of registration number shall be permanently and legibly marked on a durable, waterproof tag securely and visibly attached to the exterior surface of the container.

(f) "Shore" for purposes of this section, shall include all lands within one mile of the body of water where the product was harvested. "Shore" does not include permanent structures affixed to the land and operated for purposes of storing or processing brine shrimp and brine shrimp eggs, provided the name of the structure's current owner or tenant is visibly marked on the exterior of the structure.

R657-52-16. Certificate of Registration Markers.

(1)(a) One certificate of registration marker corresponding to each certificate of registration shall be displayed at each harvest location as follows:

(i) on the boat with the certificate of registration on board;

(ii) on the harvest boat or attached to the boom;

(iii) in the water at the harvest location; or

(iv) on the shore while harvesting brine shrimp or brine shrimp eggs from shore.

(b) No more than one certificate of registration marker shall be displayed at each harvest location.

(c) An original certificate of registration shall be present at the harvest location where the corresponding certificate of registration marker is displayed.

(2) A certificate of registration marker shall consist of a piece of equipment, furnished by the harvesters, constructed in accordance with the following specifications:

(a) A six foot long piece of tubing with a weight at one end.

(b) This piece of tubing shall have a fluorescent orange ball that is a minimum of eighteen inches in diameter, mounted in the approximate center of the length of tubing. The fluorescent orange ball shall have the certificate of registration number, corresponding to the certificate of registration decal attached to the marker pursuant Subsection R657-52-16(2)(c), marked in two places with indelible black paint. The painted certificate of registration numbers shall be a minimum of twelve inches in height.

(c) Mounted above the orange ball towards the un-weighted end of the tubing shall be a decal issued by the division which denotes the certificate of registration in use and corresponding to the certificate of registration marker device.

(d) Mounted on the tubing between the orange ball and the un-weighted end of the tubing, shall be an aluminum radar reflector that is a minimum of fifteen inches square.

(e) Mounted above the radar reflector shall be a three-inch wide band of silver reflective tape.

(f) Mounted on the un-weighted end of this tubing shall be an amber light that at night is visible for up to one-half mile and flashes 30 times per minute, minimum.

(3) The certificate of registration marker must be displayed in a manner that is:

(a) visible in all directions at a distance of 500 yards; or

(b) displayed above the superstructure of any vessel that a certificate of registration is being used from.

(4) The amber light on a displayed marker device must be operating at all times between sunset and sunrise.

(5) A brine shrimp harvester shall not display an amber light at night, or an orange ball or other device which simulates the certificate of registration marker device, without having the corresponding, original certificate of registration at the harvest location.

(6) Brine shrimp or brine shrimp eggs may not be harvested in any manner, nor may a harvest location be claimed unless and until an original copy of the certificate of registration is at the harvest location and the corresponding certificate of registration marker is properly displayed as required in this section.

(7) The certificate of registration and corresponding certificate of registration marker shall not be transported to the harvest location by aircraft.

(a) "Aircraft" for purposes of this section, means any contrivance now known or in the future invented, used, or designed for navigation of or flight in the air.

(8) A person may not harvest any brine shrimp or brine shrimp eggs within a 300 yard radius of a certificate of registration marker displayed at a harvest location without permission from the company that first began harvesting in that location.

R657-52-17. Use of Booms.

(1)(a) A primary seiner, alternate seiner, or helper must remain within one mile of any boom attached to the shore, whether open or closed, 24 hours a day so that an officer may easily locate the person tending the boom.

(b) A boom may be left unattended in the open water during the legal harvest season if:

(i) the boom is properly identified as provided in Subsection R657-52-15(1)(d);

(ii) the boom is closed;

(iii) the boom is marked with a certificate of registration marker as described in Subsections R657-52-16(2) and (3); and

(iv) the certificate of registration marker is lighted as described in Subsections R657-52-16(2)(f)and (4).

(2) On a causeway or dike where camping is not allowed, a primary seiner, alternate seiner, or helper must be stationed at the closest possible camping site, not more than 10 miles away, and that location must be clearly identified on a tag securely attached to the shore end of the boom.

(3)(a) A person may not harvest any brine shrimp or brine shrimp eggs within 300 yards of any certificate of registration marker displayed at a harvest location as provided in Subsection R657-52-16(8) without permission from the company that first began harvesting in that location.

(b) The certificate of registration marker must be deployed as provided in Section R657-52-16 and accompanied by an individual at the harvest location to receive the 300 yard encroachment protection.

(4) Brine shrimp and brine shrimp eggs may be removed from another person's boom only with written permission from the person who owns the boom.

(5) A person may not deploy more than one continuous length of boom for each certificate of registration.

R657-52-18. Use of Equipment.

(1) A person may not intentionally drive a boat through or create a wake through a streak of brine shrimp eggs that another person is harvesting.

(2)(a) A person or business entity possessing a valid certificate of registration may test the equipment to be used in

harvesting brine shrimp from March 1 through the official opening date of the brine shrimp harvest season, as declared by rule or the division.

(b) At least 48 hours before testing the equipment, the person must notify the division's Northern Regional Office.

(c) Any brine shrimp or brine shrimp eggs collected while testing the equipment must be immediately returned to the water, if collected from the water, or returned to the beach, if collected from the beach, within 1/4 mile of the location in which they were collected.

(3) Brine shrimp and brine shrimp eggs may not be taken to a storage facility, test site located greater than 1/4 mile from the location in which they were collected, or to shore, except as provided in Section R657-52-13(4).

R657-52-19. Violations.

(1) The penalty for any violation of this rule is a class C misdemeanor as provided in Section 23-13-11(2).

(2) Any violation of, or failure to comply with the provisions of this rule, any requirement contained in a certificate of registration issued pursuant to this rule, any Wildlife Board Order, or any statute related to the harvesting, possession or transfer of brine shrimp or brine shrimp eggs may be grounds for revocation, suspension or denial of future certificates of registration as determined by a division hearing officer.

KEY: brine shrimp, commercialization
December 12, 2006 **23-14-3**
Notice of Continuation October 9, 2007 **23-14-18**
23-14-19
23-15-7
23-15-8
23-15-9
23-19-1(2)

R657. Natural Resources, Wildlife Resources.
R657-53. Amphibian and Reptile Collection, Importation, Transportation and Possession.
R657-53-1. Purpose and Authority.

(1) Under Title 23, Wildlife Resources Code of Utah, this rule governs the collection, importation, transportation, possession, and propagation of amphibians and reptiles.

(2) Nothing in this rule shall be construed as superseding the provisions set forth in Title 23, Wildlife Resources Code of Utah. Any provision of this rule setting forth a criminal violation that overlaps a section of that title is provided in this rule only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

(3) In addition to this rule, additional regulation is provided in R657-40. Where a more specific provision has been adopted, that provision shall control.

(4) Specific dates, species, areas, number of pre-authorized certificates of registration, limits and other administrative details which may change annually are published in the proclamation of the Wildlife Board for amphibians and reptiles.

(5) Amphibians and reptiles lawfully collected from wild populations in Utah and thereafter possessed remain the property of the state for the life of the animal pursuant to Section 23-13-3. The state does not assert ownership interest in lawfully possessed, captive-bred amphibians and reptiles, but does retain jurisdiction to regulate the importation, possession, propagation and use of such animals pursuant to Title 23 of the Utah Code and this rule.

(6) This rule does not apply to division employees acting within the scope of their assigned duties.

R657-53-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and Subsection (2) through Subsection (29).

(2) "Amphibian" means animals from the Class of Amphibia, including hybrid species or subspecies of amphibians and viable embryos or gametes of species or subspecies of amphibians.

(3) "Captive-bred" means any legally-obtained amphibian or reptile, for which fertilization and birth occurred in captivity, has spent its entire life in captivity, and is the offspring of legally obtained progenitors.

(4) "Certificate of registration" means a document issued under the Wildlife Resources Code, or any other rule or proclamation of the Wildlife Board granting authority to engage in activities not covered by a license, permit or tag.

(5) "Certificate of veterinary inspection" means an official health authorization issued by an accredited veterinarian required for the importation of an amphibian or reptile, as provided in Rule R58-1.

(6) "Collect" means to take, catch, capture, salvage, or kill any free-roaming amphibian or reptile within Utah.

(7) "Commercial use" means any activity through which a person in possession of an amphibian or reptile:

(a) receives any consideration for the amphibian or reptile or for a use of the amphibian or reptile, including nuisance control; or

(b) expects to recover all or any part of the cost of keeping the amphibian or reptile through selling, bartering, trading, exchanging, breeding, or other use, including displaying the amphibian or reptile for entertainment, advertisement, or business promotion.

(8) "Controlled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a possible significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is required.

(9) "Den" means any place where reptiles congregate for winter hibernation or brumation.

(10) "Educational use" means the possession and use of an amphibian or reptile for conducting educational activities concerning wildlife and wildlife-related activities.

(11) "Entry permit number" means a number issued by the state veterinarian's office to a veterinarian signing a certificate of veterinary inspection authorizing the importation of an amphibian or reptile into Utah.

(12) "Export" means to move or cause to move any amphibian or reptile from Utah by any means.

(13) "Import" means to bring or cause an amphibian or reptile to be brought into Utah by any means.

(14) "Legally obtained" means to acquire through collection, trade, barter, propagation or purchase with supporting written documentation, such as applicable certificate of registration, collection permit, license, or sales receipt in accordance with applicable laws. Documentation must include the date of the transaction; the name, address and phone number of the person or organization relinquishing the animal; the name, address and phone number of the person or organization obtaining the animal; the scientific name of the animal acquired; and a description of the animal.

(15) "Native species" means any species or subspecies of amphibian or reptile that historically occurred in Utah and has not been introduced by humans or migrated into Utah as a result of human activity.

(16) "Naturalized species" means any species or subspecies of amphibian or reptile that is not native to Utah but has established a wild, self-sustaining population in Utah.

(17) "Noncontrolled species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses no significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration is not required, unless otherwise specified.

(18) "Nonnative species" means a species or subspecies of amphibian or reptile that is not native to Utah and has not established a wild, self-sustaining population in Utah.

(19) "Personal use" means the possession and use of an amphibian or reptile for a hobby or for its intrinsic pleasure and where no consideration for the possession or use of the animal is received by selling, bartering, trading, exchanging, breeding, or any other use.

(20) "Possession" means to physically retain or to exercise dominion or control over an amphibian or reptile.

(21) "Pre-authorized certificate of registration" means a certificate of registration that:

(a) meets the criteria established in Subsection R657-53-11(1)

(b) has been approved by the division; and

(c) is available for issuance.

(22) "Prohibited species" means a species or subspecies of amphibian or reptile that if taken from the wild, introduced into the wild, or held in captivity, poses a significant detrimental impact to wild populations, the environment, or human health or safety, and for which a certificate of registration shall only be issued in accordance with Sections R657-53-23(1)(a) or R657-53-19.

(23) "Propagation" means the mating of a male and female amphibian or reptile in captivity.

(24) "Reptile" means animals from the Class of Reptilia, including hybrid species or subspecies of reptiles and viable embryos or gametes of species or subspecies of reptiles.

(25) "Scientific use" means the possession and use of an amphibian or reptile for conducting bona fide scientific research that is directly or indirectly beneficial to wildlife or the general public.

(26) "Transport" means to be moved or cause to be moved,

any amphibian or reptile within Utah by any means.

(27) "Turtle" means all animals commonly known as turtles, tortoises and terrapins, and all other animals of the Order Testidunata, Class Reptilia.

(28) "Wild population" means native or naturalized amphibians or reptiles living in nature including progeny from a gravid female where fertilization occurred in the wild and birth occurred within six months of collection.

(29) "Wildlife Registration Office" means the division office in Salt Lake City responsible for processing applications and issuing certificates of registration.

R657-53-3. Liability.

(1)(a) Any person who accepts a certificate of registration assumes all liability and responsibility for the collection, importation, transportation, and possession of the authorized amphibian or reptile and for any other activity authorized by the certificate of registration.

(b) To the extent provided under the Utah Governmental Immunity Act, the division shall not be liable in any civil action for:

(i) any injury, disease, or damage caused by or to any animal, person, or property as a result of any activity authorized under this rule or a certificate of registration; or

(ii) the issuance, denial, suspension, or revocation of or by the failure or refusal to issue, deny, suspend, or revoke any certificate of registration or similar authorization.

(2) It is the responsibility of any person who obtains a certificate of registration to read, understand and comply with this rule and all other applicable federal, state, county, city, or other municipality laws, regulations, and ordinances governing amphibians or reptiles.

R657-53-4. Animal Welfare.

(1) Any amphibian or reptile held in possession under the authority of a certificate of registration shall be maintained under humane and healthy conditions, including humane handling, care, confinement, transportation, and feeding of the amphibian or reptile.

(2) Adequate measures must be taken for the protection of the public when handling, confining, or transporting any amphibian or reptile.

R657-53-5. Collection, Importation, and Possession of Threatened and Endangered Species.

(1) Any amphibian or reptile listed by the U.S. Fish and Wildlife Service as endangered or threatened pursuant to the federal Endangered Species Act is prohibited from collection, importation, possession, or propagation except:

(a) The division may authorize the collection, importation, possession, or propagation of a threatened or endangered species under the criteria set forth in this rule for controlled species where the U.S Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity; or

(b) A person may import, possess, transfer, or propagate captive-bred eastern indigo snakes (Drymarchon couperi) without a certificate of registration where the U.S. Fish and Wildlife Service has issued a permit or otherwise authorized the particular activity.

R657-53-6. Release of an Amphibian or Reptile to the Wild -- Capture or Disposal of Escaped Wildlife.

(1) Pursuant to Section 23-13-14, a person may not release from captivity any amphibian or reptile without first obtaining authorization from the division.

(2)(a) Any peace officer, division representative, or authorized animal control officer may seize or dispose of any live amphibian or reptile that escapes from captivity.

(b) The division may retain custody of any recaptured amphibian or reptile until the costs of recapture or care have been paid by its owner or keeper.

R657-53-7. Inspection of Documentation.

A conservation officer or any other peace officer may require any person engaged in activities covered by this rule to exhibit any documentation related to activities covered by this rule, including certificates of registration, permits, certificates of veterinary inspection, certification, bills of sale, or proof of ownership or legal possession.

R657-53-8. Certificate of Registration Required.

(1)(a) A person shall obtain a certificate of registration before collecting, importing, transporting, possessing, or propagating any amphibian or reptile or their parts as provided in rule and the proclamations of the Wildlife Board for amphibians and reptiles, except as otherwise provided by the Wildlife Board or rules of the Wildlife Board.

(b) A certificate of registration is not required:

(i) to collect, import, transport, or possess any amphibian or reptile classified as noncontrolled, except as provided in Subsections R657-53-26(1)(c), R657-53-27(5) and R657-53-28(7); or

(ii) to export any species or subspecies of amphibian or reptile from Utah, provided that the amphibian or reptile is held in legal possession and importation into the destination state is lawful.

(c) An application for an amphibian or reptile classified as prohibited shall not be accepted by the division without providing written justification describing how the applicant's proposed collection, importation, or possession of the amphibian or reptile meets the criteria provided in Subsections R657-53-23(1)(a), R657-53-24(c)(i) or R657-53-19.

(d) Pre-authorized certificates of registration may be issued for collection and the resulting possession of amphibians and reptiles classified as controlled for collection pursuant to R657-53-13.

(2)(a) Certificates of registration expire as designated on the certificate of registration.

(b) Certificates of registration are not transferable.

(c) If the holder of a certificate of registration is a representative of an institution, organization, business, or agency, the certificate of registration shall end upon the representative's discontinuation of association with that entity.

(d) Certificates of registration do not provide the holder with any rights of succession and any certificate of registration issued to a business or organization shall be void upon the termination of the business or organization or upon bankruptcy or transfer.

(3) The issuance of a certificate of registration automatically incorporates within its terms the conditions and requirements of this rule specifically governing the activity for which the certificate of registration is issued.

(4) In addition to this rule, the division may impose specific requirements on the holder of the certificate of registration necessary for the safe and humane handling and care of the amphibian or reptile.

(5)(a) Upon or before the expiration date of a certificate of registration, the holder must renew an existing or apply for a new certificate of registration to continue the activity.

(b) The division shall use the criteria provided in Section R657-53-11 in determining whether to issue a certificate of registration.

(c) If an application is not made by the expiration date, a live or dead amphibian or reptile held in possession under the expired certificate of registration shall be considered unlawfully held.

(d) If an application for a new certificate of registration is submitted before the expiration date, the existing certificate of

registration shall remain valid while the application is pending.

(6) Failure to submit timely, accurate, or valid reports as required under this rule or the certificate of registration may disqualify a person from obtaining a new certificate of registration.

(7) A certificate of registration may be suspended as provided in Section 23-19-9 and Rule R657-26.

R657-53-9. Application Procedures -- Fees.

(1)(a) Applications for certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City or any regional division office.

(b) The application may require up to 45 days for review and processing.

(c) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be returned to the applicant.

(2)(a) Legal tender in the correct amount must accompany the application.

(b) The certificate of registration fee includes a nonrefundable handling fee.

(c) Fees may be waived for wildlife rehabilitation, educational or scientific activities, or for state or federal agencies upon request if, in the opinion of the division, the activity is significantly beneficial to the division, wildlife, or wildlife management.

R657-53-10. Retroactive Effect on Possession.

(1) A person lawfully possessing an amphibian or reptile prior to the effective date of any species reclassification may receive a certificate of registration from the division for the continued possession of that amphibian or reptile where the amphibian or reptile's classification has changed hereunder from noncontrolled to controlled or prohibited, or from controlled to prohibited.

(2) The certificate of registration shall be obtained within six months of the reclassification, or possession of the amphibian or reptile thereafter shall be unlawful.

(3) The certificate of registration for a species where the classification has changed from noncontrolled to controlled shall be issued for the life of the animal.

(4) The certificate of registration for a species where the classification has changed from noncontrolled or controlled to prohibited shall be renewed annually for the life of the animal.

(5) The division may require annual reporting.

R657-53-11. Issuance Criteria.

(1) The following factors shall be considered before the division may issue a certificate of registration:

(a) the health, welfare, and safety of the public;

(b) the health, welfare, safety, and genetic integrity of wildlife and other animals; and

(c) ecological and environmental impacts.

(2) In addition to the criteria provided in Subsection (1), the division shall use the following criteria for the issuance of a certificate of registration for a scientific use of an amphibian or reptile:

(a) the validity of the objectives and design;

(b) the likelihood the project will fulfill the stated objectives;

(c) the applicant's qualifications to conduct the research, including the requisite education or experience;

(d) the adequacy of the applicant's resources to conduct the study; and

(e) whether the scientific use is in the best interest of the amphibian or reptile, wildlife management, education, or the advancement of science without unnecessarily duplicating previously documented scientific research.

(3) In addition to the criteria provided in Subsection (1), the division may use the following criteria for the issuance of a certificate of registration for an educational use of an amphibian or reptile:

(a) the objectives and structure of the educational program; and

(b) whether the applicant has written approval from the appropriate official if the activity is conducted in a school or other educational facility.

(4) The division may deny issuing or reissuing a certificate of registration to any applicant, if:

(a) the applicant has violated any provision of Title 23, Utah Wildlife Resources Code, Administrative Code R657, a certificate of registration, an order of the Wildlife Board or any other law that, when considered with the functions and responsibilities of collecting, importing, possessing or propagating an amphibian or reptile, bears a reasonable relationship to the applicant's ability to safely and responsibly carry out such activities;

(b) the applicant has previously been issued a certificate of registration and failed to submit any report or information required by this rule, the division, or the Wildlife Board; or

(c) the applicant misrepresented or failed to disclose material information required in connection with the application.

(d) The division may deny issuing or renewing a certificate of registration to an applicant where holding the amphibian or reptile at the proposed location violates federal, state or local laws.

(5) If an application is denied, the division shall provide the applicant with written notice of the reasons for denial.

(6) An appeal of the denial of an application may be made as provided in Section R657-53-20.

R657-53-12. Amendment to Certificate of Registration.

(1)(a) If material circumstances change, requiring a modification of the terms of the certificate of registration, the holder may request an amendment by submitting written justification and supporting information.

(b) The division may amend the certificate of registration or deny the request based on the criteria for initial applications provided in Section R657-53-11, and, if the request for an amendment is denied, shall provide the applicant with written notice of the reasons for denial.

(c) The division may charge a fee for amending the certificate of registration.

(d) An appeal of a request for an amendment may be made as provided in Section R657-53-20.

(2) The division reserves the right to amend any certificate of registration for good cause upon notification to the holder and written findings of necessity.

(3)(a) Each holder of a certificate of registration shall notify the division within 30 days of any change in mailing address.

(b) An amphibian or reptile or activities authorized by a certificate of registration may not be held at any location not specified on the certificate of registration without prior written permission from the division.

R657-53-13. Pre-authorized Certificates of Registration for Personal Use.

(1) Pre-authorized certificates of registration may only be issued for collection and the resulting possession for personal use of amphibians and reptiles classified as controlled for collection, as provided in this rule and the proclamation of the Wildlife Board.

(2) Pre-authorized certificates of registration shall be held to all conditions established in R657-53-8.

(3)(a) The criteria established in R657-53-11(1) shall be

utilized to determine if pre-authorized certificates of registration shall be approved and issued.

(b) The criteria shall be applied to all amphibians and reptiles classified as controlled for collection.

(c) Pre-authorized certificates of registration shall be approved and issued only when the R657-53-11(1) criteria have been evaluated by the division and issuance found consistent with the criteria.

(4)(a) Applications for pre-authorized certificates of registration are available from, and must be submitted to, the Wildlife Registration Office in Salt Lake City.

(i) Applications for pre-authorized certificates of registration shall be accepted during the second full week of January and must be received by the Salt Lake Office by 5 p.m. Friday of that week.

(ii) Applications received before the second full week in January will not be accepted.

(iii) If necessary, a drawing will be held for those species that have more applications than available pre-authorized certificates of registration.

(iv) Remaining pre-authorized certificates of registration will be available after the second full week of January on a first-come, first-served basis.

(v) A person may not apply for or obtain more than one pre-authorized certificate of registration for each available species in a calendar year.

(vi) If available, pre-authorized certificates of registration shall be issued within five business days beginning the Monday after the second full week in January.

(vii) Applications that are incomplete, completed incorrectly, or submitted without the appropriate fee or other required information may be rejected.

(b)(i) Legal tender in the correct amount must accompany the application.

(ii) The pre-authorized certificate of registration fee includes a nonrefundable handling fee.

(c) Applications for pre-authorized certificates of registration may be denied as provided in R657-53-11(4).

(5)(a) Pre-authorized certificates of registration are not transferable, nor may they be amended to change collection area, species, bag limits, or dates.

(b) A holder of a pre-authorized certificate of registration shall notify the division within 30 days of any change in mailing address.

(c) An amphibian or reptile, or activities authorized by a certificate of registration may not be held or conducted at any location not specified on the certificate of registration without prior written permission from the division.

(6) Specific dates, species, areas, number of pre-authorized certificates of registration approved, and bag limits shall be published in the proclamation of the Wildlife Board for amphibians and reptiles.

(7)(a) Holders of a pre-authorized certificate of registration must report collection success or lack thereof to the division before the expiration date of the pre-authorized certificate of registration.

(b) The division shall issue a possession certificate of registration for the amphibian or reptile collected under the pre-authorized certification of registration for the life of the animal.

(c) Annual reporting to the division on the status of the animal is required or the possession certificate of registration becomes invalid.

R657-53-14. Records and Reports.

(1)(a) From the date of issuance of the certificate of registration, the holder shall maintain complete and accurate records of any taking, possession, transportation, propagation, sale, purchase, barter, or importation pursuant to applicable sections of this rule or the certificate of registration.

(b) Records must be kept current and shall include the names, phone numbers, and addresses of persons with whom any amphibian or reptile has been sold, bartered, or otherwise transferred or received, and the dates of the transactions.

(c) The records required under this section must be maintained for five years from the expiration date of the certificate of registration.

(2) Reports of activity must be submitted to the Wildlife Registration Office as specified on the certificate of registration.

R657-53-15. Transfer of Possession.

(1) Any person who lawfully possesses an amphibian or reptile classified as prohibited or controlled may transfer possession of that amphibian or reptile only to a person who has first applied for and obtained a certificate of registration for that amphibian or reptile from the division, except as provided in Subsection (3).

(2) The division may issue a certificate of registration granting the transfer and possession of an amphibian or reptile only if the applicant/transferee meets the issuance criteria provided in Section R657-53-11.

(3) Upon the death of a certificate of registration holder, a legally-obtained and possessed amphibian or reptile may pass to a successor, and a certificate of registration will be issued to the successor provided the amphibian or reptile poses no detrimental impact to community safety and the successor is qualified to handle the amphibian or reptile.

R657-53-16. Violations.

(1) Any violation of this rule is a class C misdemeanor, as provided in Section 23-13-11.

(2) Nothing in this rule shall be construed to supersede any provision of Title 23, Wildlife Resources Code of Utah which establishes a penalty greater than a class C misdemeanor. Any provision of this rule which overlaps a provision of that title is intended only as a clarification or to provide greater specificity needed for the administration of the provisions of this rule.

R657-53-17. Certification Review Committee.

(1) The division shall establish a Certification Review Committee which shall be responsible for:

(a) reviewing:

(i) petitions to reclassify species and subspecies of amphibians or reptiles;

(ii) appeals of certificates of registration; and

(iii) requests for variances to this rule; and

(b) making recommendations to the Wildlife Board.

(2) The committee shall consist of the following individuals:

(a) the director or the director's designee who shall represent the director's office and shall act as chair of the committee;

(b) the chief of the Aquatic Section;

(c) the chief of the Wildlife Section;

(d) the chief of the Administrative Services Section;

(e) the chief of the Law Enforcement Section;

(f) the state veterinarian or his designee; and

(g) a person designated by the Department of Health.

(3) The division shall require a fee for the submission of a request provided in Section R657-53-18 and R657-53-19.

R657-53-18. Request for Species Reclassification.

(1) A person may make a request to change the classification of a species or subspecies of amphibian or reptile provided in this rule.

(2) A request for reclassification must be made to the Certification Review Committee by submitting an application for reclassification.

(3)(a) The application shall include:
(i) the petitioner's name, address, and phone number;
(ii) the species or subspecies for which the application is made;
(iii) the name of all interested parties known by the petitioner;
(iv) the current classification of the species or subspecies;
(v) a statement of the facts and reasons forming the basis for the reclassification; and
(vi) copies of scientific literature or other evidence supporting the change in classification.
(b) In addition to the information required under Subsection (a), the petitioner must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.
(4)(a) The committee shall, within a reasonable time, consider the request for reclassification and shall submit its recommendation to the Wildlife Board.
(b) The committee shall send a copy of its recommendation to the petitioner and other interested parties specified on the application.
(5)(a) At the next available Wildlife Board meeting the Wildlife Board shall:
(i) consider the committee recommendation; and
(ii) any information provided by the petitioner or other interested parties.
(b) The Wildlife Board shall approve or deny the request for reclassification based on the issuance criteria provided in Section R657-53-11(1).
(6) A change in species classification shall be made in accordance with Title 63G, Chapter 4, Administrative Rulemaking Act.
(7) A request for species reclassification shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-19. Request for Variance.
(1) A person may make a request for a variance to this rule for the collection, importation, propagation, or possession of an amphibian or reptile classified as prohibited under this rule by submitting a request for variance to the Certification Review Committee.
(2)(a) A request for variance shall include the following:
(i) the name, address, and phone number of the person making the request;
(ii) the species or subspecies of the amphibian or reptile and associated activities for which the request is made; and
(iii) a statement of the facts and reasons forming the basis for the variance.
(b) In addition to the information required under Subsection (a), the person making the request must provide any information requested by the committee necessary to formulate a recommendation to the Wildlife Board.
(3) The committee shall, within a reasonable time, consider the request and shall submit its recommendation to the Wildlife Board.
(4) At the next available Wildlife Board meeting the Wildlife Board shall:
(a) consider the committee recommendation; and
(b) any information provided by the person making the request.
(5)(a) The Wildlife Board shall approve or deny the request based on the issuance criteria provided in Section R657-53-11.
(b) If the request applies to a broad class of persons and not to unique circumstances of the applicant, the Wildlife Board shall consider changing the species classification before issuing a variance to this rule.
(6)(a) If the request is approved, the Wildlife Board may impose any restrictions on the person making the request considered necessary for that person to maintain the standards upon which the variance is made.
(b) Any restrictions imposed on the person making the request shall be included in writing on the certificate of registration which shall be signed by the person making the request.
(7) A request for variance shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-20. Appeal of Certificate of Registration Denial.
(1) A person may appeal the division's denial of a certificate of registration by submitting an appeal request to the Certification Review Committee.
(2) The request must be made within 30 days after the date of the denial.
(3) The request shall include:
(a) the name, address, and phone number of the petitioner;
(b) the date the request was mailed;
(c) the species or subspecies of the amphibian or reptile and the activity for which the application was made; and
(d) supporting facts and other evidence applicable to resolving the issue.
(4) The committee shall review the request within a reasonable time after it is received.
(5) Upon reviewing the application and the reasons for its denial, the committee may:
(a) overturn the denial and approve the application; or
(b) uphold the denial.
(6) The committee may overturn a denial if the denial was:
(a) based on insufficient information;
(b) inconsistent with prior action of the division or the Wildlife Board;
(c) arbitrary or capricious; or
(d) contrary to law.
(7)(a) Within a reasonable time after making its decision, the committee shall mail a notice to the petitioner specifying the reasons for its decision.
(b) The notice shall include information that a person may seek Wildlife Board review of that decision.
(8)(a) If the committee upholds the denial, the petitioner may seek Wildlife Board review of the decision by submitting a request for Wildlife Board review within 30 days after its issuance.
(b) The request must include the information provided in Subsection (3).
(9)(a) Upon receiving a request for Wildlife Board review, the Wildlife Board shall, within a reasonable time, hold a hearing to consider the request.
(b) The Wildlife Board may:
(i) overturn the denial and approve the application; or
(ii) uphold the denial.
(c) The Wildlife Board shall provide the petitioner with a written decision within a reasonable time after making its decision.
(10) An appeal contesting initial division determination of eligibility for a certificate of registration shall be considered a request for agency action as provided in Subsection 63G-4-201(3) and Rule R657-2.

R657-53-21. Prohibited Collection Methods.
(1) Amphibians and reptiles may not be collected using any method prohibited in this rule and the proclamations of the Wildlife Board except as provided by a certificate of registration or the Wildlife Board.
(a) Lethal methods of collection are prohibited except as provided in Subsections R657-53-27(6) and R657-53-28(6), (8),and (9).

(b) The destruction of habitats such as breaking apart of rocks, logs or other shelters in or under which amphibians or reptiles may be found is prohibited.

(c) The use of winches, auto jacks, hydraulic jacks, crowbars and pry bars are prohibited.

(d) The use of gasoline or other potentially toxic substance is prohibited.

(e) The use of firearms, airguns or explosives is prohibited.

(f) The use of electrical or mechanical devices, or smokers is prohibited except as provided in Subsection (2)(b).

(g) The use of traps including pit fall traps, can traps, or funnel traps is prohibited.

(h) The use of fykes, seines, weirs, or nets of any description are prohibited except as provided in Subsection (2)(b).

(2)(a) Any logs, rocks, or other objects turned over or moved must be replaced in their original position.

(b) Dip nets less than 24 inches in diameter, snake sticks, and lizard nooses may be used.

R657-53-22. Personal Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess a live amphibian or reptile for personal use only as provided in Subsection (a), (b) or (c).

(a) Certificates of registration are not issued for the collection and possession of any live amphibian or reptile classified as prohibited for collection and possession, except as provided in R657-53-19.

(b) A certificate of registration is required for collection and possession of any live amphibian or reptile classified as controlled for collection and possession, except as otherwise provided by the Wildlife Board.

(c) A certificate of registration is not required for collection and possession of any live amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(2) A person may collect and possess a dead amphibian or reptile or its parts for personal use only as provided in Subsections (a), (b) or (c).

(a) A person may collect and possess a dead amphibian or reptile or its parts classified as controlled for collection and possession without a certificate of registration as provided in Subsections (i) and (ii).

(i) The specimen must be frozen and submitted to the division by appointment within 30 days of collection; and

(ii) The specimen must be labeled with the species name, salvage date, salvage location, Universal Transverse Mercator (UTM) location coordinates and name of person collecting the dead amphibian or reptile.

(b) A certificate of registration is required for collection and possession of a dead amphibian or reptile or its parts classified as controlled for collection and possession where the dead amphibian or reptile or its parts remains in personal possession, except as otherwise provided by the Wildlife Board.

(i) A certificate of registration is not required for collection and possession of any dead amphibian or reptile classified as noncontrolled for collection and possession, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) Collection and possession of any dead amphibian or reptile or its parts classified as noncontrolled for collection and possession, which remain in personal possession will count against collection and possession limits.

(c) A dead amphibian or reptile or its parts classified as prohibited for collection and possession may not be collected and possessed without a certificate of registration issued by the division for collection and possession of the specimen.

(3) A person may temporarily handle for personal use live amphibians or reptiles classified as noncontrolled and controlled for collection and possession without a certificate of registration only as provided in Subsections (a) through (d).

(a) An amphibian or reptile may be held for up to 15 minutes in a non-harmful way for the purpose of photography, noninvasive data collection and moving out of harm's way;

(i) For the purposes of this Subsection, noninvasive data collection means the collection of external measurements, specimen weights, external meristics, and sex determination which does not involve the use of probes or other instruments which enter the body of the animal;

(b) The amphibian or reptile cannot be moved more than 60 feet from the location found;

(c) The amphibian or reptile can be placed in any container, bag or device which confines the animal so it may be transported; and

(d) The amphibian or reptile must be released immediately when directed to do so by a division employee.

(4) A certificate of registration is required for a person to handle live amphibians or reptiles classified as prohibited for collection and possession.

(5) A person may import and possess a live or dead amphibian or reptile or its parts for personal use only as provided in subsection (b), (c) and (d).

(a) Certificates of registration are not issued for the importation and possession of any live or dead amphibian or reptile or its parts classified as prohibited for importation and possession, except as provided in Subsection (d) and R657-53-19.

(b) A certificate of registration is required for importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for importation and possession, except as otherwise provided by the Wildlife Board and subsection (i).

(i) Prior to importation, a certificate of registration shall be issued for the importation and the resulting possession of any live amphibian or reptile for personal use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) Legal documentation of the acquisition of the amphibian or reptile shall be maintained as determined in the certificate of registration.

(iii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iv) Imported native and naturalized species shall not count toward the possession limit.

(c) A certificate of registration is not required for importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for importation and possession.

(i) Legal documentation of the acquisition of the amphibian or reptile shall be maintained for the life of the animal or the time the animal is in possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(d) Notwithstanding subsection (5)(a) or (b), a person may import and possess any dead amphibian or reptile or its parts classified as prohibited or controlled, except as provided in Section R657-53-5, for personal use without obtaining a certificate of registration, provided the animal was legally taken, is held in legal possession, and a valid license, permit, tag,

certificate of registration, bill of sale, or invoice is available for inspection upon request.

R657-53-23. Scientific, or Educational Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for scientific or educational use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a) The division may issue a certificate of registration to a university, college, governmental agency, bona fide nonprofit educational or scientific institution, or a person involved in wildlife research through an eligible institution to collect and possess or import and possess a live or dead amphibian or reptile classified as prohibited for collection and possession or importation and possession if, in the opinion of the division, the scientific or educational use is beneficial to wildlife and significantly benefits the general public without material detriment to wildlife.

(b) A certificate of registration is required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as controlled for collection and possession or importation and possession for scientific or educational use, except as otherwise provided by the Wildlife Board.

(i) Prior to importation, a certificate of registration shall be issued for the importation and resulting possession of any live amphibian or reptile for scientific or educational use that is legally obtained from outside the state of Utah, is a species native to Utah, and is classified as controlled for importation and possession.

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

(c)(i) A certificate of registration is not required for the collection and possession or importation and possession of any live or dead amphibian or reptile or its parts classified as noncontrolled for collection and possession or importation and possession for scientific or educational use, except as provided in Subsections R657-53-27(5) and (6) and R657-53-28(7) and (8).

(ii) As provided in Rule R58-1, the Department of Agriculture and Food requires a valid certificate of veterinary inspection and an entry permit number to import any amphibian or reptile into Utah.

(iii) Imported native and naturalized species shall not count toward the possession limit.

R657-53-24. Commercial Use: Collection and Possession or Importation and Possession of a Live or Dead Amphibian or Reptile.

(1) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess a live amphibian or reptile for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in this rule or a certificate of registration.

(2) A person may collect and possess or import and possess a live or dead amphibian or reptile or its parts for commercial use only as provided in Subsections (a), (b) and (c) and R657-53-19.

(a)(i) A person may import and possess a live amphibian or reptile classified as non-controlled for importation and possession for a commercial use or a commercial venture, except as provided in subsection (ii)

(ii) A native or naturalized species or subspecies of amphibian or reptile may not be sold or traded unless it originated from a captive-bred population.

(iii) Complete and accurate records for native or naturalized species must be maintained and available for inspection for five years from the date of the transaction, documenting the date, name, address, and telephone number of the person from whom the amphibian or reptile has been obtained.

(iv) Complete and accurate records must be maintained and available for inspection for five years from the date of the transfer, documenting the date, name, address and certificate of registration number if applicable of the person receiving the amphibian or reptile.

(b)(i) A person may not import and possess a live amphibian or reptile classified as controlled for importation and possession for a commercial use or commercial venture without first obtaining a certificate of registration.

(ii) A certificate of registration will not be issued to sell or trade a native or naturalized species of amphibian or reptile unless it originates from a captive-bred population.

(iii) It is unlawful to transfer a live amphibian or reptile classified as controlled for collection and possession or importation and possession to a person who does not have a certificate of registration to possess the amphibian or reptile, except as follows:

(A) the amphibian or reptile is captive-bred;

(B) the transferee is not domiciled in Utah;

(C) the transferee is exporting the amphibian or reptile out of Utah; and

(D) the transferee follows the transport provisions in Section R657-53-25.

(iv) Complete and accurate records must be maintained by the buyer and the seller for five years from the date of the transaction or transfer, documenting the date, and the name, address, and telephone number of the person from whom the amphibian or reptile has been obtained and the person receiving the amphibian or reptile.

(v) The records indicated in Subsection (iv) must be made available for inspection upon request of the division.

(c)(i) A certificate of registration will not be issued for importation and possession of a live amphibian or reptile, classified as prohibited for importation and possession for a commercial use or commercial venture, except as provided in Subsection (ii) or R657-53-19.

(ii) The division may issue a certificate of registration to a zoo, circus, amusement park, aviary, or film company to import and possess a live amphibian or reptile classified as prohibited for importation and possession if, in the opinion of the division, the importation and possession for a commercial use is beneficial to wildlife or significantly benefits the general public without material detriment to wildlife.

(iii) The division's authority to issue a certificate of registration to a zoo, circus, amusement park, or aviary under this Subsection is restricted to those facilities that keep the prohibited amphibian or reptile in a park, building, cage, enclosure or other structure for the primary purpose of public exhibition or viewing.

(3) It is unlawful to sell or trade any turtle, including tortoises, less than 4" in carapace length (Referenced Federal Register 21 CFR 1240.62).

(4)(a) Pursuant to Sections 23-13-13 and 23-20-3, a person may not collect and possess or import and possess any dead amphibian or reptile or its parts for a commercial use or commercial venture for pecuniary gain, unless otherwise provided in the rules and proclamations of the Wildlife Board, or a memorandum of understanding with the division.

(b) The restrictions in Subsection (a) do not apply to importation and possession of a dead amphibian or reptile sold or traded for educational use.

R657-53-25. Transporting a Live Amphibian or Reptile Through Utah.

A certificate of veterinary inspection is required from the state of origin as provided in Utah Department of Agriculture Rule R58-1 and proof of legal possession must accompany the zoological animal

(1) Any controlled or prohibited amphibian or reptile may be transported through Utah without a certificate of registration if:

(a) the amphibian or reptile remains in Utah no more than 72 hours; and

(b) the amphibian or reptile is not sold, transferred, exhibited, displayed, or used for a commercial venture while in Utah.

(2) Proof of legal possession must accompany the amphibian or reptile.

(3) If delays in transportation arise, an extension of the 72 hours may be requested by contacting the Wildlife Registration Office in Salt Lake City.

R657-53-26. Propagation of Amphibians or Reptiles.

(1) A person may propagate native amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is required for propagating any native amphibian or reptile collected in Utah and classified as controlled for propagation, except as otherwise provided by the Wildlife Board.

(i) All progeny shall be marked as determined in the certificate of registration;

(ii) A report shall be submitted yearly as specified in the certificate of registration;

(iii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iv) Progeny shall not count toward possession limits.

(c) A certificate of registration is required for propagating native amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) A report shall be submitted yearly as specified in the certificate of registration;

(ii) Records of the progeny as determined in the certificate of registration shall be kept for the life of the animal or time in possession; and

(iii) Progeny shall not count toward possession limits.

(2) A person may propagate naturalized amphibians or reptiles that are legally collected in Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any naturalized amphibian or reptile collected in Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any naturalized amphibian or reptile collected in Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating naturalized amphibians or reptiles collected in Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(3) A person may propagate native amphibians or reptiles that are legally imported into Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any native amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any native amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating native amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(4) A person may propagate nonnative or naturalized amphibians or reptiles that are legally imported into Utah and possessed only as provided in Subsection (a) through (c).

(a) Certificates of registration are not issued for the propagation of any nonnative or naturalized amphibian or reptile imported into Utah and classified as prohibited for propagation except as provided in R657-53-19.

(b) A certificate of registration is not required for propagating any nonnative or naturalized amphibian or reptile imported into Utah and classified as controlled for possession but classified as noncontrolled for propagation.

(i) Records of the progeny shall be kept for the life of the animal or time in possession; and

(ii) Progeny shall not count toward possession limits.

(c) A certificate of registration is not required for propagating nonnative or naturalized amphibians or reptiles imported into Utah and classified as noncontrolled for propagation.

(i) Progeny shall not count toward possession limits.

(5) Certificates of registration may be denied to an applicant who:

(a) is a non-resident of Utah;

(b) fails to provide and maintain suitable, disease-free facilities and to humanely hold and maintain amphibians or reptiles in good condition;

(c) has been judicially or administratively found guilty of violating the provisions of this rule;

(d) has been convicted of, pleaded no contest to, or entered into a plea in abeyance to any criminal offense that bears a reasonable relationship to the applicant's ability to safely and responsibly collect, import, transport or possess amphibians or reptiles; or

(e) fails to maintain the propagation records and file the annual reports required in this section.

(6) Legally-obtained amphibians or reptiles and their progeny and descendants born in captivity, which are held in possession under the authority of a certificate of registration, remain property of the holder, but are subject to regulation by the division in accordance with the needs for public health, welfare, and safety, and impacts on wildlife.

R657-53-27. Classification and Specific Rules for Amphibians.

(1) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) will be utilized in Subsection (2).

(2) Amphibians are classified as follows:

(a) Frogs are classified as follows:

(i) American bullfrog, Ranidae Family (Rana catesbeiana) is

(A) prohibited for collection, possession and propagation

of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Canyon treefrog, Hylidae Family (Hyla arenicolor) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Clawed frog, Pipidae Family (Xenopus) (All species) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Columbia spotted frog, Ranidae Family (Rana luteiventris) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Green frog, Ranidae Family (Rana clamitans) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (7);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Lowland leopard frog, Ranidae Family (Rana yavapaiensis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Northern leopard frog, Ranidae Family (Rana pipiens) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Pacific treefrog, Hylidae Family (Pseudacris regilla) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Relict leopard frog, Ranidae Family (Rana onca) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Western chorus frog, Hylidae Family (Psedacris triseriata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(b) Spadefoots are classified as follows:

(i) Great basin spadefoot, Pelobatidae Family (Spea intermontana) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Mexican spadefoot, Pelobatidae Family (Spea multiplicata) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Plains spadefoot, Pelobatidae Family (Spea bombifrons) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(c) Salamanders are classified as follows:

(i) Tiger salamander, Ambystomatidae Family (Ambystoma tigrinum) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah.

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(d) Toads are classified as follows:

(i) Arizona toad, Bufonidae Family (Bufo microscaphus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Cane (marine) toad, Bufonidae Family (Bufo marinus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Great Plains toad, Bufonidae Family (Bufo cognatus) is

(A) controlled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Red-spotted toad, Bufonidae Family (Bufo punctatus) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Western toad, Bufonidae Family (Bufo boreas) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(t) Woodhouse's toad, Bufonidae Family (Bufo woodhousii) is

(A) noncontrolled for collection and possession and controlled for propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(3)(a) Amphibians classified at the genus or family taxonomic level include all species and subspecies.

(b) Amphibians classified at the species taxonomic level include all subspecies.

(c) Amphibians classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of amphibians not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5)(a) A person must obtain a certificate of registration to collect and possess more than three amphibians of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (6).

(b) A person must obtain a certificate of registration to possess more than nine amphibians in aggregate classified as

noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (6).

(6) A person may collect and possess any number of American bullfrogs (Rana catesbeiana) or Green frogs (Rana clamitans) without a certificate of registration provided they are either killed or released immediately. A person may not transport a live bullfrog or green frog from the point of capture without first obtaining a certificate of registration.

R657-53-28. Classification and Specific Rules for Reptiles.

(1)(i) Common and scientific nomenclature recognized and adopted by the Society for the Study of Amphibians and Reptiles (2003) shall be utilized in Subsection (2) for North American species found north of Mexico.

(ii) Common and scientific nomenclature recognized and adopted by C. Mattison in The Encyclopedia of Snakes (1999) shall be utilized for all other snakes found in Subsection (2).

(iii) Common and scientific nomenclature recognized and adopted by O'Shea and Halliday in Smithsonian Handbooks: Reptiles and Amphibians (2002) shall be utilized for the Gharial found in subsection (2).

(2) Reptiles are classified as follows:

(a) Crocodiles are classified as follows:

(i) Alligators and caimans, Alligatoridae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Crocodiles, Crocdylidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah; and

(iii) Gharial, Gavialidae Family (Gavialis gangeticus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah.

(b) Lizards are classified as follows:

(i) Beaded lizard, Helodermatidae Family, (Heloderma horridum) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Chuckwalla, Iguanidae Family (Sauromalus) (All species) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession and prohibited for propagation of individuals legally obtained outside of Utah;

(iii) Common lesser earless lizard, Phrynosomatidae Family (Holbrookia maculata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Common side-blotched lizard, Phrynosomatidae Family (Uta stansburiana) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert horned lizard, Phrynosomatidae Family (Phrynosoma platyrhinos) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert iguana, Iguanidae Family (Dipsosaurus dorsalis) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation and possession, and prohibited for propagation of individuals legally obtained outside of Utah;

(vii) Desert spiny lizard, Phrynosomatidae Family (Sceloporus magister) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Eastern collared lizard, Crotaphytidae Family (Crotaphytus collaris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Gila monster, Helodermatidae Family (Heloderma suspectum) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Basin collared lizard, Crotaphytidae Family (Crotaphytus bicinctores) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Great Basin fence lizard, Phrynosomatidae Family (Sceloporus occidentalis longipes) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Great Basin skink, Scincidae Family (Eumeces skiltonianus utahensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Great Basin Whiptail, Teiidae Family (Aspidoscelis tigris tigris) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Greater short-horned lizard, Phrynosomatidae Family (Phrynosoma hernandesi) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Long-nosed leopard lizard, Crotaphytidae Family (Gambelia wislizenii) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Northern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus elongatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvii) Northern sagebrush lizard, Phrynosomatidae Family (Sceloporus graciosus graciosus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (5);

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xviii) Ornate tree lizard, Phrynosomatidae Family (Urosaurus ornatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xix) Plateau striped whiptail, Teiidae Family (Aspidoscelis velox) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xx) Plateau tiger whiptail, Teiidae Family (Aspidoscelis tigris septentrionalis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxi) Southern plateau lizard, Phrynosomatidae Family (Sceloporus undulatus tristichus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxii) Utah banded gecko, Gekkonidae Family (Coleonyx variegatus utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiii) Utah night lizard, Xantusiidae Family (Xantusia vigilis utahensis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxiv) Variable (many-lined) skink, Scincidae Family (Eumeces multivirgatus epipleurotus)

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xxv) Western zebra-tailed lizard, Phrynosomatidae Family (Callisaurus draconoides rhodostictus) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah; and

(xxvi) Yucca night lizard, Xantusiidae Family (Xantusia vigilis vigilis) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah.

(c) Snakes are classified as follows:

(i) Bird Snake, Colubridae Family (Thelotornis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(ii) Boomslang, Colubridae Family (Dispholidus typus) is

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Burrowing asps, Atractaspidae Family (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) California kingsnake, Colubridae Family (Lampropeltis getula californiae) is

(A) controlled for collection, possession and noncontrolled for propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(v) Desert glossy snake, Colubridae Family (Arizona elegans eburnata) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vi) Desert nightsnake, Colubridae Family (Hypsiglena torquata deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(vii) Desert striped whipsnake, Colubridae Family (Masticophis taeniatus taeniatus) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(viii) Desert gophersnake, Colubridae Family (Pituophis catenifer deserticola) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(ix) Great Basin rattlesnake, Viperidae Family (Crotalus oreganus lutosus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (6);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(x) Great Plains ratsnake, Colubridae Family (Elaphe emoryi) is

(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xi) Groundsnake, Colubridae Family (Sonora semiannulata) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xii) Keelback, Colubridae Family (Rhabdophis) (All species) are

(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiii) Midget faded rattlesnake, Viperidae Family (Crotalus oreganus concolor) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xiv) Mojave rattlesnake, Viperidae Family (Crotalus scutulatus) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(xv) Mojave patch-nosed snake, Colubridae Family (Salvadora hexalepis mojavensis) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;

(xvi) Painted desert glossy snake, Colubridae Family

(Arizona elegans philipi) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xvii) Pit vipers, Viperidae Family (All species) are
(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;
(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;
(xviii) Prairie rattlesnake, Viperidae Family (Crotalus viridis) is
(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;
(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;
(xix) Proteroglyphous snakes, Australian spp., cobras, coral snakes, kraits, and their allies, Elapidae Family (All species) are
(A) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;
(xx) Red racer (Coachwhip), Colubridae Family (Masticophis flagellum piceus) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxi) Regal ring-necked snake, Colubridae Family (Diadophis punctatus regalis) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxii) Rubber boa, Boidae Family (Charina bottae) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxiii) Sidewinder, Viperidae Family (Crotalus cerastes) is
(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;
(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxiv) Smith's black-headed snake, Colubridae Family (Tantilla hobartsmithi) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxv) Smooth greensnake, Colubridae Family (Opheodrys vernalis) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxvi) Sonoran lyresnake, Colubridae Family (Trimorphodon biscutatus lambda) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxvii) Speckled rattlesnake, Viperidae Family (Crotalus mitchellii) is
(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah;
(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxviii) Spotted leaf-nosed snake, Colubridae Family (Phyllorhynchus decurtatus) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxix) Utah milksnake, Colubridae Family (Lampropeltis triangulum taylori) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxx) Utah mountain kingsnake, Colubridae Family (Lampropeltis pyromelana infralabialis) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxxi) Utah threadsnake, Leptotyphlopidae Family (Leptotyphlops humilis utahensis) is
(A) controlled for collection, possession and propagation of individuals from wild populations in Utah;
(B) controlled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxxii) Valley gartersnake, Colubridae Family (Thamnophis sirtalis fitchi) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxxiii) Wandering gartersnake, Colubridae Family (Thamnophis elegans vagrans) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (8);
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxxiv) Western black-necked gartersnake, Colubridae Family (Thamnophis cyrtopsis cyrtopsis) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah;
(xxxv) Western long-nosed snake, Colubridae Family (Rhinocheilus lecontei lecontei) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah; and
(xxxvi) Western yellow-bellied racer, Colubridae Family (Coluber constrictor mormon) is
(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;
(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.
(d) Turtles are classified as follows:
(i) Alligator snapping turtle, Chelydridae Family (Macrochelys temminckii) is
(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);
(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;
(ii) Common snapping turtle, Chelydridae Family (Chelydra serpentine) is
(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);
(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iii) Desert tortoise, Testudinidae Family (Gopherus agassizii) is

(A) prohibited for collection, and propagation and controlled for possession of individuals from wild populations in Utah;

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(iv) Painted turtle, Emydidae Family (Chrysemys picta) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(v) Red-eared slider, Emydidae Family (Trachemys scripta elegans) is

(A) noncontrolled for collection, possession and propagation of individuals from wild populations in Utah;

(B) noncontrolled for importation, possession and propagation of individuals legally obtained outside of Utah.

(vi) Spiny softshell, Trionychidae Family (Apalone spinifera) is

(A) prohibited for collection, possession and propagation of individuals from wild populations in Utah, except as provided in Subsection (9);

(B) prohibited for importation, possession and propagation of individuals legally obtained outside of Utah;

(3)(a) Reptiles classified at the genus or family taxonomic level include all species and subspecies.

(b) Reptiles classified at the species taxonomic level include all subspecies.

(c) Reptiles classified at the subspecies taxonomic level do not include any other related subspecies.

(4) All species or subspecies of reptiles not listed in Subsection (2) are classified as noncontrolled for collection, importation, possession and propagation.

(5) A person may not:

(a) knowingly disturb the den of any reptile or kill, capture, or harass any reptile within 100 yards of a reptile den without first obtaining a certificate of registration from the division; or

(b) indiscriminately kill any reptile.

(6)(a) Great Basin rattlesnakes, Crotalus oreganus lutosus, may be killed without a certificate of registration only for reasons of human safety.

(b) The carcass or its parts of a Great Basin rattlesnake killed pursuant to Subsection (a) may be retained for personal use or possessed.

(7)(a) A person must obtain a certificate of registration to collect more than three reptiles of each species or subspecies classified as noncontrolled for collection and possession within a calendar year, except as provided in Subsection (8).

(b) A person must obtain a certificate of registration to possess more than nine reptiles of each species or more than 56 in aggregate which are classified as noncontrolled for collection and possession and collected within Utah, except as provided in Subsection (8).

(8) In a calendar year, a person may collect and possess for personal use 25 common side-botched lizards (Uta stansburiana), 25 northern sagebrush lizards (Sceloporus graciosus graciosus), and 25 wandering gartersnakes (Thamnophis elegans vagrans), without obtaining a certificate of registration or counting against the aggregate possession limit.

(9)(a) A person may collect and possess any number of common snapping turtles (Chelydra serpentina), alligator turtles (Macrochelys temminckii) or spiny softshell (Apalone spinifera) turtles without a certificate of registration provided they are either killed or released immediately upon removing them from the point of capture.

(b) A person may not transport a live common snapping turtle, alligator turtle or spiny softshell turtle from the point of capture from which it was collected without first obtaining a certificate of registration.

KEY: wildlife, import restrictions, amphibians, reptiles
May 8, 2008 **23-14-18**
23-14-19
23-20-3
23-13-14

R708. Public Safety, Driver License.
R708-2. Commercial Driver Training Schools.
R708-2-1. Purpose.

Sections 53-3-501 through 509, requires the Driver License Division to administer the Commercial Driver Training Schools Act by licensing and regulating commercial driver training schools and instructors of such schools. This rule assists the division in doing that.

R708-2-2. Authority.

This rule is authorized by Section 53-3-505.

R708-2-3. Definitions.

(1) "Behind-the-wheel instruction" means instruction a student receives while driving a commercial driver training vehicle.

(2) "Branch office" means an approved location where the business of the driver training school is conducted other than the principal place of business.

(3) "Business plan" means a plan that contains written acknowledgment of expectations, as outlined by this rule and a detailed explanation of how these expectations will be accomplished.

(4) "Classroom instruction" means that part of the driver training course which takes place in a classroom and which utilizes effective teaching methods such as lecture, discussion, and audio-visual aids.

(5) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons, either practically or theoretically, or both, to drive motor vehicles, including motorcycles, and to prepare an applicant for an examination given by the state for a license or learner permit, and charging a consideration or tuition for those services.

(6) "Commercial driver training vehicle" means a motor vehicle equipped with a second functioning foot brake and inside mirrors which are positioned for use by the instructor for the purpose of observing rearward.

(7) "Commissioner" means the Commissioner of the Department of Public Safety.

(8) "Corporation" means a business incorporated under the laws of a state or other jurisdiction.

(9) "Department" means the Department of Public Safety.

(10) "Division" means the Driver License Division.

(11) "Driver training" means behind-the-wheel instruction, extended learning, observation time, and classroom instruction provided by a driver training school for the purpose of teaching students to safely operate motor vehicles.

(12) "Extended learning course" means a home-study course in driver education offered by a school and approved and operated under the direction of an institution of higher learning. The division must also approve the course.

(13) "Fraudulent practices" means any misrepresentation on the part of a licensee or any partner, officer, agent, or employee of a licensee tending to induce another to part with something of value or to surrender a legal right.

(14) "Higher education" means a university or college currently accredited by an appropriate accreditation agency recognized by the U.S. Dept. of Education and the Utah State Board of Regents.

(15) "Instructor" means any person, whether acting for himself as operator of a commercial driver training school or for any school for compensation, who teaches, conducts classes of, gives demonstrations to, or supervises practice of persons learning to drive motor vehicles, including motorcycles, or preparing to take an examination for a license or learner permit.

(16) "Instructor demonstration" means a demonstration of the operation of a motor vehicle performed by the instructor, which may be included as a part of the required six clock hours of observation time for a student for which credit is designated as hour for hour.

(17) "Observation time" means the time a student is riding in the commercial driver training vehicle to observe the driver instructor, other student drivers, and other road users.

(18) "Operator" means any person who is certified as an instructor, has met requirements for operator status as outlined in this rule, is authorized or certified to operate or manage a driver training school, and who may supervise the work of any other instructor.

(19) "Partnership" means an association of two or more persons who co-own and operate a commercial driver training school or testing only school.

(20) "Permanent record book" means a permanently bound book with pages consecutively numbered, setting forth the name, address, date of birth, enrollment date, and completion date of every person receiving lessons, lectures, tutoring, instruction of any kind or any other services relating to instruction in the operation of motor vehicles. A computerized file that is printed and permanently bound at the end of the calender year will be accepted as a permanent record book upon approval by the division.

(21) "Probation" means action taken by the department which includes a period of close supervision as determined by the division.

(22) "Reinstatement" means the process for an instructor, operator, commercial driver training school or testing only school to re-license following revocation.

(23) "Revocation" means the removal of certification of an instructor license, operator license, commercial driver training school or testing only school for a period of six months.

(24) "Student record book" means a book or other record showing the name, date of birth for each student, and also the date, type, time, and duration of all lessons, lectures, tutoring, instructions or other services relating to instruction in the operation of motor vehicles. It will also contain the names of the instructors giving such lessons or instructions and identification of the vehicle in which any behind-the-wheel instruction is given.

(25) "Testing only school" means a school that has been designated by the division as a commercial testing only school, employs instructors who are certified in accordance with R708-37, and engages only in testing students for the purpose of obtaining a driver license. A testing only school may conduct behind-the-wheel and/or observation instruction upon approval by the division. A testing only school may not engage in education or training of persons, either practically or theoretically, or both, to drive motor vehicles, except when counseling the driver following a test in reference to errors made during the administration of the test or when conducting behind-the-wheel or observation instruction as approved by the division. A tester may not test an individual who has completed any behind-the-wheel or observation instruction through the school with which the tester is employed.

R708-2-4. Licensing Requirement for a Commercial Driver Training School.

(1) Every corporation, partnership or person who owns a commercial driver training school shall obtain a school license from the division. School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it can be licensed.

(2) A license is valid for the calendar year and expires on

December 31 of the year issued. The fee for an original license is $100. The annual fee for a renewal license is $100. The annual fee for each branch license is $30. Fees shall be payable to the Department of Public Safety. If a license is revoked, or refused issuance or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If a license is lost or destroyed, a duplicate will be issued upon payment of a fee of $10. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

(5) Whenever any school or branch office is discontinued, the school or branch office license must be surrendered to the division within five days. In such cases, the licensee shall state in writing the reason for such surrender.

(6) Any branch office or classroom facility in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they can be licensed.

(7) Each school must employ a licensed operator to operate the school and each branch office before it may become licensed. The current licensed operator must be identified on the application maintained by the division for each school or branch office. It is permissible for a single operator to operate multiple branch offices of the same school. If at any time the operator discontinues employment with the school, a new operator must be employed before continuation of operation of the school, including any branch offices for which the individual has been identified as the operator, may occur.

(a) It is not permissible for an individual to maintain employment with more than one commercial driver training school or testing only school at a time.

(8) Only one school may be operated from a branch office or a classroom facility. It is not permissible for two or more schools owned by separate individuals and owned under different school names to operate from the same facility or office space unless one school has been designated by the division as a testing only school. One commercial driver training school and one testing only school may be operated from the same school or branch office. A clear separation of the schools must be identified, and each school must comply with standards set forth in R708-2.

(9) Each school or classroom facility must be posted with signage that will identify the school by name as the school is listed on the school certification.

R708-2-5. Licensing Requirement for a Testing Only School.

(1) Every corporation, partnership or person who owns a testing only school shall obtain a school license from the division. School license applications may be obtained from the Driver License Division at 4501 South 2700 West, Salt Lake City, Utah. Applicants are also responsible for obtaining any business licenses required by the municipality or county in which they are located. School and business licenses must be conspicuously displayed in the licensee's principal place of business and branch offices. Each school shall be inspected by a division representative before it can be licensed.

(2) A license is valid for the calendar year and expires on December 31 of the year issued. The fee for an original license is $100. The annual fee for a renewal license is $100. The annual fee for each branch license is $30. Fees shall be payable to the Department of Public Safety. If a license is revoked, or refused issuance or reinstatement, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If a license is lost or destroyed, a duplicate will be issued upon payment of a fee of $10. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

(5) Whenever any school or branch office is discontinued, the school or branch office license must be surrendered to the division within five days. In such cases, the licensee shall state in writing the reason for such surrender.

(6) Any branch office in a location other than the school's principal place of business shall be separately licensed. A branch office shall meet the same requirements as the school's principal place of business and shall be similarly equipped and perform substantially the same services. Application for a branch office license shall be made on an application form provided by the division. Branch offices shall be inspected by a division representative before they can be licensed.

(7) It is not permissible for an individual to maintain employment with more than one commercial driver training school or testing only school at a time.

(8) Only one school may be operated from a branch office. It is not permissible for two schools owned by separate individuals and owned under different school names to operate from the same facility or office space unless one school has been designated by the division as a testing only school. One commercial driver training school and one testing only school may be operated from the same school or branch office. A clear separation of the schools must be identified, and each school must comply with standards set forth in R708-2.

(9) Each school must be posted with signage that will identify the school by name as the school is listed on the school certification.

(10) It is not required that a testing only school maintain a classroom facility in the school or branch office location. It is required that the testing only school location or branch office have a designated area in which to maintain required files and records.

R708-2-6. Application for a Commercial Driver Training School License or a Testing Only School License.

(1) Application for an original or renewal commercial driver training school license or a testing only school license must be made on forms provided by the division, signed by the applicant, and notarized. In the case of a partnership, the application must be signed by all partners. In the case of a corporation, the application must be signed by an officer of the corporation. Applications must be submitted at least 30 days prior to licensing. An appointment should be made when the application is filed to have the school inspected by a division representative.

(2) Every application must be accompanied by the following supplementary documents:

(a) in the case of a corporation, a certified copy of a certificate of incorporation;

(b) samples of all forms and receipts to be used by the school;

(c) a schedule of fees for all services to be performed by the school;

(d) a fingerprint record for each applicant, partner or corporate officers. A Bureau of Criminal Identification check will be done by the division on all applicants, partners, and corporate officers. Fingerprints may be taken by any law enforcement agency. The division may require renewal applicants to submit new fingerprint records;

(e) a certificate of insurance for each vehicle used for driver training or testing purposes;

(f) a copy of all tests and criteria which the school requires in order for a student to satisfactorily complete the driver training course all of which are subject to approval of the

division; including copies of translations; and

(g) evidence that a surety bond has been obtained by the school. The amount of the surety bond will be determined by the division with the use of a formula that incorporates the number of students that the school is capable of instructing over a period of three months based on its facility, equipment, personnel, and the tuition that would be collected from each student, with a minimum requirement of $10,000.00 coverage and a maximum requirement of $60,000.00 coverage. If, at any time, there is a change in the number of instructors, the number of vehicles, or the size of the classroom facility, the required surety bond amount will be reevaluated by the division and adjusted accordingly. Cancellation of the surety bond is grounds for revocation, probation, or refusal to issue or renew the school license. A school designated by the department as a testing only school will not be required to obtain a surety bond unless it has been authorized by the division to conduct behind-the-wheel training. A school may enter into an agreement with the division that will outline a method for determining the amount of the required surety bond in lieu of the formula specified in this section. Noncompliance with the terms of the agreement may result in the revocation of school, operator, and or instructor licenses issued by the division for use by the school or its employees. A school that does not charge tuition for driver education is not required to maintain a surety bond.

(3) The division may require that a credit check be performed for each applicant. Based on the results of the credit check, the division may deny certification.

R708-2-7. Application Requirements for a Commercial Driver Training School Instructor License.

(1) Every person who serves as an instructor in a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an instructor's license from the division. Such license shall be valid only for the specific driver training school listed on the license.

(2) A license is valid for the calendar year and expires on December 31 of the year issued. The fee for an original license is $30. The annual fee for a renewal license is $20. Fees shall be payable to the Department of Public Safety. If a license is revoked or refused issuance, or refused renewed, no part of the fee will be refunded.

(3) Licenses are not transferable.

(4) If an instructor license is lost or destroyed, a duplicate will be issued upon payment of a fee of $6. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

R708-2-8. Application Requirements for a Commercial Driver Training School Operator License.

(1) Every person who serves as an operator of a commercial driver training school, including the owner, operator, partner or corporate officer of the licensee, substitute or part-time instructor, shall obtain an operator license from the division. Such license shall be valid only for the specific driver training school listed on the license.

(2) A school operator license is not valid unless accompanied by a valid instructor license.

(a) Requirements for licensure as a school operator include six college semester credit hours or eight college quarter credit hours in business related courses through an accredited college or university; or two years experience operating a business, or a combination thereof.

(b) Prior to licensure, a potential school operator must submit a business plan to the division for approval.

(c) Individuals who are functioning in the capacity of a commercial driver training school operator prior to January 1, 2003, will not be required to comply with section (a) of this section.

(3) An operator license is valid for the calendar year and expires on December 31 of the following year issued.

(4) Licenses are non-transferable.

(5) If an operator license is lost or destroyed, a duplicate will be issued upon request. A notarized affidavit setting forth the date the license was lost or destroyed and the circumstances of such loss or destruction must be provided.

R708-2-9. Additional Requirements for Commercial Driver Training School Instructors.

(1) In addition to obtaining a license, a commercial driver training school instructor must:

(a) have a valid Utah driver license;

(b) be at least twenty one years of age;

(c) have at least three years of driving experience in the United States, Canada, or a country with which the state of Utah has established a license reciprocity agreement;

(d) have a driving record free of conviction for a moving violation or chargeable accident resulting in suspension or revocation of the driver license for the two year period immediately prior to application and during employment and be checked to determine if there is an unsatisfactory driving record in any state;

(e) be in acceptable physical condition as required by Section 10 of this rule;

(f) complete specialized professional preparation in driver safety education consisting of not less than 21 quarter hours, or 14 semester hours of credit as approved by the division. Of the 21 quarter hours or 14 semester hours, one class must be in teaching methodology and another class must include basic driver training instruction or organization and administration of driver training instruction;

(g) pass a written test given by the division. The test may cover commercial driver training school rules, traffic laws, safe driving practices, motor vehicle operation, teaching methods and techniques, statutes pertaining to commercial driver training schools, business ethics, office procedures and record keeping, financial responsibility, no fault insurance, procedures involved in suspension or revocation of an individual's driving privilege, material contained in the "Utah Driver Handbook", and traffic safety education programs;

(h) pass a practical driving test;

(i) pass the same standard eye test that is given to applicants who apply for a Utah operator or commercial driver license; and

(j) submit a fingerprint record for a criminal history record check.

(2) Instructors shall be sponsored by a commercial driver training school which shall be responsible for controlling and supervising the actions of the instructors. No school may knowingly employ any person as an instructor or in any other capacity if such person has been convicted of a felony or any crime involving moral turpitude.

(3) The instructor's license must be in the possession of the instructor at all times while providing behind-the-wheel or classroom instruction.

R708-2-10. Application and Medical Requirements for a Commercial Driver Training School Instructor License.

(1) Application for an original or renewal instructor's license must be made on forms provided by the division, signed by the applicant in front of a division employee authorized to administer oaths. Applications must be submitted at least 30 days prior to licensing. The original and each yearly renewal application must be accompanied by a medical profile form provided by the division and completed by a health care professional as defined in Subsection 53-3-302(2).

(2) The medical profile form shall indicate any physical or

mental impairments which may preclude service as a commercial driver training school instructor. The physical examinations must take place no more than three months prior to application.

(3) The commercial driver training school desiring to employ the applicant as an instructor must sign the application verifying that the applicant will be employed by the school.

(4) When deemed necessary by the division, an applicant seeking to renew an instructor's permit may be required to take a driving skills test.

R708-2-11. Re-certification.

All holders of school licenses, operator licenses, and instructor licenses may at the discretion of the division be required to re-certify every three years. Re-certification may be obtained by submitting proof of completion of classes, seminars, and workshops approved by the division.

R708-2-12. Classroom and Behind-The-Wheel Instruction.

(1) Classroom instruction for students shall meet or exceed 18 clock hours and shall be conducted in not less than nine separate class sessions on nine separate days of two hours per class. Classroom curriculum may not be repeated in any of the nine sessions provided to a student except in the form of a review of materials covered in a previous classroom session. The time frame allotted for review is not to exceed 10 minutes per classroom session. Not more than five of the classroom hours may be devoted to showing slides or films. Classroom instruction shall cover the following areas:

(a) attitudes and physical characteristics of drivers;

(b) driving laws with special emphasis on Utah law;

(c) driving in urban, suburban, and rural areas;

(d) driving on freeways;

(e) maintenance of the motor vehicle;

(f) affect of drugs and alcohol on driving;

(g) motorcycles, bicycles, trucks, and pedestrian's in traffic;

(h) driving skills;

(i) affect of the motor vehicle on modern life;

(j) Utah's motor vehicle laws regarding financial responsibility and no fault insurance, and a driver's responsibility when involved in an accident; and

(k) suspension or revocation of a driver license.

(2) Behind-the-wheel instruction shall include a minimum of six clock hours of instruction in a dual-control vehicle with a licensed instructor. Each student will be limited to a maximum of two hours of behind-the-wheel instruction per day. An instructor may not conduct more than 10 hours of behind-the-wheel instruction within a period of 24 hours and must have at least eight consecutive hours of off-duty time between each ten hour shift. The front seat of the vehicle shall be occupied by the instructor and no more than one student. Under no circumstances shall there be more than five individuals in the vehicle.

(a) Behind-the-wheel instruction shall include student practice in using vehicle controls to start, shift gears, make right and left turns, stop, backup, and park. This instruction shall begin under relatively simple conditions and progress until the student has acquired reasonable skill in operating the vehicle under varying traffic conditions.

(b) Students shall receive experience in driving on urban streets, open highways, or freeways. Behind-the-wheel instruction shall include the experience of driving under variable conditions which may be used by the instructor at different times of the day and year. Special emphasis should be given to teaching students to show courtesy to other drivers and pedestrians.

(c) Students shall receive a minimum of six clock hours of observation time. This instruction may include instructor demonstrations, for which hour for hour credit will be given, and may not exceed two hours per day. Students observing from the rear seat, as well as the student driver, should benefit from time in the vehicle. The instructor's role is not merely to provide driving experience for the student behind-the-wheel, but to make the vehicle a practical classroom on wheels where all students may learn about the problems which face a driver and the appropriate solution to such problems.

(d) Behind-the-wheel instruction may not be conducted for a student unless the division has issued an instruction permit for the student and the instruction permit issued for the student is in the vehicle at the time the instruction is conducted, unless the student is in possession of a valid Utah driver license, a learner permit or temporary permit issued by the division, or a valid out of state or out of country driver license.

(3) All classroom and behind-the-wheel instruction will be conducted by an individual who is licensed as a commercial driver training school instructor as specified in this rule.

(a) It is a violation of this rule to conduct classroom or behind-the-wheel instruction or to allow another individual to conduct classroom or behind-the-wheel instruction without an instructors license unless a school has obtained prior approval from the division for classroom instruction to be provided by experts, such as a police officer, on a limited basis.

(4) Instructors shall screen students for visual acuity and physical or emotional conditions which may compromise public safety before allowing students to participate in behind-the-wheel instruction. Screening may not be performed over the telephone. An employee of the school who is not certified as an instructor may not perform medical or visual screening unless approved by the division in writing. Screening results shall be maintained on a form approved by the division.

(a) Students must have 20/40 visual acuity or better in one eye and a visual field of 90 degrees. Students with less than the required visual acuity and/or visual field shall be referred to a licensed medical practitioner for further consideration.

(b) Students must answer all questions on a health questionnaire approved by the Driver License Medical Advisory Board and sign a statement of affirmation of truth. Students indicating a physical or emotional condition on the questionnaire shall be referred to a licensed medical practitioner for further consideration. Health questionnaires shall be provided by the division.

(5) Commercial driver training schools shall provide each student a copy of the current Utah Driver Handbook. The handbook shall not be used as the sole text of the course, but as an essential aid when Utah traffic laws are studied. Handbooks may be obtained by the schools from the division.

R708-2-13. Monthly Reports.

(1) Each commercial driver training school shall submit a monthly report of the number of students completing both classroom and behind-the-wheel instruction.

(2) Monthly reports shall be submitted on forms supplied by the division and must be received by the division no later than the 15th day of each month.

(3) Failure to submit monthly reports within the prescribed time is grounds for revocation of the school's license.

(4) Monthly reports may be submitted electronically with division approval.

R708-2-14. Extended Learning Course.

(1) A commercial driver training school may offer an extended learning course of instruction as a substitute for the classroom instruction set forth in Section 10 of this rule provided such course is approved by an institution of higher learning and the division.

(2) An extended learning course must be operated under the direction of an institution of higher learning. The institution

of higher learning shall notify the division in writing when it has approved a school's extended learning course. The institution of higher learning will monitor any extended learning course approved by them to ensure the course is run as originally planned. They will notify the division of any substantive changes in the course as well as their approval of such changes. An institution of higher learning can approve the extended learning course of more than one school.

(3) An extended learning course shall consist at a minimum of a text, a workbook, and a 50 question competency test which addresses the subjects described in Section 10 of this rule.

(a) All materials, including texts, workbooks, and tests, used in the course must be submitted by the school to the division for approval.

(b) The average study time required to complete the workbook exercises must meet or exceed 30 clock hours.

(c) An extended learning student must complete all workbook exercises.

(d) An extended learning student must pass the 50 question written competency test at 80% or better. Testing shall occur under the following conditions:

(i) the test shall be taken at the school or at a proctored testing facility approved by the division;

(ii) the identity of the student will be verified by the licensed instructor prior to testing;

(iii) the test shall be completed by the student without any outside help;

(iv) the school shall maintain at least three separate 50 question competency tests created from a test pool of at least 200 questions;

(v) the extended learning student will be given a minimum of three opportunities to pass the test. After each failure the school will provide the student with additional instruction to assist the student to pass the next test;

(vi) the original fees for the course must include the three opportunities to pass the test and any additional instruction that is required;

(vii) an extended learning student must pass the test in order to complete driver training; and

(viii) the school will maintain for three years records of all tests administered by the school. Test records shall include the results of all tests taken by every student.

R708-2-15. Instruction Permits.

(1) A commercial driver training school must obtain from the division an instruction permit for each student enrolled in the school for the purpose of meeting licensing requirements as set forth in Section 53-3-204 (1). An instruction permit provides proof that the student is enrolled in a driver training course and is licensed to receive behind-the-wheel instruction with a licensed instructor. Instruction permits shall be retained by the instructor and shall be available in the vehicle at all times while the student is driving. Information shall be included on the instruction permit in a manner specified by the division.

(a) It is the responsibility of the school to ensure that the instruction permit application contains the correct name and date of birth of the student, by means of a birth certificate or other official form of identification.

(b) Application for an instruction permit must be typed or printed in ink. Duplicate instruction permits may not be issued unless the student's name and date of birth are the same as those on the original application.

(c) Instruction permits shall not be issued for persons under the age of 15 years and six months.

(d) All unused instruction permits issued between January 1 and September 30 of each year shall be returned to the division prior to December 31 of that year. Unused permits issued during October, November, and December shall be submitted with the unused permits of the following year.

(2) Upon completion of the requirements of the driver training course, the commercial driver training school shall release to the student a form consisting of an instruction permit, a certificate of training which must be signed by the student, and a certificate of completion which must be signed by the instructor and the school owner.

(3) The student shall present the certificate of completion to the division when the student makes application for a driver license.

(4) Duplicate certificates of completion may be obtained for $5.

(5) Following notice of intent to take agency action, suspension of issuance of instruction permits to a school or instructor may occur whenever the division has reason to believe that a school or instructor is in non-compliance with this rule.

(6) After notice of intent to take agency action is sent to a school, and after allowing sufficient time for the school to have received the notice, the division will no longer issue instruction permits to the school.

(7) Suspension of issuance of instruction permits will remain in effect until such times as the school, operator or instructor is in compliance with requirements as stipulated in the notice of intent to take agency action and reinstatement of the school license, instructor license, and /or operator license has occurred. The subject of intended action may request a hearing regarding the agency's intent to take action. If a hearing is requested, suspension of issuance of instruction permits will remain in effect pending the outcome of the hearing.

(8) After a school has received notice from the division of intent for agency action to occur, it is a violation of this rule for the school to allow students to enroll in a driver training course at the school or to accept money from students for whom the school will be unable to obtain an instruction permit or for whom the school will be unable to provide a completion slip if the school license is revoked or refused renewal or reinstatement following a hearing as requested by the school.

(9) In the event that a school license is revoked or refused renewal, all incomplete instruction permits shall be returned to the division.

R708-2-16. Students Transferring from the Utah Public School System.

(1) Students transferring from the Utah public school system will not be given credit by the division for any previous partial driver education instruction unless authorized in writing by the State Office of Education.

(2) Students who have successfully completed the classroom portion of driver training in the public school system in the State of Utah or in another state, but who have not completed behind-the-wheel driving instruction and observation time, may receive credit for the classroom instruction if they provide an authorized letter or certificate from the school which provided the training. The letter or certificate must be prepared on the school's letterhead, signed by a school representative, and state the number of classroom hours completed.

R708-2-17. Commercial Driver Training Vehicles.

(1) Commercial driver training vehicles used for behind-the-wheel instruction shall be properly registered, maintained in safe mechanical condition, and equipped with the following:

(a) functioning dual control brakes;

(b) outside and inside mirrors for both the driver and the instructor for the purpose of observing rearward;

(c) a separate seat belt for each occupant;

(d) functioning heaters and defrosters; and

(e) a functioning fire extinguisher, first aid kit, safety flares and/or reflectors.

(2) Students shall receive instruction in either standard shift or automatic transmission vehicles. The school shall have the option of choosing the type of transmission.

(3) If instruction is given in snow or on icy road surfaces tire chains or snow tires shall be used in compliance with local police or highway patrol recommendations.

(4) Vehicles must be capable of passing a state safety inspection at all times during their instructional use. Failure to maintain a vehicle in safe operating condition is grounds for the revocation of the license of the school operating the vehicle.

(5) Vehicles unable to meet safety standards shall be replaced by the school.

(6) It is the responsibility of the school to notify the division of any vehicle added to or deleted from their fleet. No vehicle may be used for driver training until it passes inspection by the division.

(7) Each vehicle used by a school for driver training shall be properly identified to safeguard against accidents. A vehicle is properly identified when the words "STUDENT DRIVER" are displayed on the front and rear and on both the left and right sides of the vehicle. The letters shall be at least three inches in height.

(8) Advertising or other markings on the vehicle for identifying or advertising the school shall be approved by the division.

R708-2-18. Notification of Accident.

If any driver training vehicle is involved in an accident during the course of instruction, the school shall notify the division in writing within five working days of the date of the accident and submit to the division a copy of the investigating law enforcement officer's accident report as soon as it is available.

R708-2-19. Insurance.

(1) Each commercial driver training school or testing only school must file with the division evidence of the minimum required insurance with an insurance company authorized to do business in Utah. Schools shall maintain suitable insurance coverage on each vehicle used in the driver training program sufficient to protect the instructor, students, and the public. The minimum insurance coverage is that required by the Utah Insurance Code, in Title 31A, Chapter 22, Part 3.

(2) The insurance company supplying the policy shall furnish to the division a certificate of insurance and shall notify the division immediately upon cancellation of said insurance. Operation of a vehicle without the required minimum insurance coverage shall be grounds for revocation of the licensee's license.

R708-2-20. Contracts.

(1) A student shall not be given lessons, lectures, tutoring or any other service relating to instruction in driver training, unless a written contract approved by the division has been executed by the school and the student.

(a) The contract must be signed by both the student and a representative of the school who is employed by the school, is authorized to enter into a contract with the student on behalf of the school and who is listed as school representative on the school application. If the student is under 18 years of age, the contract must also be signed by a parent or legal guardian.

(2) A copy of the contract must be given to the student and the original retained by the school.

(3) A school shall not agree orally or in writing to give an unlimited number of lessons, to give instruction until the driver license is obtained, or to give free lessons, or a premium or discount if a driver license is not obtained.

(4) The term "no refund" or similar phrase is not permitted in contracts.

(5) It is required that the student shall be provided with a receipt each time that money is paid by the student to the school. It is also required that the school shall maintain a copy of all receipts.

R708-2-21. Records.

(1) Every commercial driver training school shall maintain the following records:

(a) A permanent record book, defined as: a permanently bound book, with pages consecutively numbered, setting forth the name, address, date of birth, enrollment date, course type, and completion date of every person receiving lessons, lectures, tutoring, instruction of any kind or any other services relating to instruction in the operation of motor vehicles. The permanent record book must be updated upon both enrollment and course completion of each student. The division must approve the format of the permanent record book.

(b) A student record book, defined as: a book or other record showing the name, date of birth, and course type for each student; and the date, type, exact time of day including a.m. and p.m. for the beginning and ending of all training administered in the operation of motor vehicles. It will also contain the names of the instructors giving such lessons or instructions and identification of the vehicle in which any behind-the-wheel and/or observation instruction is given. The student record book must be updated within 24 hours of the time that instruction is conducted for each student. The division must approve the format of the student record book.

(c) Computerized files may be substituted for the permanently bound book and student record book if the format to be used has been approved by the division. It is a violation of this rule to maintain computerized files that have not been approved by the division.

(d) Each school shall maintain accurate, up to date records. Failure to do so is a violation of this rule.

(2) The division shall review the records of all schools at least annually and may observe the instruction given both in the classroom and behind the wheel. The division shall have the right to review the operation of the schools whenever the division deems it necessary to insure compliance with this rule.

(3) The loss, mutilation or destruction of any records which a school is required to maintain, must be immediately reported by the school to the division by affidavit stating:

(a) The date such records were lost, mutilated or destroyed; and

(b) The circumstances involving such loss, mutilation or destruction.

(4) All records must be retained by the schools for three years, with the exception of the permanently bound book or computerized file there of, which is to be kept permanently, during which time they shall be subject to inspection by the division during reasonable business hours. In the event that the school closes permanently, the permanent record book will be submitted by the school to the division.

(5) When deemed necessary by the division, the school records will be removed from the school location for the purpose of conducting an audit.

(a) When records are removed from the school location, a receipt will be provided to the school operator which will include the name of the school, location of the school, date of removal of records from the school location, information that specifies all records removed from the school location, the signature of the school operator, and the signature of a division representative.

(b) Upon return of the school records, the receipt will be updated to reflect the date that the records were returned to the school, the signature of the school operator, and the signature of the division designate returning the records.

(c) Records will be held by the division for the minimum

amount of time necessary so that an audit can occur without creating an unnecessary hardship or inconvenience to the school.

(d) All records, including computerized records, must be provided to the division when requested for the purpose of an audit or review of the school's records. Failure to provide all records as requested by the division is a violation of this rule. In the event that a hearing occurs subsequent to an audit, records not provided by the school at the time of the audit may not be considered as evidence during the hearing.

R708-2-22. Advertising and School Location.

(1) Commercial driver training schools and testing only schools may not imply or expressly guarantee that a driver license is guaranteed or assured. The display of a sign such as "Driver License Secured Here" is forbidden.

(2) A Commercial driver training school or testing only school may display on its premises a sign reading, "This School is Licensed by the State of Utah".

(3) No Commercial driver training school or testing only school may solicit business directly or indirectly or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

(4) In municipalities having a population of 50,000 or more, no license will be issued for a commercial driver training school or testing only school if the school's place of business is located within 1500 feet of a facility in which vehicle registrations or driver licenses are issued to the public. If a school is established in a location prior to the origination of a facility located within 1500 feet of the school in which vehicle registrations or driver licenses are issued to the public, the school will be authorized to continue operation; however, the school's location may not be transferred to another corporation, partnership, or owner, under the same school name or a different school name.

(5) No commercial driver training school or testing only school may change its place of business or location without prior approval from the division.

(6) Each commercial driver training school shall provide classroom space, either in their own building or in any other building approved by the division. The classroom shall have seating for all students, access to sanitary facilities, and appropriate training aids, such as blackboards, charts, projectors, etc. Classroom facilities and buildings shall comply with federal, state, and local building, fire, safety and health codes.

R708-2-23. Change of Address and Officers.

(1) The commercial driver training school or testing only school shall immediately notify the division in writing if there is a change in the residence or business address of any individual owner, partner, officer or employee of the school.

(2) The commercial driver training school or testing only school shall immediately notify the division in writing of any change in officers, directors or employees, and shall provide the same information that would be required on an original application by the corporation.

(3) Failure to notify the division of a change of address, or of a change in the officers, directors, employees or controlling stockholders of any corporation, or change in the members of a partnership, may be considered grounds for the revocation of the school license.

R708-2-24. Change in Ownership.

(1) In the event of any ownership change in the commercial driver training school or testing only school, the division must be notified immediately in writing by the new owner and a new application must be submitted. Such application shall be considered a renewal if one or more of the original licensees remain as part owner of the school. In the event the change in ownership is to any person or persons not named in the application for the last current license or renewal license of the school, such license shall be considered a new application.

(2) The division may permit continuance of the commercial driving training school or testing only school by the current licensee, pending processing of the application made by the person or persons to whom ownership of the school is to be transferred.

(3) Upon issuance of the new license, the prior license must be immediately surrendered to the division. Refund of any part of the license fee is not permitted.

R708-2-25. Grounds for Revocation, Probation or Refusal to Issue or Renew Instructor License, Operator License, or School License.

(1) Following a hearing, the division may revoke, place on probation, or refuse to renew a license for either an instructor, operator, commercial driver training school or a testing only school. The division may also refuse to issue a license for an instructor, operator, commercial driver training school or a testing only school. A license may be revoked, placed on probation or refused for renewal for any of the following reasons:

(a) failure to comply with any of the provisions of Title 53, Chapter 3, Part 5;

(b) failure to comply with any of the provisions of this rule;

(c) cancellation of surety bond as required in Section 6(2)(g) of this rule;

(d) providing false information in an application or form required by the division;

(e) commission of a violation of Section 7(1)(d) of this rule pertaining to moving violations or chargeable accident that results in a suspension or revocation of one's driver license;

(f) failure to permit the division or its representatives to inspect the school, classrooms, records, or vehicles used in the instruction of the school's students;

(g) conviction of any crime involving violence, dishonesty, deceit, indecency, degeneracy, drug or alcohol abuse, fraud, or moral turpitude;

(h) conviction of any fraudulent acts or practices by any partner, officer, agent or employee in relation to the business conducted under the license; or

(i) failure to appear for a hearing on any of the above charges; and

(j) violation of any of the provisions of this rule.

(2) Any proceeding to revoke, place on probation, or refuse to issue or renew an instructor license, operator license, commercial driver training school license or a testing only school license is hereby designated as an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.

(3) Any licensee who has had a license revoked shall not be eligible to reapply for a license until six months have elapsed since the date of the revocation. The applicant will be required to complete an application for an original license and meet all applicable requirements for an original license as stated herein. In addition to the other fees provided for in section 4(2), the licensee shall be required to pay a $25.00 reinstatement fee for each license that was revoked to the division at the time of application for reinstatement.

(a) Upon receipt of a completed application for an instructor license, operator license, commercial driver training school license or a testing only school, and applicable documentation and fees, the division will conduct a review process as established by the division director in order to determine eligibility for reinstatement or re-licensure. Notice of

a final decision will be made in writing by the division within twenty days of receipt of evidence that all applicable requirements have been met for reinstatement or re-licensure.

(b) In the event that a request for reinstatement is denied, the applicant will have an opportunity to request a hearing in writing within five days of receipt of the final decision made by the division.

(4) The following procedures will govern informal adjudicative proceedings:

(a) Action by the division to revoke, place on probation or refuse to issue or renew a license will be commenced by the division by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63G-4-201.

(b) No response is required to the notice of agency action.

(c) An opportunity for a hearing will be granted on a revocation, probation or refusal to issue or renew a license if, within five days, the division receives in writing a request for a hearing.

(d) The licensee or applicant will receive written notice of the hearing at least ten days prior to the date of the hearing.

(e) No discovery, either compulsory or voluntary, will be permitted prior to the hearing except that all parties shall have access to information contained in the division's files, and to investigatory information and materials not restricted by law.

(f) The hearing shall be conducted by an individual, or panel, designated by the division.

(g) Within twenty days after the close of the hearing or after the failure of a party to appear for the hearing, the individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right of judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(5) When a commercial driver training school license or a testing only school is under investigation by the division or when a commercial driver training school license or a testing only school license has been revoked, placed on probation or refused renewal, or reinstatement the school license may not be transferred to another party.

(6) If a commercial driver training school license is revoked, placed on probation or refused renewal, the existing incomplete instruction permits and or classroom, behind-the-wheel, and observation training hours may not be transferred to another school for completion.

(7) If a commercial driver training school license is revoked or refused renewal under the emergency provisions of UAPA, Section 63G-4-502, all remaining incomplete instruction permits will be confiscated from the school and the school will not be authorized to conduct business unless otherwise determined at a hearing.

(8) If an instructor license is revoked, placed on probation, or refused renewal under the emergency provisions of UAPA, Section 63G-4-502, and the school license is valid, the school may continue operation provided that there is an instructor employed by the school with a valid instructor license, and that to allow operation will not compromise public safety.

(9) If an operator license is revoked, placed on probation, or refused renewal under the emergency provisions of UAPA, Section 63G-4-502, and the school license is valid, the school may continue operation provided that there is an operator employed by the school with a valid operator license, and that to allow operation will not compromise public safety.

(10) An instructor license, operator license, commercial driver training school license or a testing only school may be placed on probation upon approval of the director of the division in the event that a violation of this section has occurred and it has been determined that the violation was not committed maliciously or with intent to defraud the department or the public. During a period of probation, provided that the terms of the probation agreement are adhered to by the subject, the instructor license, operator license, commercial driver training school license or a testing only school license shall remain intact and the instructor, operator, or school will be allowed to continue operation.

KEY: driver education, schools, rules and procedures
August 17, 2004 53-3-505
Notice of Continuation March 2, 2007

R708. Public Safety, Driver License.
R708-3. Driver License Point System Administration.
R708-3-1. Purpose.

The purpose of this rule is to establish procedures for the administration of a point system for drivers age 21 and older as mandated by Subsection 53-3-221(4) and a point system for drivers age 20 and younger as mandated by Subsection 53-3-209(2).

R708-3-2. Authority.

This rule is authorized by Subsections 53-3-209(2), 53-3-221(4), and 63G-4-203(1).

R708-3-3. Definitions.

(1) "Defensive driving course" means a course sponsored and conducted by a certified designee of the National Safety Council which allows the division to grant a 50 point reduction from the driving records of drivers who successfully complete the course.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "License" means the privilege to drive a motor vehicle.

(4) "Probation" means a division sanction whereby a driver is permitted to drive by complying with certain terms and conditions established by the division.

(5) "Provisional license" means a driving privilege issued by the division to a person younger than 21 years of age.

R708-3-4. Point Assignment.

(1) In compliance with Subsection 53-3-221(4), the division shall determine a number of points to be assigned to each moving traffic violation as a measure of the violation's seriousness.

(2) In compliance with Subsection 53-3-221(4)(c), the driving record of the driver will be assessed 35 points for minimum speeding violations, 55 points for intermediate speeding violations, and 75 points for maximum speeding violations. Since excessive speed has been demonstrated by the National Safety Council and the Department of Public Safety's Utah Traffic Accident Summary to be a leading contributing factor in causing vehicular accidents, the division has determined that the assessing of no points for minimum speeding violations would be detrimental to public safety.

(3) The Driver License Division, Utah Department of Public Safety, shall make available for public review and inspection at the division office, reception desk, 4501 South 2700 West, Salt Lake City, Utah 84130-0560 a listing of the number of points assigned to moving traffic violations and the length of time that the violations remain on the record.

(4) Moving traffic violations which require mandatory sanction by law or rule are assigned 0 points.

R708-3-5. Point Increase or Decrease.

(1) Total points accumulated will be increased or decreased by the following means:

(a) a 10% increase or decrease in points assigned to any moving violation, except speed violations in accordance with Subsection 53-3-221(4)(b);

(b) a 50 point decrease once in a three year period after successfully completing a defensive driving course as defined in this rule;

(c) a 50% point decrease after one year of violation free driving in accordance with Subsection 53-3-221(4)(d); and

(d) a 100% point decrease after two years of violation free driving in accordance with Subsection 53-3-221(4)(d).

(2) The assigned points for any moving traffic violation will be dropped three years after the violation occurred in accordance with Subsection 53-3-221(4)(d).

(3) The point total after a sanction for drivers under age 21 will decrease to 35 points except when the point total is already below 35.

(4) The point total after a sanction for drivers age 21 and older will decrease to 125 points except when the point total is already below 125 in accordance with this rule.

R708-3-6. Point System Thresholds for Drivers Age 21 and Older.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 150 to 199 points: driver is sent a warning letter;

(b) 200 points: driver must appear for a hearing;

(c) 200 to 299 points: driver may be placed on probation or suspended for three months;

(d) 300 to 399 points: driver is suspended for 3 months;

(e) 400 to 599 points: driver is suspended for 6 months; and

(f) 600 or more points: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) The suspension time is doubled, up to a maximum of one year, for a second or subsequent suspension within a three year period.

R708-3-7. Separate Point System for Provisional Licensed Drivers.

(1) In compliance with Subsection 53-3-209(2), a separate point system is established to facilitate behavioral influence upon drivers age 20 and younger. The point thresholds are designed to take remedial action earlier than is provided for drivers who are age 21 and older.

(2) In compliance with Subsection 53-3-209(2), and in conjunction with the consideration of point totals, the division may counsel a driver with regards to the development of safe driving attitudes, habits, and skills.

R708-3-8. Point System Thresholds for Provisional Licensed Drivers.

(1) Upon receiving notice of a court conviction of a moving traffic violation, the division will post the violation to the driving record of the individual convicted, along with the points assigned to the violation, as designated in the code violation table.

(2) The division will use the following point thresholds to determine the severity of the sanction to be levied against the driver:

(a) 35 to 69 points: driver is sent a warning letter;

(b) 70 points: driver must appear for a hearing;

(c) 70 to 139 points: driver may be placed on probation or denied for 30 days;

(d) 140 to 199 points, or violation of probation for the first time in a three year period: driver may be denied for 30 days;

(e) 140 to 199 points for a second time in a three year period or a second probation violation in a three year period: driver may be denied for 60 days;

(f) 140 to 199 points for a third time in a three year period or a third probation violation in a three year period: driver may be suspended for 90 days;

(g) 200 to 249 points: driver is suspended for 60 days;

(h) 250 to 349 points: driver is suspended for 90 days;

(i) 350 to 449 points: driver is suspended for 6 months;

and

(j) 450 or more: driver is suspended for 1 year.

(3) A driver who is within a designated threshold may be considered for action at a lower threshold if completion of the defensive driving course has lowered the point total to that lower threshold.

(4) In accordance with Subsection 53-3-209(2)(b)(iii), the first two sanctions within a three year period will deny a driving privilege unless the point total is 200 or more. A third or additional sanction within a three year period will result in a suspension at the next highest threshold, which doubles in length for each succeeding sanction within the three year period up to a maximum of one year.

R708-3-9. Hearing.

Drivers who are sanctioned under the provisions of this point system rule are entitled to a hearing in accordance with Subsection 53-3-221(5)(a)(i) and R708-35.

KEY: traffic violations, point-system
August 17, 2004 53-3-209(2)
Notice of Continuation March 2, 2007 53-3-221(4)

R708. Public Safety, Driver License.
R708-14. Adjudicative Proceedings For Driver License Actions Involving Alcohol and Drugs.
R708-14-1. Purpose.

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for alcohol/drug adjudicative proceedings.

R708-14-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

R708-14-3. Definitions.

(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "Division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders.

(4) "Hearing" means an alcohol/drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege.

(5) "Presiding officer" means a division employee with authority to conduct alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at an alcohol/drug adjudicative proceeding.

R708-14-4. Designations.

(1) In compliance with Section 63G-4-202, all division alcohol/drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

R708-14-5. Authority for Conducting Adjudicative Proceedings.

Alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 41-6a-521, 53-3-223, 53-3-231, 53-3-418, 63G-4-203, and this rule.

R708-14-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-201, alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively. In addition, a request for division action shall include the petitioner's full name, date of birth, and the date of arrest or occurrence which prompted the request for division action. A request for division action that is not made timely, in accordance with Subsections 53-3-223(6)(a), 53-3-231(7)(a)(ii), and 53-3-418(9)(b), will not be granted except for good cause as determined by the division.

R708-14-7. Alcohol/Drug Adjudicative Proceedings.

The alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) driving under the influence of alcohol/drugs (per-se), Section 53-3-223;

(b) implied consent (refusal), Section 41-6a-520;

(c) measurable metabolite in body, Section 41-6a-517;

(d) consumption by a minor (not a drop), Section 53-3-231; and

(e) CDL (.04), Section 53-3-418.

R708-14-8. Hearing Procedures.

(1) Time and place. Alcohol/drug adjudicative proceedings will be held in the county of arrest, at a time and place designated by the division, or agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216(3) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The notice need only inform the parties as to the date, time, place, and basic purpose of the proceeding. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion;

(e) take appropriate measures to preserve the integrity of the hearing; and

(f) conduct hearings in accordance with division policy III-A-3, III-A-4, and III-A-5.

R708-14-9. Findings, Conclusions, Recommendations and Orders.

(1) Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation.

(2) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on forms that utilize a system of check boxes and fill in blanks. The completed form will be transmitted to the presiding officer's supervisor as soon as possible for the preparation of an order that complies with Subsection 63G-4-203(1)(i).

(3) As provided in Subsection 53-3-216(3), the order will be mailed to the last known address of the driver.

(4) The order shall advise the driver of his/her right to seek

a copy of written findings, conclusions, and recommendation of the presiding officer, and these will be made available to the driver only upon written request.

R708-14-10. Reconsideration.

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

KEY: adjudicative proceedings
February 1, 2000 53-3-104
Notice of Continuation March 2, 2007 63G-4-203(1)

R708. Public Safety, Driver License.
R708-18. Regulatory and Administrative Fees.
R708-18-1. Authority.

This rule is authorized by Section 53-3-104(2), 53-3-105, 53-3-808, 53-3-905 and Subsection 63J-1-301(2).

R708-18-2. Definitions as used in this chapter.

(1) "Accident Report" means an officer's report of an accident as described under Subsection 41-6a-402.

(2) "Accompanying data" means supplemental accident reports or addenda there to.

(3) "Driving Record", more commonly known as a Driver License Record (DLR) means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

(a) Driver's name;

(b) Driver's license or Driving Privilege Card number;

(c) Driver's date of birth;

(d) Driver's zip code;

(e) Member of military;

(f) Reportable arrests and convictions;

(g) Reportable notices from courts indicating failure to comply with terms of a citation or failure to comply with terms set by the court, pursuant to UCA 53-3-221(2) and 53-3-221(3).

(h) Reportable department actions;

(i) Driving Privilege Status;

(j) Driver license or Driving Privilege Card issue/expiration dates; and

(k) Driver license or Driving Privilege Card class/type/endorsement.

(4) Driving Record - "Certified Copy" means an authenticated Driving Record and/or accident report and/or accompanying data prepared under the seal of the division. (Other records or information may be included only under order or rule of the court.)

(5) "Photocopies" means the mechanical reproduction of an original digitized or filmed document.

(6) "Recording" means a verbatim magnetic tape or digitized recording of sworn, or unsworn testimony, or information.

R708-18-3. Fees.

The Driver License Division charges user fees for some services. A schedule of these fees is available for public examination at any Driver License office location. These fees are set by the legislature in Section 53-3-105, 808, and 905, and in the annual appropriations act as recorded in "The 'Laws of Utah' as passed at the General Session of the Legislature".

R708-18-4. Exemptions.

The fees established may not be charged to any municipal, county, state or federal agency as defined in Subsection 53-3-105(33)(b).

R708-18-5. Records.

All fees charged shall be receipted and recorded under normal accounting principles established by the Driver License Division.

KEY: driver education, licensing, fees
October 27, 2005 **63J-1-301(2)**
Notice of Continuation March 20, 2006 **41-6a-402**
53-3-104(2)
53-3-105
53-3-808
53-3-905
53-3-221(2)
53-3-221(3)

R708. Public Safety, Driver License.
R708-22. Commercial Driver License Administrative Proceedings.
R708-22-1. Authority.

This rule is authorized by Subsection 53-3-221(5)(a)(i).

R708-22-2. Commercial Driver License Administrative Proceedings.

All adjudicative proceedings for commercial driver license (CDL) holders, including but not limited to, the application for and denial, disqualification, suspension or revocation of authorization to operate any particular class or classes of vehicles, shall be conducted according to applicable rules for administrative proceedings as specified in section R708-17.

KEY: administrative proceedings
1989 53-3-221(5)(a)(i)
Notice of Continuation August 25, 2004 63G-4-102

R708. Public Safety, Driver License.
R708-30. Motorcycle Rider Training Schools.
R708-30-1. Purpose.

The purpose of this rule is to assist the Driver License Division in administering the Motorcycle Rider Education Program set forth in Title 53, Chapter 3, Part 9, the Motorcycle Rider Education Act.

R708-30-2. Authority.

This rule is authorized by Subsection 53-3-903(1)(b).

R708-30-3. Definitions.

(1) "Agreement" means a written agreement between the Driver License Division, and a school, institution, or individual to provide motorcycle rider training courses for beginner and experienced riders and courses for instructors.

(2) "Division" means the Driver License Division.

(3) "Practice riding" means that portion of instruction during which the student actually rides a motorcycle.

(4) "Program coordinator" means the division representative appointed to oversee and direct the Motorcycle Rider Education Program.

(5) "School" means an institution owned and operated by an individual, partnership or corporation, public or private, licensed to do business in the State of Utah, for the purpose of providing classroom and practical motorcycle rider training.

R708-30-4. Application.

(1) An application for an original or renewal agreement shall be made on a form furnished by the division and shall include the following:

(a) name of the school;

(b) address of the school;

(c) names of all proposed instructors; and

(d) addresses of all instruction sites.

(2) Upon receipt of the application, the division shall schedule an inspection of the school sites, equipment, instructional materials, course curriculum, class schedules, and shall determine eligibility of proposed instructors.

(3) Once the application has been completed and approved, the division and the school may enter into an agreement allowing the school to conduct motorcycle rider training.

R708-30-5. Agreement.

(1) Once the school has executed an agreement with the division to provide training for beginner and experienced motorcycle riders, the school may begin to conduct motorcycle rider training.

(2) The agreement shall allow the school to provide training and instruction for motorcycle riders, but shall not allow the school to bind or obligate the division in any way to issue a motorcycle endorsement or license.

(3) Upon execution of the agreement, the school and all approved instructors will be placed on a list provided to all driver license offices. A certificate of approval will be mailed to the school and will indicate the expiration date of the agreement.

(4) The agreement shall expire on July 1 of each year. No later than three months prior to expiration of the agreement, the school may submit a renewal application to the division.

R708-30-6. Standards.

(1) To be approved, a school shall meet the following standards:

(a) make application to and enter into an agreement with the division;

(b) maintain a place of business with at least one permanent occupied structure within the State;

(c) ensure the place of business meets all requirements of State law and local ordinances;

(d) have at least one qualified and approved instructor;

(e) provide helmets, motorcycles and range equipment for practice riding;

(f) have emergency equipment readily available. The emergency equipment shall include an adequate fire extinguisher and a fully stocked, industrial-quality first-aid kit;

(g) have written procedures for responding to accidents, including emergency telephone numbers, and a telephone within easy access during any range training;

(h) furnish the division with written permission to use any facilities not owned or leased by the school. Specific days of use and intended use of the facilities must be indicated, e.g., days: Thursday, Saturday, Sunday, etc.; and uses: classroom instruction and operation of motorcycles on property;

(i) request approval from the division for any proposed changes in instructor or administrative procedures;

(j) make record of and report to the division within 48 hours any accident or injuries occurring during any instruction;

(k) provide rider training at remote sites only upon approval and/or at the request of the division;

(l) not engage the service of an employee of the division as an instructor, agent or employee of the school; and

(m) maintain for five years, and present upon request of the division, verification that all instructors are certified, and attendance and completion records are accurate.

R708-30-7. Certificate of Approval.

Upon approval, the division will issue a certificate of approval to the school, each branch office, and/or mobile team. The certificate will be conspicuously displayed at all times in the school's permanent place of business and will be displayed during instruction at branch offices and mobile training sites.

R708-30-8. Inspections.

(1) The division may:

(a) conduct random examinations, inspections, and audits without prior notice during normal business hours; and

(b) conduct on-site inspections annually and at any other time deemed necessary by the division.

(2) A person designated by the school shall accompany the division representative while performing on-site inspections. On-site inspections may include:

(a) ensuring that all requirements specified in this rule are met;

(b) examining school records;

(c) ensuring that practice riding procedures comply with criteria established by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instructor certifying body and the division; and

(d) reviewing any other items the division may deem necessary to ensure that all requirements specified in the agreement are met.

(3) Random checks may be made by any designated division representative to verify compliance with course instruction standards. Checks by the division may include:

(a) having a division representative take a course administered by the school; and

(b) having the division administer practical skills tests to a sample of riders who have completed the course of instruction presented by the school to determine if the results of the tests administered by the division are comparable to the results submitted by the school.

R708-30-9. Courses.

(1) Course curriculum will be conducted in accordance with this rule. The division may provide supplemental instruction as necessary. Such instruction may include

information on course content, practice riding, instructor and administrative procedures and/or changes.

(2) Courses shall be conducted at locations approved by the division.

(3) Courses shall be conducted using division approved content, forms, scoring procedures and equipment.

(4) Courses conducted by mobile teams at remote sites and branches shall be held to the same standards as required at permanent locations.

R708-30-10. Certificate of Course Completion.

(1) The school will provide a certificate of course completion to verify rider competency and successful completion of the prescribed course of instruction.

(2) The certificate of course completion shall include the following:

(a) applicant's name;

(b) title of the course completed;

(c) date of course completion; and

(d) authorized signature from the school.

(3) Upon completion of a beginner class from an approved school, the division may waive the practical skills portion of the application for motorcycle license or endorsement to a current driver license.

(4) Riders must submit to the division the certificate of course completion of a beginner class within six months of the date of course completion to be eligible for waiver of the practical skills test.

R708-30-11. Insurance Coverage.

(1) The division shall obtain through a commercial insurance agency the required insurance coverage for all schools involved in providing motorcycle rider training.

(2) Each school shall submit to the division a list identifying all motorcycles used for instruction purposes.

(3) Motorcycles used by the schools for instruction purposes shall be covered by insurance obtained by the division and will be used only in approved rider training courses and only on division approved ranges.

R708-30-12. Instructors.

(1) Instructors approved by the division to conduct motorcycle rider training shall:

(a) furnish proof of completed training and certification provided by the Motorcycle Safety Foundation or another nationally recognized motorcycle safety instruction certifying organization;

(b) instruct only those classes which have been approved by the division;

(c) instruct only those students who are at least 16 years of age and have completed an approved driver education course;

(d) except as set forth in paragraph two of this section, have a valid Utah driver license with motorcycle endorsement;

(e) have a high school diploma or its equivalent;

(f) be at least 18 years of age;

(g) have at least two years of recent motorcycle riding experience;

(h) possess valid Red Cross standard first-aid and CPR cards, or their equivalent; and

(i) manifest safe riding habits whenever riding.

(2) The requirement for a Utah drive license may be waived by the division if the instructor is assigned as active duty military to an installation in Utah.

(3) Instructors are encouraged to wear all protective gear every time they ride. Protective gear includes helmet and eye protection, over-the-ankle footwear (not cloth, canvas, etc.), long non-flare denim pants or material of equivalent durability, long-sleeved shirt or jacket, and full-fingered gloves (preferably leather).

(4) The division shall refuse approval or will revoke approval if the applicant/instructor:

(a) no longer meets the requirements of this section;

(b) has had a driver license suspended or revoked during the preceding two years or within the preceding five years if the suspension or revocation was for an alcohol or drug related offense; or

(c) fails to successfully complete an instructor course or required course updates, or fails to teach at least two rider training classes per year, one of which must be as the lead instructor. An exception to this requirement may be granted if written justification for not meeting the teaching requirements is submitted by the instructor and is approved/accepted by the division.

R708-30-13. Advertisement.

(1) No school advertisement may:

(a) indicate in any way that a program can issue or guarantee the issuance of a motorcycle license or endorsement;

(b) imply that a program can in any way influence the division in the issuance of a motorcycle license or endorsement; or

(c) imply that preferential or advantageous treatment from the division can be obtained.

(2) No instructor, employee or agent of a school may be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a location rented, leased, or owned by the division.

R708-30-14. Revocation.

(1) In accordance with Subsection 63G-4-202(1), the division designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) The division shall deny approval of an application for a school or an instructor if the applicant does not qualify for approval under provisions of this rule.

(3) The division may deny approval or revoke approval of a school or instructor for any of the following reasons:

(a) failure to comply with any provision of this rule or the school's agreement;

(b) falsification of any records or information relating to the school's instruction program;

(c) commission of any act which compromises the integrity of the school's instruction program or the instructor;

(d) failure to notify the division within ten days of any change in instructor personnel or testing locations;

(e) notification that an instructor's driver license is suspended, revoked, canceled or disqualified; or

(f) misstatements or misrepresentation on the application.

(4) If the division determines that reasons for revocation exist because of failure to comply with any provision of this rule or the school's agreement, the division may postpone revocation and allow the school or instructor up to thirty (30) days to correct the deficiency.

(5) A school or instructor who receives notice that the division intends to revoke their approval is entitled to a hearing. The hearing will be conducted by a person appointed by the division director.

(a) The party requesting the hearing must file the request for hearing within ten days from the date notice of the division's intent to revoke is received.

(b) The person conducting the hearing will issue a written decision that complies with Subsection 63G-4-203(1)(i) within ten days following the hearing.

(6) The decision of the person conducting the hearing will be considered final agency action. A party wishing to contest the decision may:

(a) file a request for reconsideration with the division in

accordance with Section 63G-4-302; or

(b) seek judicial review in accordance with Section 63G-4-401.

(7) Reinstatement following revocation of approval may take place only after:

(a) a new application for approval is filed;

(b) the division is satisfied that the reason for revocation no longer exists; and

(c) the division is satisfied that approval of the school or instructor is in the best interests of the public and will not jeopardize public safety.

KEY: motorcycle rider training schools
May 18, 1999 53-3-903
Notice of Continuation January 27, 2004

R708. Public Safety, Driver License.
R708-34. Medical Waivers for Intrastate Commercial Driving Privileges.
R708-34-1. Purpose.

A person who desires to obtain an interstate commercial driver license must meet the minimum federal fitness standards dealing with physical, mental, and emotional health set forth in Part 391 of the Federal Motor Carrier Safety Regulations. As authorized by Section 53-3-303.5, compliance with those standards can be waived for a person who (a) desires to obtain commercial driving privileges for intrastate driving only, and (b) meets minimum state fitness standards. This rule sets forth the procedure whereby a person may apply for a waiver, and also for the Driver License Division to respond to waiver requests.

R708-34-2. Authority.

This rule is authorized by Subsection 63G-3-201(2) and Section 53-3-303.5.

R708-34-3. Definitions.

(1) "Board" means the Driver License Medical Advisory Board.

(2) "Commercial driving privileges" means the privilege given to any licensed operator of a motor vehicle who must be in compliance with Federal Fitness Standards for the purpose of transporting commerce in vehicles with a gross vehicle weight of at least 10,000 to 26,000 pounds or over, with or without a commercial driver license.

(3) "Department" means the Utah Department of Public Safety.

(4) "Division" means the Driver License Division.

(5) "Fitness standards" means standards set forth by the board for determining the physical, mental and emotional capabilities appropriate for issuance of intrastate commercial driver licenses.

(6) "Waiver" means approval granted by the division allowing a driver to drive commercial vehicles intrastate even though the driver does not meet the minimum federal fitness standards to drive commercial vehicles interstate.

(7) "Medical Waiver Card" means a card issued by the Driver License Division to verify the driver has met minimum state fitness standards to qualify for intrastate commercial driving privileges.

R708-34-4. Requesting a Waiver.

Drivers desiring an intrastate commercial driving privilege waiver shall:

(a) request a waiver application from the Driver License Division, Medical Waiver Program Coordinator, P.O. Box 30560, Salt Lake City, UT 84130-0560;

(b) submit to the division for approval a waiver application with a current Functional Ability Evaluation Medical Certificate Report and Certificate of Visual Examination, as required, and a non-refundable check or money order payable to the Utah Department of Public Safety for the waiver processing fee;

(c) take a letter received from the division granting the waiver to any commercial driver license office and apply for an intrastate commercial driving privilege with appropriate endorsements and/or restrictions; and

(d) pay applicable waiver fees, and when necessary, take appropriate written and skills tests to obtain the desired driving privilege.

R708-34-5. Obligation of Drivers Possessing Waivers.

Drivers possessing waivers must comply with division instructions requesting periodic updated medical information including submission of a Functional Ability Evaluation Medical Report, a Certificate of Visual Examination, and a non-refundable check or money order payable to the Department. Non-compliance with division instructions may result in the denial of commercial driving privileges.

R708-34-6. Driver License Medical Advisory Board Responsibilities.

The board shall:

(a) establish fitness standards for issuing intrastate commercial driver licenses under Title 53, Chapter 3, Part 4, Uniform Commercial Driver License Act; and

(b) review waiver applications when necessary and make recommendations to the division director.

R708-34-7. Driver License Division Responsibilities.

(1) The division shall provide information and guidance to waiver applicants and shall process all waiver applications.

(2) The division shall coordinate with and provide information to the board concerning waiver applications and shall issue a letter approving or disapproving a waiver after consideration of the board's recommendation.

(3) The division shall issue a medical waiver card which the applicant must carry while driving intrastate.

R708-34-8. Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-202(1) all adjudicative proceedings herein shall be conducted informally.

(2) A driver whose waiver application is denied, or whose waiver application is granted with restrictions that are unacceptable to the driver, may make a request for administrative review in accordance with Subsection 53-3-303(10) and for judicial review in accordance with Subsection 53-3-303(11).

KEY: intrastate driver license waivers
December 4, 2001 63G-3-201(2)
Notice of Continuation March 2, 2007 53-3-303.5

R708. Public Safety, Driver License.
R708-35. Adjudicative Proceedings For Driver License Offenses Not Involving Alcohol or Drug Actions.
R708-35-1. Purpose.

The purpose of this rule is to establish procedures to be used by the Utah Driver License Division for non-alcohol/drug adjudicative proceedings.

R708-35-2. Authority.

This rule is authorized by Section 53-3-104 and Subsection 63G-4-203(1).

R708-35-3. Definitions.

(1) "Adjudicative proceeding" means any meeting, conference, session or hearing, in person or otherwise, between a person and a presiding officer or designee of the division, that is intended to resolve a dispute.

(2) "Division" means the Driver License Division of the Utah Department of Public Safety.

(3) "Division record" means the entire division file, including written reports received or generated by the division. It also includes, but is not limited to, minutes, written comments, presiding officer's written statements and summaries, testimony, evidence, findings of fact, conclusions of law, recommendations, and orders.

(4) "Hearing" means a non-alcohol/drug adjudicative proceeding where evidence is considered to determine an issue of fact and to adjudicate a legal right or privilege.

(5) "Presiding officer" means a division employee with authority to conduct non-alcohol/drug adjudicative proceedings.

(6) "Recording" means documenting, by electronic or other means, the testimony or information presented at a non-alcohol/drug adjudicative proceeding.

(7) "Serious violation" means a single violation determined by the division to require immediate remedial action.

R708-35-4. Designations.

(1) In compliance with Section 63G-4-202, all division non-alcohol/drug adjudicative proceedings are designated as informal proceedings, unless converted to formal proceedings by a presiding officer or division supervisor.

(2) An informal proceeding may be converted to a formal proceeding only if approved by a division supervisor and only if the conversion will promote efficiency, public safety, and not unreasonably increase cost.

R708-35-5. Authority for Conducting Adjudicative Proceedings.

Non-alcohol/drug adjudicative proceedings will be conducted in accordance with Sections 53-3-221, 63G-4-203, and this rule.

R708-35-6. Commencement of Adjudicative Proceedings.

(1) In accordance with Subsection 63G-4-201(1), non-alcohol/drug adjudicative proceedings may be commenced by:

(a) a notice of division action, if the proceedings are commenced by the division; or

(b) a request for division action, if the proceedings are commenced by a person other than the division.

(2) A notice of division action and request for division action shall include the information set forth in Subsections 63G-4-201(2)(a) and (3)(a) respectively.

R708-35-7. Non-Alcohol/Drug Adjudicative Proceedings.

The non-alcohol/drug adjudicative proceedings deal with the following types of hearings:

(a) point system, Sections 53-3-209 and 53-3-221;

(b) financial responsibility, Sections 41-12a-303.2, 41-12a-503, 41-12a-511, and 53-3-221;

(c) contributing to a fatality, Section 53-3-221;

(d) serious violation, Section 53-3-221 and R708-14-3(8);

(e) unlawful use of a license, Section 53-3-229;

(f) fraudulent application, Section 53-3-229;

(g) failure to appear or comply, Section 53-3-221;

(h) review examination request, Subsection 53-3-221(9);

(i) driving during denial, suspension, revocation, or disqualification, Subsection 53-3-220(2);

(j) leaving the scene of an accident, Section 53-3-221 (serious violation); and

(k) limited license, Subsection 53-3-220 (4)(a).

R708-35-8. Hearing Procedures.

(1) Time and place. Non-alcohol/drug adjudicative proceedings will be held at a time and place agreed upon by the parties.

(2) Notice. Notice shall be given as provided in Subsection 53-3-216(3) unless otherwise agreed upon by the parties. Notice shall be given on a form approved by the division and is deemed to be signed by the presiding officer. The parties are deemed to have knowledge of the law.

(3) Default. If the driver fails to respond timely to a division request or notice, a default may be entered in accordance with Section 63G-4-209.

(4) Evidence. The parties and witnesses may testify under oath, present evidence, and comment on pertinent issues. The presiding officer may exclude irrelevant, repetitious, immaterial, or privileged information or evidence. The presiding officer may consider hearsay evidence and receive documentary evidence, including copies or excerpts.

(5) Information. The driver shall have access to information in the division file to the extent permitted by law.

(6) Subpoenas. Discovery is prohibited, but the division may issue subpoenas or other orders to compel production of necessary evidence. Subpoenas may be issued by the division at the request of the driver if the costs of the subpoenas are paid by the driver and will not delay the proceeding.

(7) Administrative notice. The presiding officer has discretion to take administrative notice of records, procedures, rules, policies, technical scientific facts within the presiding officer's specialized knowledge or experience, or of any other facts that could be judicially noticed.

(8) Presiding officer. The presiding officer may:

(a) administer oaths;

(b) issue subpoenas;

(c) conduct prehearing conferences by telephone or in person to clarify issues, dispose of procedural questions, and expedite the hearing;

(d) tape record or take notes of the hearing at his/her discretion; and

(e) take appropriate measures to preserve the integrity of the hearing.

R708-35-9. Findings, Conclusions, Recommendations and Orders.

(1) Within a reasonable period of time after the close of the hearing, the presiding officer will issue a written decision that may include findings of fact, conclusions of law, and a recommendation.

(2) Statements reflecting findings of fact, conclusions of law, and recommendation may be written on a form that is approved by the division. The completed form will be transmitted to the central office of the division as soon as possible for the preparation of an order that complies with Subsection 63G-4-203(1).

(3) As provided in Subsection 53-3-216(3), the order will be mailed to the last known address of the driver.

(4) The order shall advise the driver of his/her right to seek a copy of written findings, conclusions, and recommendation of

the presiding officer, and these will be made available to the driver only upon written request.

R708-35-10. Reconsideration.

In accordance with Section 63G-4-302 a driver may file a request for reconsideration of the order within 20 days after receiving it. If the division does not issue an amended order within 20 days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the driver may seek judicial review in accordance with Section 63G-4-402.

KEY: adjudicative proceedings
October 6, 1997 53-3-104
Notice of Continuation March 2, 2007 63G-4-203(1)

R708. Public Safety, Driver License.
R708-36. Disclosure of Personal Identifying Information in MVRs.
R708-36-1. Purpose.

One of the responsibilities of the division is to compile information regarding the driving record of licensed drivers in Utah. This information is searched, compiled and summarized by the division in a report called a Motor Vehicle Record (MVR). The MVR contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63G, Chapter 2 (Government Records Access and Management Act). However, such laws provide for limited public disclosure of such information because the Division Director has determined it is in the best interest of pubic safety in order to protect the public against fraud and misuse of the MVR. It is the purpose of this rule to set forth the contents of the MVR and the procedure to be followed in disclosing it.

R708-36-2. Authority.

This rule is authorized by Section 53-3-109(5).

R708-36-3. Content of MVRs.

(1) The personal identifying information contained in an MVR consists of the driver name, driver license number, and in certain circumstances, the driver address.

(2) The driver name and driver license number will appear on every MVR released by the division to qualified requesters.

(3) Driver address will appear only on MVRs released to licensed private investigators or investigative agencies certified by the Department of Public Safety. The division may make exceptions to this procedure, provided the exception falls under a permissible use set forth in the DPPA.

(4) All MVRs will contain the driver's 5-digit zip code, date of birth, military status, license status, license issue/expiration dates, license class, endorsements, reportable arrests, convictions, reportable department actions, and reportable failure to appear/comply notations.

R708-36-4. Disclosure Procedure.

(1) When properly requested to do so the division will search its driver license files and then compile and furnish an MVR on any person licensed in the state.

(2) MVRs shall only be released to qualified requesters in accordance with the DPPA.

(3) In order to receive an MVR, the requester must:

(a) provide acceptable proof of identification such as a driver license, official identification card, or other official documentation. The division may also require other forms of identification as needed;

(b) declare one or more permissible uses within the DPPA under which the requester is qualified to receive the information. The division will provide a list of the permissible uses for the requester to review if necessary. The division may determine that the requester is not entitled to receive an MVR if the division has reason to believe the declaration is invalid, or that any other condition in this rule has not been met;

(c) provide sufficient information to locate the driver records;

(d) pay appropriate fees in a manner approved by the division; and

(e) agree to comply with state and federal laws regulating re-sale and further disclosure of information on an MVR.

R708-36-5. Bulk Requests.

Bulk customers (generally those requesting 50 or more MVRs at a time) may meet the conditions in this rule by contracting with the division.

R708-36-6. Electronic Transactions.

Requests for MVRs may be transacted electronically as approved by the division.

KEY: driver license, motor vehicle record, privacy
June 1, 2000 53-3-109(5)
Notice of Continuation May 11, 2005

R708. Public Safety, Driver License.
R708-37. Certification of Licensed Instructors of Commercial Driver Training Schools or Testing Only Schools to Administer Driving Skills Tests.
R708-37-1. Purpose.

The purpose of this rule is to establish standards and procedures to certify instructors of commercial driver training schools and testing only schools to administer driving skills tests.

R708-37-2. Authority.

This rule is authorized by Section 53-3-510.

R708-37-3. Definitions.

(1) "Agreement" means a written agreement between the state and a third-party tester agreeing to the conditions contained in this rule.

(2) "Cancellation" means action taken by the division that voids an instructor's testing certification.

(3) "Certification" means the process by which commercial driver training instructors are certified by the division to administer driving skills tests.

(4) "Commercial driver training school" or "school" means a business enterprise conducted by an individual, association, partnership, or corporation for the education and training of persons to drive motor vehicles, and to prepare applicants for examinations prerequisite to their obtaining driver licenses or learner permits.

(5) "Commercial driver training vehicle" means a motor vehicle equipped with a second functioning foot brake and inside and outside mirrors which are positioned for use by the instructor for the purpose of observing rearward.

(6) "Corporation" means a business incorporated under the laws of a state or other jurisdiction.

(7) "Division" means the Driver License Division of the Utah Department of Public Safety.

(8) "Instructor" means a person who is authorized to teach driver education in an approved commercial driver training school.

(9) "Partnership" means an association of two or more persons who co-own and operate a commercial driver training school or a testing only school.

(10) "Probation" means action taken by the department which includes a period of close supervision as determined by the division.

(11) "Suspension" means action taken by the division that temporarily voids an instructor's testing certification. The certification may be reinstated whenever the instructor follows a division-approved plan and complies with reinstatement procedures.

(12) "Test" means a driving skills test approved by the division.

(13) "Tester" means an instructor who is certified to administer driving skills tests.

R708-37-4. Application Procedures.

(1) An instructor shall become a certified tester by making application and by meeting the requirements of this rule. In order to become a certified tester, an individual must be certified as a commercial driver education instructor in accordance with R708-2-6,8 and 9. Application shall be made on a form furnished by the division and shall include the following information:

(a) the name of the instructor who is applying for tester certification;

(b) the name and address of the commercial driver training or testing only school where the instructor is employed; and

(c) the signature of the school owner indicating approval of the instructor for tester certification and consent to the use of school vehicles, facilities, etc. for the purpose of testing.

(2) The instructor must enter into a written agreement with the division. The agreement must contain provisions that:

(a) the tester cannot maintain employment with more than one commercial driver training school or testing only school at a time;

(b) allow the division to conduct random examinations, inspections, and audits without prior notice during normal business hours; and

(c) allow the division to conduct on-site inspections annually or when deemed necessary by the division.

(3) The division will offer training to instructors regarding minimum standards which must be met in the administration and scoring of tests.

(4) The division may authorize, train, and approve persons outside the division to provide the training. Instructors are responsible for any costs associated with training provided by approved organizations, agencies, or individuals.

(5) The division shall maintain a list of approved testers and shall assign testers identification numbers.

R708-37-5. Medical Screening.

(1) Prior to administering a driving skills test, the tester shall screen students for visual acuity, visual field and physical or emotional conditions which may compromise public safety. Screening may not be performed over the telephone. An employee of the tester who is not certified as an instructor or tester may not perform medical or visual screening unless approved in writing by the division.

(a) Students must have 20/40 or better visual acuity in one eye and a visual field of 90 degrees. Students with less than the required visual acuity and/or visual field shall be referred to a licensed medical practitioner for further consideration.

(b) Students must answer all questions on a health questionnaire approved by the Driver License Medical Advisory Board and sign a statement of affirmation of truth. Students indicating a physical or emotional condition on the questionnaire shall be referred to a licensed medical practitioner for further consideration. Health questionnaires shall be provided by the division and maintained for three years by the commercial driver training school or testing only school as a part of the school's records.

(c) The driver will not be required to submit to a medical screening if one of the following is provided to the tester:

(i) a verification of medical fitness approval form as completed by a commercial driver education instructor; or

(ii) a driver receipt issued by the division that indicates that the medical screening has taken place in the division.

R708-37-6. Tests.

(1) When testing students for driver licenses, instructors certified as testers shall administer tests developed in accordance with these rules which meet or exceed minimum division testing standards.

(2) Tests shall be conducted:

(a) on test routes approved by the division;

(b) by certified testers who are also certified instructors;

(c) in vehicles provided by commercial driver training schools or testing only schools which have been inspected and approved for use in driver training by the division or in a personal vehicle provided by the applicant. Each school shall notify the division of any vehicle added to or deleted from their fleet. No vehicle owned by a commercial driver training school or testing only school may be used for testing until it passes an inspection by the division;

(d) using division approved content, forms, and scoring procedures;

(e) only for students who have completed a course of driver education or who have had a previous driver license;

(f) with only the student and the tester occupying the vehicle. The tester shall be seated next to the student. No other passengers or observers shall occupy the vehicle during the test, except upon approval and written consent by the division; and

(g) only for students who have in their possession a temporary driving permit, a learner permit, an instruction permit issued by the division; or a valid driver license issued by a jurisdiction other than the State of Utah.

(h) only for students who have in their possession adequate verification of their identity.

(3) a tester may not make any changes to a testing route without prior written approval by the division.

(4) a tester shall not employ an employee of the division as a tester.

R708-37-7. Test Requirements.

(1) A tester may not administer a skills test to a student who:

(a) completed the driver training course at the same commercial driver training school or testing only school in which the tester is employed as an instructor; or

(b) completed the driver training course at a commercial driver training school that is owned completely or partially by an individual or individuals who possess any ownership in the school in which the tester is employed as an instructor.

(2) A student who fails the skills test given by a tester may:

(a) apply to the same tester for additional testing;

(b) apply to a different tester for additional testing; or

(c) complete the skills test at a division office.

(3) The written test shall be administered by the division.

R708-37-8. Notification of Accident.

If any vehicle is involved in an accident during the driving skills test the tester shall notify the division of the accident in a written report on a form supplied by the division within five working days of the date of the accident. If damages are $1,000 or more, the accident must also be reported to the local law enforcement agency. A copy of the officer's report shall also be submitted to the division when available.

R708-37-9. Evidence of Test Completion.

(1) The tester shall furnish a certificate of test completion to the student in a sealed envelope with the tester's signature signed over the seal. The certificate shall be a form approved by the division and shall contain the results of tests taken, the signature and certification number of the tester who administered the tests, and the dates the tests were completed. The test results are valid for a period of one year from the test completion date.

(2) The tester shall provide the student with a receipt each time money is paid by the student to the tester. The tester shall maintain a copy of all receipts.

(3) A student, under this rule, must submit a certificate of completion of a driver education course and a certificate of successful test completion, issued by a tester, to the division and make an application in order to obtain a Class D Driver License.

(4) The commercial driver training school or testing only school shall maintain records of all tests administered for a period of three years. Records shall be maintained in separate files for each tester for auditing purposes. The records shall be subject to inspection by the division during business hours.

R708-37-10. Monthly Reports.

(1) Each third-party tester shall submit to the division a monthly report containing the number of tests administered each month.

(2) Monthly reports shall be submitted on forms supplied by the division and must be received by the division no later than the 10th day of each month following the month in which the testing occurred.

(3) Failure to submit monthly reports within the prescribed time is grounds for suspension or cancellation of the third-party tester's certification.

(4) Monthly reports may be submitted electronically with division approval.

R708-37-11. Refusal to Certify, Grounds for Cancellation, Suspension, or Probation of a Tester's Certification.

(1) The division may refuse to certify tester applicants who do not meet the standards for training or who submit an application that contains false or incomplete information.

(2) The tester certification shall remain effective as long as the tester retains the status of instructor for a commercial driver training school or testing only school or until the tester certification is canceled or suspended by the division. A commercial driver training school or testing only school may initiate suspension or cancellation of the testing certification held by one of their instructors by providing the division with acceptable written justification.

(3) The tester certification shall be canceled or suspended upon cancellation, revocation, denial of issuance of renewal of the tester's instructor certification. Grounds for cancellation or suspension of the tester certification shall include all items listed in R708-2-25.

(4) Certification may be canceled or suspended for non-compliance with these rules.

(5) Certification may be canceled or suspended for failure to participate in any in-service training required by the division.

(6) Certification may be canceled or suspended when a third-party tester's personal driver license has been denied, suspended, revoked, canceled, or disqualified. The tester shall be required to notify the division in writing within five working days of any action taken against the tester's driving privilege.

(7) When the division determines it is necessary to cancel, suspend, or place on probation a tester's certification, it shall determine an appropriate course of action from the following options:

(a) probation, with terms that must be met and adhered to by the tester;

(b) suspension, pending a remedial plan leading to reinstatement; or

(c) cancellation.

(8) Action by the division to cancel, suspend, place on probation or refuse to issue a tester certification is designated as an informal adjudicative proceeding under the Utah Administrative Procedures Act, Section 63G-4-202.

(9) The following procedures will govern informal adjudicative proceedings:

(a) action by the division to cancel, revoke, place on probation or refuse to issue a certification will be commenced by the division by the issuance of a notice of agency action. The notice of agency action will comply with the provisions of Section 63G-4-201;

(b) no response is required to the notice of agency action;

(c) an opportunity for a hearing will be granted on a cancellation, revocation, probation or refusal to issue a certification if, within five days, the division receives a request for a hearing;

(d) the tester will receive written notice of the hearing at least ten days prior to the date of the hearing;

(e) no discovery, either compulsory or voluntary, will be permitted prior to the hearing except that all parties shall have access to information contained in the division's files, and to investigatory information and materials not restricted by law;

(f) the hearing shall be conducted by an individual, or panel designated by the division; and

(g) within twenty days after the close of the hearing or after the failure of a party to appear for the hearing, the

individual conducting the hearing shall issue a written decision which shall constitute final agency action. The written decision shall state the decision, the reason for the decision, notice of right to request reconsideration under Section 63G-4-302, notice of right to judicial review under Section 63G-4-402, and the time limits for filing an appeal to the appropriate district court.

(10) Reinstatement following cancellation of certification shall consist of completing an approved training plan and making application for a new certification. Instructors and testers must have a driving record free of suspensions or revocations of their driving privilege resulting from moving violations, chargeable accidents, and drug or alcohol related offenses, in all states, for a two year period immediately prior to application and during employment.

(11) Certification shall be canceled when testers are no longer employed as instructors in commercial driver training schools or testing only schools. Testers who discontinue employment as instructors with a commercial driver training schools or testing only school and subsequently return to instruct and test under the sponsorship of a different commercial driver training schools or testing only school must make a new application with the division for a new instructor certification and tester certification. If the period of cancellation of testing certification exceeds six months the applicant shall complete a course of approved training.

R708-37-12. Advertising.

(1) No advertisement shall indicate in any way that a commercial driver training schools or testing only school or a tester can issue or guarantee the issuance of a driver license, or imply that the testing program, except for reporting test scores, can in any way influence the division in the issuance of a Class D driver license; or imply that preferential or advantageous treatment can be obtained from the division through participation in their testing program.

(2) No tester, employee, or agent of a commercial driver training schools or testing only school shall be permitted to advertise or solicit business or cause business to be solicited in its behalf, or display or distribute any advertising material within 1500 feet of a building in which vehicle registrations or driver licenses are issued to the public.

KEY: driver training, skills tests
August 18, 2003 **53-3-510**
Notice of Continuation May 13, 2005

R708. Public Safety, Driver License.
R708-42. Driver Address Record.
R708-42-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for requesting and disclosing a Driver Address Record in accordance with Subsection 53-3-109(1)(c)(ii).

R708-42-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-42-3. Definitions.

(1) "Driver Address Record" (DAR), means a computer generated compilation of particular elements contained in the Driver License Division electronic database, consisting of:

(a) driver's name;

(b) driver's license or driving privilege card number;

(c) driver's current residential address; and

(d) name and driver license or driving privilege card number of a person with a driver license residential address that is the same as the driver requested.

R708-42-4. Procedures.

(1) Upon receipt of a request for a DAR pursuant to Subsection 53-3-109(1)(c)(ii), the division will search its driver license files to compile and furnish a DAR on any person licensed in the state of Utah. A qualified requester may only obtain a DAR for a person who has obtained motor vehicle insurance, from the qualified requester pursuant to Title 31A Chapter 22 Part 3.

(2) DAR's shall only be released to qualified requesters in accordance with the Federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109(1)(c)(ii), and Title 63G, Chapter 2.

R708-42-5. Requirements.

(1) In order to receive a DAR, the requester must:

(a) provide acceptable proof of identification that they are a qualified requester under Subsection 53-3-109(1)(c)(ii);

(b) enter into a contract with the division or its designated provider to obtain a DAR;

(c) provide the driver's name, Utah driver license or driving privilege card number and address;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on an DAR; and

(f) comply with auditing processes and procedures as required by the division or its designated provider.

R708-42-6. Electronic Transactions.

Requests for DARs will be transacted electronically as approved by the division.

KEY: driver address record
August 8, 2006 **53-3-109(1)©**

R708. Public Safety, Driver License.
R708-43. YES or NO Notification.
R708-43-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for verifying personal identifying information in accordance with Subsection 53-3-109(1)(c)(iii).

R708-43-2. Authority.

This rule is authorized by Subsection 53-3-109(7)(f).

R708-43-3. Definitions.

(1) "Yes or No Verification (YON)" means an electronic notification that information submitted by a requester matches the information on the driver license division database. For this purpose Yes verifies a match of (a) through (c), and No indicates one or more items do not match the database information, including:

(a) name;

(b) driver license, driving privilege card or identification card number; and

(c) date of birth.

R708-43-4. Procedures.

(1) Upon receipt of a request for verification pursuant to Subsection 53-3-109(1)(c)(iii), the division will search the driver license division database and furnish a YON on any person who has a driver license, driving privilege card or identification card in the state.

(2) The YON contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Subsection 53-3-109, and Title 63G, Chapter 2.

R708-43-5. Requirements.

(1) A YON shall only be released to qualified requesters in accordance with the DPPA and Subsection 53-3-109(1)(c)(iii).

(2) In order to receive a YON, the requester must:

(a) provide acceptable proof that they are a depository institution as defined in Section 7-1-103;

(b) enter into a contract with the division or its designated provider to obtain a YON;

(c) provide the name, Utah driver license number, driving privilege number or identification card number and date of birth of the person who is the subject of the request;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information provided; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-43-6. Electronic Transactions.

Requests for a YON will be transacted electronically as approved by the division.

KEY: driver license verification
June 8, 2007 53-3-109(1)©

R708. Public Safety, Driver License.
R708-44. Citation Monitoring Service.
R708-44-1. Purpose.

The purpose of this rule is to define the procedures, requirements and format for disclosing personal identifying information in accordance with Section 53-3-109(3).

R708-44-2. Authority.

This rule is authorized by Section 53-3-109(7)(f).

R708-44-3. Definitions as Used in This Chapter.

"Citation Monitoring Service (CMS)" means an electronic service whereby the Driver License Division database is monitored on a regular basis to determine if a reportable moving violation has been entered on a specific driving record within the month prior to the date of the request. The requestor will receive a "YES or NO" response that indicates whether a reportable moving violation has been entered on the driver's record during the previous month. If the information submitted by the requestor does not match a driver's record on the database, the requestor will receive an unable to locate (UTL) response.

R708-44-4. Procedures.

(1) Upon receipt of a request for a notification pursuant to Section 53-3-109(3), the division will provide this monitoring service on any person who has a Utah driver license or driving privilege card.

(2) The Driver License Division database contains certain personal identifying information and is protected from public disclosure for privacy reasons in accordance with the federal Driver Privacy Protection Act of 1994 (DPPA), Section 53-3-109 and Title 63G, Chapter 2 (Government Records Access and Management Act).

R708-44-5. Requirements.

(1) CMS is only available to qualified requesters in accordance with the DPPA and Section 53-3-109(3).

(2) In order to be eligible for the CMS, the requester must:

(a) provide acceptable proof that they are an insurer as defined under Section 31A-1-301, or a designee of an insurer as defined under Section 31A-1-301;

(b) enter into a contract with the division or its designated provider to obtain this service;

(c) provide the name, date of birth, and Utah driver license or driving privilege number for the person for which they are seeking monitoring and notification;

(d) pay required fees as established by the division;

(e) agree to comply with state and federal laws regulating the use and further disclosure of information on the Driver License Division database; and

(f) comply with auditing processes and procedures required by the division or its designated provider.

R708-44-6. Electronic Transactions.

The Citation Monitoring Service will be transacted electronically, as approved by the division.

KEY: driver license, motor vehicle record, citation monitoring service
August 8, 2006 53-3-109(3)

R710. Public Safety, Fire Marshal.
R710-1. Concerns Servicing Portable Fire Extinguishers.
R710-1-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those concerns that service Portable Fire Extinguishers.

There is adopted as part of these rules the following code which is incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-1-8, et seq.

1.2 A copy of the above mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

1.3 Validity.

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.4 Order of Precedence.

In the event of any difference between these rules and any adopted reference material, the text of these rules shall govern. When a specific provision varies from a general provision, the specific provision shall apply.

R710-1-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern, and may include, but shall not be limited to, those persons who work on a contractual basis.

2.7 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing portable fire extinguishers.

2.8 "NFPA" means National Fire Protection Association.

2.9 "Repair" means any work performed on, or to, any portable fire extinguisher, and not defined as charging, recharging, or hydrostatic testing.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "UCA" means Utah State Code Annotated 1953 as amended.

2.12 "USDOT" means the United States Department of Transportation.

R710-1-3. Licensing.

3.1 License Required.

No person or concern shall engage in the servicing of portable fire extinguishers without a license issued by the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Application.

3.2.1 Application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.2.2 The application for a license to engage in the business of, or perform the servicing of portable fire extinguishers, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.3 Signature of Application.

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.4 Equipment Inspection.

The applicant or licensee shall allow the SFM, and any of his properly authorized deputies to enter, examine, and inspect any premise, building, room, establishment, or vehicle, used by the applicant in servicing portable fire extinguishers to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager will be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of portable fire extinguishers.

3.5 Issuance.

Following receipt of the properly completed application, and compliance with the provision of the statute and these rules, the SFM shall issue a license.

3.6 Original License and Inspection.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license shall be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.7 Renewal License and Inspection.

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003, through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.8 Refusal to Renew.

The SFM may refuse to renew any license in the same manner, and for any reason, that he is authorized, pursuant to Section 9 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Section 9 of these rules to an applicant for an original license which has been denied by the SFM.

3.9 Change of Address.

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

3.10 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.11 List of Licensed Concerns.

The SFM shall make available, upon request and without cost, to the chief fire official of each local fire authority, the name, address, and license number of each concern that is licensed pursuant to these rules. Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.12 Inspection.

The holder of any license shall submit such license for inspection upon request of the SFM, or any of his properly authorized deputies, or any local fire official.

3.13 SFM Notification and Certification of Registration.

Every licensed concern shall, within thirty (30) days of employment, and within thirty (30) days of termination of any employee, report to the SFM, the name, address, and certificate of registration number, of every person performing any act of servicing portable fire extinguishers for such licensed concern in writing.

3.14 Type.

3.14.1 Every license shall be identified by type. The type of license issued shall be determined on the basis of the act or acts performed by the licensee or by any of the employees. Every licensed concern shall be staffed by qualified personnel, and shall be properly equipped to perform the act or acts for the type of license issued.

3.14.2 Licenses shall authorize any one, or any combination of the following types of activities:

3.14.2.1 Type 1 - Conducting of all activities, as per (2), (3), and (4) below, or

3.14.2.2 Type 2 - Conducting hydrostatic tests of fire extinguisher cylinders using the water jacket or ultrasonic test methods after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

3.14.2.3 Type 3 - Conducting hydrostatic tests of fire extinguisher cylinders using the proof pressure test method after receiving a Retesters Identification Number (RIN) issued by the United States Department of Transportation (USDOT), or

3.14.2.4 Type 4 - Servicing, inspecting, and maintaining all types of extinguishers, excluding hydrostatic testing.

3.14.3 No licensed concern shall be prohibited from taking orders for the performance of any act or acts for which the concern has not been licensed to perform. Such orders shall be consigned to another licensed concern that is authorized to perform such act or acts.

3.15 Examination.

Every person who performs any act or acts within the scope of the license shall pass an examination in accordance with the provisions of section 4 of these rules.

3.16 Duplicate License.

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the SFM. Such statement shall attest to the fact that the license has been lost or destroyed.

3.17 Employer Responsibility.

Every concern shall be responsible for the acts of its employees insofar as such acts apply to the marketing, sale, distribution, and servicing of any portable fire extinguisher.

3.18 Minimum Age.

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.19 Restrictive Use.

3.19.1 No license shall constitute authorization for any licensee, or any of his employees, to enter upon, or into, any property or building other than by consent of the owner or manager.

3.19.2 No license shall constitute authorization for any licensee, or any of his employees, to enforce any provision, or provisions, of this rule, or the International Fire Code.

3.20 Non-Transferable.

No license issued pursuant to this section shall be transferred from one concern to another.

3.21 Registration Number.

3.21.1 Every license shall be identified by a number, delineated as E-(number). Such number may be transferred from one concern to another only when approved by the SFM.

3.22 Minimum Materials and Equipment Required.

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.22.1 Type 4 license:

3.22.1.1 Nitrogen tank.

3.22.1.2 Nitrogen regulator and hose assembly.

3.22.1.3 Minimum of twelve (12) recharge adapters.

3.22.1.4 Valve cleaning brush.

3.22.1.5 Scoop.

3.22.1.6 Funnel for A:B:C.

3.22.1.7 Funnel for B:C.

3.22.1.8 A closed receptacle for dry chemical.

3.22.1.9 Fifty pound scale.

3.22.1.10 A scale for cartridges.

3.22.1.11 'O' Ring lubricant.

3.22.1.12 Tag hole Punch.

3.22.1.13 Approved seals maximum fourteen (14) pound break strength.

3.22.1.14 A copy of NFPA Standard 10 (1998 Edition), statute, and these rules.

3.22.1.15 Minimum parts:

3.22.1.15.1 A supply of O rings needed for standard service.

3.22.1.15.2 A supply of valve stems for standard service.

3.22.1.15.3 A supply of nozzles and hoses for standard extinguishers.

3.22.1.15.4 Pressure gauges for extinguisher types: 100, 150, 175, 195, 240 lbs.

3.22.1.15.5 Carry handles and replacement handles for extinguishers.

3.22.1.15.6 Rivets or steel roll pins for handles and levers.

3.22.1.15.7 Dry chemical cartridges as required by manufacture specifications, to include 4 lb., 10 lb., 20 lb. and 30 lb.

3.22.1.15.8 Inspection light for cylinders.

3.22.1.15.9 A variety of pull pins to secure handle.

3.22.1.15.10 Carbon Dioxide continuity tester for hoses.

3.22.1.16.11 Halon closed recovery system.

3.22.2 Type 3 License:

3.22.2.1 Approved testing pump with a current calibration certificate for the attached gauges.

3.22.2.2 Test cage or suitable safety barrier.

3.22.2.3 Approved hydro test labels.

3.22.2.4 Hydrostatic test adapters or approved equal.

3.22.2.5 Heater which produces a heated air or dry air for drying cylinders, or other approved dryer not to exceed 150 degrees Far. (66 degrees C).

3.22.3 Type 2 License:

Current registration number from the United States Department of Transportation (USDOT), verifying the concern as a qualified cylinder requalification facility under the provisions of the Code of Federal Regulations, 49 CFR, Section 173.34, shall be maintained for all concerns holding a type 1 or 2 license. A copy of the certification letter must be submitted to the SFM. All equipment required to perform the functions allowed as a qualified cylinder requalification facility, shall be maintained in good working order and available for inspection by the SFM.

3.22.4 Type 1 License:

All of the equipment, provisions, and numbers as required in License types 2, 3, and 4 shall be required for a Type 1 License.

3.23 Records.

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall include the name and address of all servicing locations, and the date and name of the person performing the work. These records shall be made available to the SFM, or authorized deputies, upon request.

R710-1-4. Certificates of Registration.

4.1 Required Certificates of Registration.

No person shall service any portable fire extinguisher without a certificate of registration issued by the SFM pursuant to these rules expressly authorizing such person to perform such acts. The provisions of this section apply to the state, universities, a county, city, district, public authority, and any other political subdivision or public corporation in this State.

4.2 Exemptions.

The provisions of this section shall not apply to any person servicing any portable fire extinguisher owned by such person, when the portable fire extinguisher is not required by any statute, rule, or ordinance, to be provided or installed.

4.3 Application.

Application for a certificate of registration to service portable fire extinguishers shall be made in writing to the SFM on forms provided by him. The application shall be signed by the applicant.

4.4 Examination.

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests, when deemed necessary, to determine the applicant's knowledge of servicing portable fire extinguishers. Picture identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule and requirements:

4.4.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment shall be made to take an examination at least 24 hours in advance of the examination date.

4.4.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.4.3 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

4.4.4 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.4.5 Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.4.6 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

4.5 Issuance.

Following receipt of the properly completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.6 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance. The holder of an invalid certificate of registration shall not perform any work on portable fire extinguishers.

4.7 Renewal Date.

Application for renewal shall be made as directed by the SFM. The failure to renew will cause the certificate of registration to become invalid. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.8 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every five years, from date of original certificate, to comply with the provisions of Section 4.4 of these rules as follows:

4.8.1 The re-examination to comply with the provisions of Section 4.4 of these rules shall consist of one 25 question open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.8.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to NFPA 10, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

4.8.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.8.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.9 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 10, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 10 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.10 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the SFM, any of his properly authorized deputies, or any local fire official.

4.11 Type.

4.11.1 Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.11.2 No person holding a valid certificate of registration shall be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.12 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within thirty (30) days of such change. Such change shall also be made on the reverse side of the certificate of registration by the holder.

4.13 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the SFM from the certified person. Such statement shall attest to the certificate having been lost or destroyed.

4.14 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

4.15 Restrictive Use.

4.15.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination shall be made in writing within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the SFM, and such decision shall be final.

4.16.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

Certificates of Registration shall not be transferable. Individual certificates of registration shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination.

4.19 Certificate Identification.

Every certificate shall be identified by a number, delineated as EE-(number). Such number shall not be transferred from one person to another.

R710-1-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The Bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending above the top portion and in a centered position, shall be a box provided for displaying the type of license.

5.1.3 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the license number assigned to the concern.

5.2 Use of Seal.

No person or concern shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Licensed concerns shall use the Seal of Registration on every service tag conforming to section 10.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the concern's license.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-1-6. Service Tags.

6.1 Size and Color.

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

6.2 Attaching Tag.

One service tag shall be attached to each portable fire extinguisher in such a position as to be conveniently inspected.

6.3 Tag Information.

6.3.1 Service tags shall bear the following information:

6.3.1.1 Provisions of Section 6.7.

6.3.1.2 Type of license.

6.3.1.3 Approved Seal of Registration of the SFM.

6.3.1.4 License registration "E" number.

6.3.1.5 Certificate of registration "EE" number of individual who performed or supervised the service or services performed.

6.3.1.6 Signature of individual whose certificate of registration number appears on the tag.

6.3.1.7 Concern's name.

6.3.1.8 Concern's address.

6.3.1.9 Type of service performed.

6.3.1.10 Type of extinguisher serviced.

6.3.1.11 Date service is performed.

6.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

6.4 Legibility.

6.4.1 The certificate of registration number required in Section 6.3(5), and the signature required in Section 6.3(6), shall be printed or written distinctly.

6.4.2 All information pertaining to date, type of servicing, and type of extinguisher serviced shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

6.5 Format.

Subject to the use requirements of Section 6.4, the following format shall be used for all service tags:

EXAMPLE OF SERVICE TAG

Exception: Service tags may be printed or otherwise established for any number of years not in excess of five (5) years. ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

6.6 New Tag.

A new service tag shall be attached to the extinguisher each time a service is performed.

6.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

6.8 Removal.

No person or persons shall remove a service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar, except when further service is performed. At that time the expired tag, label or collar shall be removed and a new tag, label or collar shall replace the expired one. No person or persons shall deface, modify, or alter any service tag, hydrostatic test tag or label, 6 year maintenance service tag or label, or verification of service collar that is required to be attached to any portable fire extinguisher.

6.9 Restrictive Use.

6.9.1 Portable fire extinguishers which do not conform with the minimum rules, shall be permanently removed from service, and shall not be tagged.

6.9.2 Any extinguisher which fails a hydrostatic test shall be condemned, and so stamped or etched into the cylinder or shell.

6.9.3 Extinguishers, other than one which has failed a

hydrostatic test, may be provided with a tag stating the extinguisher is "Condemned" or "Rejected". Such tags shall be red in color, and shall be not less, in size, than that of an approved service tag.

6.9.4 Service tags shall only be placed on portable fire extinguishers and wheeled units as allowed in these rules.

R710-1-7. Portable Fire Extinguisher Rated Classification Labels.

7.1 Use of Label.

Any label bearing the rated classification and listing shall not be placed upon any extinguisher unless specifically authorized by the manufacturer. Any extinguisher, other than carbon dioxide, without this manufacturer's label shall not be serviced.

7.2 Labels Prohibited.

Company labels or advertisement stickers other than those required herein shall not be affixed to fire extinguishers.

R710-1-8. Amendments and Additions.

8.1 Restricted Service.

Any extinguisher requiring a hydrostatic test as required, shall not be serviced until such extinguisher has been subjected to, and passed the required hydrostatic test.

8.2 Service.

At the time of installation, and at each annual inspection, all servicing shall be done in accordance with the manufacturer's instructions, adopted statutes, and these rules. Extinguishers shall be placed in an operable condition, free from defects which may cause malfunctions. Nozzles and hoses shall be free of obstructions or substances which may cause an obstruction.

8.3 Seals or Tamper Indicator.

Seals or tamper indicators shall be constructed of approved plastic or non-ferrous wire which can be easily broken, and so arranged that removal cannot be accomplished without breakage. Such seals or tamper indicators shall be used to retain the locking pin in a locked position. Seals or tamper indicators shall be removed annually to ensure that the pull pin is free.

8.4 New Extinguishers

A new extinguisher that has the date of manufacture printed on the label by the manufacturer, or date of manufacture stamped on the extinguisher by the manufacturer, does not require a service tag attached to the extinguisher until one year after the date of manufacture.

8.5 Those existing sodium or potassium bicarbonate dry-chemical portable fire extinguishers, having a minimum rating of 40-B, and specifically placed for protection of commercial food heat-processing equipment, may remain in the kitchen to be used for other applications, except the protection of commercial food heat-processing equipment using vegetable or animal oils or fat cooking media.

R710-1-9. Adjudicative Proceedings.

9.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

9.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing portable fire extinguishers commits any of the following violations:

9.2.1 The person or applicant is not the real person in interest.

9.2.2 The person or applicant provides material misrepresentation or false statement on the application.

9.2.3 The person or applicant refuses to allow inspection by the SFM, or his duly authorized deputies.

9.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment to conduct the operations for which application is made.

9.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination and/or practical tests pursuant to Section 4.15 of these rules.

9.2.6 The person or applicant fails to place a verification of service collar when required on the valve assembly of any fire extinguisher when the following occurs:

9.2.6.1 re-charge;

9.2.6.2 required maintenance.

9.2.7 The person or applicant refuses to take the examination required by Section 4.3 and Section 3.14 of these rules.

9.2.8 The person or applicant has been convicted of one or more federal, state or local laws.

9.2.9 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

9.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

9.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing portable fire extinguishers.

9.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

9.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

9.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

9.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

9.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

9.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

9.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-10. Fees.

10.1 Fee Schedule.

10.1.1 Licenses and Certificates of Registration (new and renewals):

10.1.1.1 License (any type) $300.00

10.1.1.2 Branch office license 150.00

10.1.1.3 Certificate of registration 40.00

10.1.1.4 Duplicate 40.00

10.1.1.5 License Transfer 50.00
10.1.1.6 Application for exemption 150.00
10.1.2 Examinations:
10.1.2.1 Initial examination. 30.00
10.1.2.2 Re-examination 30.00
10.1.2.3 Five year examination. 30.00

10.2 Payment of Fees.

The required fee shall accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

10.3 Late Renewal Fees.

10.3.1 Any license or certificate of registration not renewed before January 1st will be subject to an additional fee equal to 10% of the required inspection fee.

10.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial examination fees.

KEY: fire prevention, extinguishers
May 23, 2008 53-7-204
Notice of Continuation May 30, 2007

R710. Public Safety, Fire Marshal.
R710-2. Rules Pursuant to the Utah Fireworks Act.
R710-2-1. Adoption.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives; minimum requirements for placement and discharge of display fireworks; and requirements for importer, wholesaler, display or special effects operator licenses.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-2-9, et seq.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.4 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-2-2. Definitions.

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "ICC" means International Code Council, Inc.

2.3 "IFC" means International Fire Code.

2.4 "NFPA" means National Fire Protection Association.

2.5 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.6 "Person" means an individual, company, partnership or corporation.

2.7 "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.8 "Resale" means the act of reselling class B or C explosives to a new party.

2.9 "SFM" means the State Fire Marshal.

2.10 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.11 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.12 "UCA" means Utah Code Annotated.

R710-2-3. General Requirements.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

4.5 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.6 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

4.7 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.8 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-5. Temporary Stands, Trailers and Tents.

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged

to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

R710-2-6. List of Approved Class C Common State Approved Explosives.

6.1 The State Fire Marshal shall publish a list of approved class C common state approved explosives each year.

6.2 The testing shall be conducted annually or as needed.

R710-2-7. Importer, Wholesaler, Display or Special Effects Operator Licenses.

7.1 Application for a importer, wholesaler, display or special effects operator license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 Every person who wishes to secure a display or special effects operator original license shall demonstrate proof of competence by:

7.10.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.10.2 Examinations will be given according to the following requirements:

7.10.2.1 The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

7.10.2.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

7.10.2.3 Each certification examination taken has a time limit of two hours to completion. Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

7.10.2 Submit written verification with the application of having completed a display or special effects operators safety class or demonstrate previous experience acceptable to the SFM.

7.10.3 Submit written verification with the application that the applicant has worked with a licensed display or special effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.11 The written examination stated in Section 7.10(a) shall be valid for five years from the date of the examination.

7.12 At the end of the five year period the licensed display or special effects operator shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.13.

7.13 After the issuance of the original license, and each year thereafter, the display or special effects operator shall complete a minimum of one fireworks performance annually or attend an operator safety class annually or work with another licensed display or special effects operator with a show annually to demonstrate proof of competence.

7.14 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Section 7.10 of these rules.

7.15 Every person who wishes to secure an importer, wholesaler, display or special effects operators license shall be at least 21 years of age.

7.16 Every licensed display or special effects operator shall complete the Pyrotechnician's After Action Report for Fireworks Display form within ten (10) working days after the conclusion of any display or special effects show and send it to the State Fire Marshal.

R710-2-8. Adjudicative Proceedings.

8.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

8.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, person employed for, the person having authority, or the person in question commits any of the following violations:

8.2.1 The person or applicant is not the real person in interest.

8.2.2 Material misrepresentation or false statement in the application.

8.2.3 Refusal to allow inspection by the AHJ.

8.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the examination or demonstrate practical skills.

8.2.5 The person or applicant has been convicted of any of the following:

8.2.5.1 a violation of the provisions of these rules;

8.2.5.2 a crime of violence or theft; or

8.2.5.3 any crime that bears upon the person or applicant's ability to perform their functions and duties.

8.2.6 Failure to accurately complete the Pyrotechnician's After Action Report for Fireworks Display form.

8.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

8.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

8.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

8.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

8.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

8.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-2-9. Amendments and Additions.

9.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

9.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

9.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

9.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

9.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

9.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

9.2.1.3.1 In self storage units where the owner allows it.

9.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

9.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

9.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

9.2.1.3.5 Wholesalers warehouse.

9.2.1.3.6 An approved Group M occupancy.

9.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

9.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

9.2.2 All other periods of time, except those stated in Section 9.2(1) of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

9.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

9.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

R710-2-10. Fire Department Displays.

10.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

10.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete a Pyrotechnician's After Action Report and send it to the State Fire Marshal.

10.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class yearly to be allowed in the discharge area during the display.

10.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

KEY: fireworks
May 23, 2008 **53-7-204**
Notice of Continuation June 4, 2007

R710. Public Safety, Fire Marshal.
R710-5. Automatic Fire Sprinkler System Inspecting and Testing.
R710-5-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test Automatic Fire Sprinkler Systems.

There is adopted as part of these rules the following code which are incorporated by reference:

1.1 National Fire Protection Association, NFPA 25, Standard for the Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems, 2008 edition, except as amended by provisions listed in R710-5-6, et seq.

1.2 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-5-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his duly authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "NFPA" means National Fire Protection Association.

2.6 "NICET" means National Institute for Certification in Engineering Technologies.

2.7 "SFM" means State Fire Marshal or authorized deputy.

2.8 "UCA" means Utah State Code Annotated 1953 as amended.

R710-5-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of automatic fire sprinkler systems without first receiving a certificate of registration issued by the SFM. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the automatic fire sprinkler system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test automatic fire sprinkler systems shall be made in writing to the SFM on forms provided the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the four technician levels the applicant will apply for:

3.2.2.1 Technician I

3.2.2.2 Technician II

3.2.2.3 Technician III

3.2.2.4 Master Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Technician I shall pass a written examination on wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes, and complete the manipulative skills task book.

3.3.2 Technician II shall pass all the requirements listed for Technician I; pass a written examination on dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps, and water storage tanks, and complete the manipulative skills task book.

3.3.3 Technician III shall pass all the requirements listed for Technician I and II; pass a written examination on water spray fixed systems, foam-water sprinkler systems, and foam-water spray systems, and complete the manipulative skills task book.

3.3.4 Master Technician shall have successfully completed and be certified as NICET III in Inspection and Testing of Water-based Systems, and complete the manipulative skills task book.

3.4 Examinations will be given according to the following requirements:

3.4.1 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

3.4.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

3.4.3 Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

3.4.4 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

3.4.5 To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3.4, those applicants that have successfully completed the requirements of NICET III, in Inspection and Testing of Water-based Systems, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original

certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules shall consist of an open book examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified as follows:

3.12.1 Technician I: A person who is engaged in the inspection and testing of wet pipe sprinkler systems, antifreeze sprinkler systems, and standpipes.

3.12.2 Technician II: A person who is engaged in the inspection and testing of dry pipe sprinkler systems, deluge sprinkler systems, preaction sprinkler systems, combined dry pipe-preaction systems, fire pumps and water storage tanks.

3.12.3 Technician III: A person who is engaged in the inspection and testing of foam-water sprinkler systems, foam-water spray systems, and water spray fixed systems.

3.12.4 Master Technician: A person who has obtained NICET III certification in Inspection and Testing of Water-based Systems.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number, delineated as AFS-(number). Such number shall not be transferred from one person to another.

3.20 New Employees

New or existing employees desiring to attain a Certificate of Registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 60 days from the initial date of employment or beginning service in the field.

R710-5-4. Service Tags.

4.1 Size and Color.

4.1.1 Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

4.1.2 Tags may be produced in any color except red or a variation of red.

4.1.3 A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of automatic fire sprinkler systems as required in NFPA, Standard 25, and the requirements of these rules. After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

4.2 Placement of Tag.

The service tag shall be attached at the sprinkler riser for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the riser in such a position as to be conveniently inspected by the AHJ.

4.3 Tag Information.

4.3.1 Service tags shall bear the following information:

4.3.1.1 Provisions of Section 4.7.

4.3.1.2 Approved Seal of Registration of the SFM.

4.3.1.3 Certificate of registration "AFS" number of individual who performed or supervised the service or services performed.

4.3.1.4 Signature of individual whose certificate of registration number appears on the tag.

4.3.1.5 Concern's name.

4.3.1.6 Concern's address.

4.3.1.7 Type of service performed.

4.3.1.8 Type of system serviced.

4.3.1.9 Date service is performed.

4.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

4.4 Legibility.

4.4.1 The certificate of registration number required in Section 4.3.1.3, and the signature required in Section 4.3.1.4, shall be printed or written distinctly.

4.4.2 All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

4.5 Format.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

4.6 New Tag.

A new service tag shall be attached to a system each time a service is performed.

4.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

4.8 Removal.

4.8.1 No person or persons shall remove a service tag except when further service is performed.

4.8.2 No person shall deface, modify, or alter any service tag that is required to be attached to the system.

4.8.3 A red tag can only be removed by written authority from the AHJ.

4.9 Tag Dates

Service tags may be printed for any number of years not to exceed eight years.

R710-5-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

5.2 Use of Seal.

No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Certificate holders or concerns shall use the Seal of Registration on every service tag.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-5-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 Frequency

Automatic fire sprinkler systems, standpipes, and fire pumps shall be inspected annually by a person holding a certificate of registration as required in Section 3.1 of these rules.

6.3 Accepted Forms

One of the two forms listed in NFPA, Standard 25, Annex B, B.1, or a similar equivalent approved by the SFM shall be used as the accepted forms for testing and inspecting fire sprinkler systems.

6.4 New Systems

Newly installed automatic fire sprinkler systems, standpipes, and fire pumps are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

R710-5-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

7.2.1 The applicant or person is not the real person in interest.

7.2.2 The applicant or person provides material misrepresentation or false statements on the application.

7.2.3 The applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies.

7.2.4 The applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made.

7.2.5 The applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination pursuant to Section 3.3 of these rules.

7.2.6 The applicant or person refuses to take the examination required by Section 3.3 of these rules.

7.2.7 The applicant or person fails to pay the certification of registration, examination or other required fees as required in Section 8 of these rules.

7.2.8 The applicant or person has been convicted of one or more federal, state or local laws.

7.2.9 The applicant or person has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration.

7.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire sprinkler system equipment.

7.3 A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-1-8. Fees.

8.1 Fee Schedule.

8.1.1 Certificates of Registration (new and renewals):

8.1.1.1 Certificate of registration - $30.00

8.1.1.2 Duplicate - $30.00

8.1.2 Examinations:

8.1.2.1 Initial examination - $20.00

8.1.2.2 Re-examination - $20.00

8.1.2.3 Three-year examination - $20.00

8.2 Payment of Fees.

The required fee shall accompany the application for certificate of registration. Certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees.

8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

8.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: automatic fire sprinklers
May 23, 2008 53-7-204
Notice of Continuation March 28, 2008

R710. Public Safety, Fire Marshal.
R710-6. Liquefied Petroleum Gas Rules.
R710-6-1. Adoption, Title, Purpose and Scope.

Pursuant to Title 53, Chapter 7, Section 305, Utah State Code Annotated 1953, the Liquefied Petroleum Gas (LPG) Board adopts minimum rules to provide regulation to those who distribute, transfer, dispense or install LP Gas and/or its appliances in the State of Utah.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 58, LP Gas Code, 2008 edition, except as amended by provisions listed in R710-6-8, et seq.

1.2 National Fire Protection Association (NFPA), Standard 54, National Fuel Gas Code, 2006 edition, except as amended by provisions listed in R710-6-8, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1192, Standard on Recreational Vehicles, 2005 Edition, except as amended by provisions listed in R710-6-8, et seq.

1.4 International Fire Code (IFC), Chapter 38, 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-6-8, et seq.

1.5 A copy of the above codes are on file with the Division of Administrative Rules, and the State Fire Marshal's Office. The definitions contained in the afore referenced codes shall also pertain to these rules.

1.6 Title.

These rules shall be known as "Rules Governing LPG Operations in the State of Utah" and may be cited as such, and will be hereinafter referred to as "these rules".

1.7 Validity.

If any article, section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the LPG Board such decision shall not affect the validity of the remaining portion of these rules.

1.8 Conflicts.

In the event where separate requirements pertain to the same situation in the same code, or between different codes or standards as adopted, the more restrictive requirement shall govern, as determined by the enforcing authority.

R710-6-2. Definitions.

2.1 "Board" means the Liquefied Petroleum Gas Board.

2.2 "Concern" means a person, firm, corporation, partnership, or association, licensed by the Board.

2.3 "Dispensing System" means equipment in which LP Gas is transferred from one container to another in liquid form.

2.4 "Division" means the Division of the State Fire Marshal.

2.5 "Enforcing Authority" means the division, the municipal or county fire department, other fire prevention agency acting within its respective fire prevention jurisdiction, or the building official of any city or county.

2.6 "ICC" means International Code Council, Inc.

2.7 "IFC" means International Fire Code.

2.8 "License" means a written document issued by the Division authorizing a concern to be engaged in an LPG business.

2.9 "LPG" means Liquefied Petroleum Gas.

2.10 "LPG Certificate" means a written document issued by the Division to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.11 "NFPA" means the National Fire Protection Association.

2.12 "Possessory Rights" means the right to possess LPG, but excludes broker trading or selling.

2.13 "Public Place" means a highway, street, alley or other parcel of land, essentially unobstructed, which is deeded, dedicated or otherwise appropriated to the public for public use, and where the public exists, travels, traverses or is likely to frequent.

2.14 "Qualified Instructor" means a person holding a valid LPG certificate in the area in which he is instructing.

2.15 "UCA" means Utah State Code Annotated 1953 as amended.

R710-6-3. Licensing.

3.1 Type of license.

3.1.1 Class I: A licensed dealer who is engaged in the business of installing gas appliances or systems for the use of LPG and who sells, fills, refills, delivers, or is permitted to deliver any LPG.

3.1.2 Class II: A business engaged in the sale, transportation, and exchange of cylinders, but not transporting or transferring gas in liquid.

3.1.3 Class III: A business not engaged in the sale of LPG, but engaged in the sale and installation of gas appliances, or LPG systems.

3.1.4 Class IV: Those businesses listed below:

3.1.4.1 Dispensers

3.1.4.2 Sale of containers greater than 96 pounds water capacity.

3.1.4.3 Other LPG businesses not listed above.

3.2 Signature on Application.

The application shall be signed by an authorized representative of the applicant. If the application is made by a partnership, it shall be signed by at least one partner. If the application is made by a corporation or association other than a partnership, it shall be signed by the principal officers, or authorized agents.

3.3 Issuance.

Following receipt of the properly completed application, an inspection, completion of all inspection requirements, and compliance with the provision of the statute and these rules, the Division shall issue a license.

3.4 Original, Valid Date.

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals thereof shall be valid for one year from issuance.

3.5 Renewal.

Application for renewal shall be made on forms provided by the SFM.

3.6 Refusal to Renew.

The Board may refuse to renew any license in the same manner, and for any reason, that they are authorized, pursuant to Article 5 of these rules to deny a license. The applicant shall, upon such refusal, have the same rights as are granted by Article 5 of this article to an applicant for a license which has been denied by the Board.

3.7 Change of Address.

Every licensee shall notify the Division, in writing, within thirty (30) days of any change of his address.

3.8 Under Another Name.

No licensee shall conduct his licensed business under a name other than the name or names which appears on his license.

3.9 List of Licensed Concerns.

3.9.1 The Division shall make available, upon request and without cost, to the Enforcing Authority, the name, address, and license number of each concern that is licensed pursuant to these rules.

3.9.2 Upon request, single copies of such list shall be furnished, without cost, to a licensed concern.

3.10 Inspection.

The holder of any license shall submit such license for inspection upon request of the Division or the Enforcing Authority.

3.11 Notification and LPG Certificate.

Every licensed concern shall, within twenty (20) days of employment, and within twenty (20) days of termination of any employee, report to the Division, the name, address, and LPG certificate number, if any, of every person performing any act requiring an LPG certificate for such licensed concern.

3.12 Posting.

Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed location.

3.13 Duplicate License.

A duplicate license may be issued by the Division to replace any previously issued license, which has been lost or destroyed, upon the submission of a written statement from the licensee to the Division. Such statement shall attest to the fact that the license has been lost or destroyed. If the original license is found it shall be surrendered to Division within 15 days.

3.14 Registration Number.

Every license shall be identified by a number, delineated as P-(number).

3.15 Accidents, Reporting.

Any accident where a licensee and LPG are involved must be reported to the Board in writing by the affected licensee within 3 days upon receipt of information of the accident. The report must contain any pertinent information such as the location, names of persons involved, cause, contributing factors, and the type of accident. If death or serious injury of person(s), or property damage of $5000.00 or more results from the accident, the report must be made immediately by telephone and followed by a written report.

3.16 Board investigation of accidents.

At their discretion, the Board will investigate, or direct the Division to investigate, all serious accidents as defined in Subsection 3.15.

R710-6-4. LP Gas Certificates.

4.1 Application.

Application for an LPG certificate shall be made in writing to the Division. The application shall be signed by the applicant.

4.2 Examination.

Every person who performs any act or acts within the scope of a license issued under these rules, shall pass an initial examination in accordance with the provisions of this article.

4.3 Types of Initial Examinations:

4.3.1 Carburetion

4.3.2 Dispenser

4.3.3 HVAC/Plumber

4.3.4 Recreational Vehicle Service

4.3.5 Serviceman

4.3.6 Transportation and Delivery

4.4 Initial Examinations.

4.4.1 The initial examination shall include an open book written test of the applicant's knowledge of the work to be performed by the applicant. The written examination questions shall be taken from the adopted statute, administrative rules, NFPA 54, and NFPA 58.

4.4.2 The initial examination shall also include a practical or actual demonstration of some selected aspects of the job to be performed by the applicant.

4.4.3 To successfully complete the written and practical initial examinations, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken. Each portion of the examination will be graded separately. Failure of any one portion of the examination will not delete the entire test.

4.4.4 Examinations may be given at various field locations as deemed necessary by the Division. Appointments for field examinations are required.

4.4.5 As required in Sections 4.2 and 4.3 of these rules, those applicants that have successfully completed the requirements of the Certified Employee Training Program (CETP), as written by the National Propane Gas Association, and that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.6 As required in Sections 4.2 and 4.3.6 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.7 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that have successfully completed the Rocky Mountain Gas Association, Natural Gas Technician Certification Exam with a passing score, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.4.8 As required in Sections 4.2 and 4.3.3 of these rules, those applicants that are licensed journeyman plumbers as required in the Constructions Trades Licensing Act Plumber Licensing Rules, R156-55c, shall have the requirement for initial examination waived, after appropriate documentation is provided to the Division by the applicant.

4.5 Original and Renewal Date.

Original LPG certificates shall be valid for one year from the date of issuance. Thereafter, each LPG certificate shall be renewed annually and renewals thereof shall be valid from for one year from issuance.

4.6 Renewal Date.

Application for renewal shall be made on forms provided by the Division.

4.7 Re-examination.

Every holder of a valid LPG Certificate shall take a re-examination every five years from the date of original certificate issuance, to comply with the provisions of Section 4.3 of these rules as follows:

4.7.1 The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of an open book examination, to be mailed to the certificate holder at least 60 days before the renewal date.

4.7.2 The open book re-examination will consist of questions that focus on changes in the last five years to NFPA 54, NFPA 58, the statute, or the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or Division.

4.7.3 The certificate holder is responsible to complete the re-examination and return it to the Division in sufficient time to renew.

4.7.4 The certificate holder is responsible to return to the Division with the re-examination the correct renewal fees to complete that certificate renewal.

4.7.5 As required in Section 4.7 of these rules, those applicants that have successfully completed the requirements in Code of Federal Regulations (CFR) 49, Parts 172.700, 172.704, 177.800 and 177.816, that corresponds to the work to be performed by the applicant, shall have the requirement for re-examination waived, after appropriate documentation is provided to the Division by the applicant.

4.7.6 As required in Section 4.7 of these rules, those applicants that provide the Division with written verification of the completion of 40 hours of continuing training over the

previous five-year period shall have the requirement for re-examination waived.

4.8 Refusal to Renew.

The Division may refuse to renew any LPG certificate in the same manner and for any reason that is authorized pursuant to Section 5.2 of these rules.

4.9 Inspection.

The holder of a LPG certificate shall submit such certificate for inspection, upon request of the Division or the enforcing authority.

4.10 Type.

4.10.1 Every LPG certificate shall indicate the type of act or acts to be performed and for which the applicant has qualified.

4.10.2 Any person holding a valid LPG certificate shall not be authorized to perform any act unless he is a licensee or is employed by a licensed concern.

4.10.3 It is the responsibility of the LPG certificate holder to insure that the concern they are employed by is licensed under this act.

4.11 Change of Address.

Any change in home address of any holder of a valid LPG certificate shall be reported by the registered person to the Division within thirty (30) days of such change.

4.12 Duplicate.

A duplicate LPG certificate may be issued by the Division to replace any previously issued certificate which has been lost or destroyed upon the submission of a written statement to the Division from the certified person. Such statement shall attest to the certificate having been lost or destroyed. If the original is found, it shall be surrendered to the Division within 15 days.

4.13 Contents of Certificate of Registration.

Every LPG certificate issued shall contain the following information:

4.13.1 The name and address of the applicant.

4.13.2 The physical description of applicant.

4.13.3 The signature of the LP Gas Board Chairman.

4.13.4 The date of issuance.

4.13.5 The expiration date.

4.13.6 Type of service the person is qualified to perform.

4.13.7 Have printed on the card the following: "This certificate is for identification only, and shall not be used for recommendation or advertising".

4.14 Minimum Age.

No LPG certificate shall be issued to any person who is under sixteen (16) years of age.

4.15 Restrictive Use.

4.15.1 No LPG certificate shall constitute authorization for any person to enforce any provisions of these rules.

4.15.2 A LPG certificate may be used for identification purposes only as long as such certificate remains valid and while the holder is employed by a licensed concern.

4.15.3 Regardless of the acts for which the applicant has qualified, the performance of only those acts authorized under the licensed concern employing such applicant shall be permissible.

4.15.4 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a LPG certificate has qualified shall be permissible by such applicant.

4.16 Right to Contest.

4.16.1 Every person who takes an examination for a LPG certificate shall have the right to contest the validity of individual questions of such examination.

4.16.2 Every contention as to the validity of individual questions of an examination that cannot be reasonably resolved, shall be made in writing to the Division within 48 hours after taking said examination. Contentions shall state the reason for the objection.

4.16.3 The decision as to the action to be taken on the submitted contention shall be by the Board, and such decision shall be final.

4.16.4 The decision made by the Board, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

4.17 Non-Transferable.

LPG Certificates shall not be transferable to another individual. Individual LPG certificates shall be carried by the person to whom issued.

4.18 New Employees.

New employees of a licensed concern may perform the various acts while under the direct supervision of persons holding a valid LPG certificate for a period not to exceed 45 days from the initial date of employment. By the end of such period, new employees shall have taken and passed the required examination. In the event the employee fails the examination, re-examination shall be taken within 30 days. The employee shall remain under the direct supervision of an employee holding a valid LPG certificate, until certified.

4.19 Certificate Identification.

Every LPG certificate shall be identified by a number, delineated as PE-(number). Such number shall not be transferred from one person to another.

R710-6-5. Adjudicative Proceedings.

5.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

5.2 The issuance, renewal, or continued validity of a license or LPG certificate may be denied, suspended or revoked by the Division, if the Division finds that the applicant, person employed for, or the person having authority and management of a concern commits any of the following violations:

5.2.1 The person or applicant is not the real person in interest.

5.2.2 The person or applicant provides material misrepresentation or false statement in the application, whether original or renewal.

5.2.3 The person or applicant refuses to allow inspection by the Division or enforcing authority on an annual basis to determine compliance with the provisions of these rules.

5.2.4 The person, applicant, or concern for a license does not have the proper or necessary facilities, including qualified personnel, to conduct the operations for which application is made.

5.2.5 The person or applicant for a LPG certificate does not possess the qualifications of skill or competence to conduct the operations for which application is made. This can also be evidenced by failure to pass the examination and/or practical tests.

5.2.6 The person or applicant refuses to take the examination.

5.2.7 The person or applicant has been convicted of a violation of one or more federal, state or local laws.

5.2.8 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

5.2.9 Any offense of finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the person or applicant were granted a license or certificate of registration.

5.2.10 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the person or applicant to safely and competently distribute, transfer, dispense or install LP Gas and/or it's appliances.

5.2.11 The person or applicant does not complete the re-examination process by the person or applicants certificate or license expiration date.

5.2.12 The person or applicant fails to pay the license fee,

certificate of registration fee, examination fee or other fees as required in Section 6 of these rules.

5.3 A person whose license or certificate of registration is suspended or revoked by the Division shall have an opportunity for a hearing before the LPG Board if requested by that person within 20 days after receiving notice.

5.4 All adjudicative proceedings, other than criminal prosecution, taken by the Enforcing Authority to enforce the Liquefied Petroleum Gas Section, Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

5.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

5.6 The Board shall direct the Division to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

5.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

5.8 After a period of three (3) years from the date of revocation, the Board may review the written application of a person whose license or certificate of registration has been revoked.

5.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-6-6. Fees.

6.1 Fee Schedule.

6.1.1 License and LPG Certificates (new and renewals):

6.1.1.1 License

6.1.1.1.1 Class I - $450.00

6.1.1.1.2 Class II - $450.00

6.1.1.1.3 Class III - $105.00

6.1.1.1.4 Class IV - $150.00

6.1.1.2 Branch office license - $338.00

6.1.1.3 LPG Certificate - $40.00

6.1.1.4 LPG Certificate (Dispenser--Class B) - $20.00

6.1.1.5 Duplicate - $30.00

6.1.2 Examinations:

6.1.2.1 Initial examination - $30.00

6.1.2.2 Re-examination - $30.00

6.1.2.3 Five year examination - $30.00

6.1.3 Plan Reviews:

6.1.3.1 More than 5000 water gallons of LPG - $150.00

6.1.3.2 5,000 water gallons or less of LPG - $75.00

6.1.4 Special Inspections.

6.1.4.1 Per hour of inspection - $50.00

(charged in half hour increments with part half hours charged as full half hours).

6.1.5 Re-inspection (3rd Inspection or more) - $250.00

6.1.6 Private Container Inspection (More than one container) - $150.00

6.1.7 Private Container Inspection (One container) - $75.00

6.2 Payment of Fees.

The required fee shall accompany the application for license or LPG certificate or submission of plans for review.

6.3 Late Renewal Fees.

6.3.1 Any license or LPG certificate not renewed on or before one year from the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

6.3.2 When an LPG certificate has expired for more than one year, an application shall be made for an original certificate as if the application was being taken for the first time. Examinations will be retaken with initial examination fees.

R710-6-7. Board Procedures.

7.1 The Board will review the Division and Enforcing Authorities activities since the last meeting, and review and act on license and permit applications, review financial transactions, consider recommendations of the Division, and all other matters brought to the Board.

7.2 The Board may be asked to serve as a review board for items under disagreement.

7.3 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman.

7.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the Division, not less than twenty-one (21) days before the regularly scheduled Board meeting.

7.5 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

7.6 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

7.7 The Division shall provide the Board with a secretary, who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least twenty-one (21) days prior to the scheduled Board meeting.

7.8 The Board may be called upon to interpret codes adopted by the Board.

7.9 The Board Chairman may assign member(s) various assignments as required to aid in the promotion of safety, health and welfare in the use of LPG.

R710-6-8. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board:

8.1 All LP Gas facilities that are located in a public place shall be inspected by a certified LP Gas serviceman every five (5) years for leaks in all buried piping as follows:

8.1.1 All buried piping shall be pressure tested and inspected for leaks as set forth in NFPA Standard 54, Sections 4.1.1 through 4.3.4.

8.1.2 If a leak is detected and repaired, the buried piping shall again be pressure tested for leaks.

8.1.3 The certified LP Gas serviceman shall keep a written record of the inspection and all corrections made to the buried piping located in a public place.

8.1.4 The inspection records shall be available to be inspected on a regular basis by the Division.

8.2 Whenever the Division is required to complete more than two inspections to receive compliance on an LP Gas System, container, apparatus, appliance, appurtenance, tank or tank trailer, or any pertinent equipment for the storage, transportation or dispensation of LP Gas, the Division shall charge to the owner for each additional inspection, the re-inspection fee as stated in R710-6-6.1(e).

8.3 All LP Gas containers of more than 5000 water gallons shall be inspected at least biannually for compliance with the adopted statute and rules. The following containers are exempt from this requirement:

8.3.1 Those excluded from the act in UCA, Section 53-7-303.

8.3.2 Containers under federal control.

8.3.3 Containers under the control of the U.S. Department of Transportation and used for transportation of LP Gas.

8.3.4 Containers located at private residences.

8.4 Those using self-serve key or card services shall be trained in safe filling practices by the licensed dealer providing the services. A letter shall be sent to the Division by the

licensed dealer stating that those using the self-serve key or card service have been trained.

8.5 IFC Amendments:

8.5.1 IFC, Chapter 38, Section 3801.2 Permits. On line 2 after the word "105.7" add "and the adopted LPG rules".

8.5.2 IFC, Chapter 38, Section 3803.1 is deleted and rewritten as follows: General. LP Gas equipment shall be installed in accordance with NFPA 54, NFPA 58, the adopted LP Gas Administrative Rules, and the International Fuel Gas Code, except as otherwise provided in this chapter.

8.5.3 IFC, Chapter 38, Section 3809.12 is deleted and rewritten as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721-2,500, the currently stated "5" is deleted and replaced with "10".

8.5.4 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete "20" from line three and replace it with "10".

8.6 NFPA, Standard 58 Amendments:

8.6.1 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (c) All new, used or existing containers of 5000 water gallons or less, installed in the State of Utah or relocated within the State of Utah shall be stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels". All new, used or existing containers of more than 5000 water gallons, installed in the State of Utah or relocated within the State of Utah shall be stamped and meet the requirements listed in ASME, Boiler and Pressure Vessel Code, Section VIII, "Rules for the Construction of Unfired Pressure Vessels", and shall be inspected for approval by the Division. If the Division has concerns about the integrity or condition of the container, additional nondestructive testing may be required to include but not limited to hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs for additional testing required by the Division shall be the responsibility of the owner.

8.6.2 NFPA, Standard 58, Section 5.2.1.1 is amended to add the following section: (d) If an existing container is relocated within the State of Utah, and does not bear the required ASME construction stamp, the owner may submit to the Division a request for "Special Classification Permit". Specifications of the type of container, container history if known, material specifications and calculations, and condition of the container shall be submitted to the Division by the owner. The Division shall inspect the container for approval. If the Division has concerns about the integrity or condition of the container, additional nondestructive tests such as hydrostatic testing, ultrasonic metal thickness testing or any other testing as determined necessary by the Division. All incurred costs of testing and evaluations shall be the responsibility of the owner. The Division will approve or disapprove the proposed container. Approval by the Division shall be obtained before the container is set or filled with LP Gas.

8.6.3 NFPA, Standard 58, Section 5.2.1.5 is amended to add the following section:

(A) Repairs and alterations shall only be made by those holding a National Board "R" Certificate of Authorization commonly known as an R Stamp.

8.6.4 NFPA Standard 58, Sections 5.8.3.2(3)(a) and (b) are deleted and rewritten as follows:

Type K copper tubing without joints below grade may be used in exterior LP Gas piping systems only.

8.6.5 NFPA, Standard 58, Section 6.6.1.2 is amended to add the following: When guard posts are installed they shall be installed meeting the following requirements:

8.6.5.1 Constructed of steel not less than four inches in diameter and filled with concrete.

8.6.5.2 Set with spacing not more than four feet apart.

8.6.5.3 Buried three feet in the ground in concrete not less than 15 inches in diameter.

8.6.5.4 Set with the tops of the posts not less than three feet above the ground.

8.6.6 NFPA, Standard 58, Section 6.6.3 is amended to add the following section: 6.6.3.9 Skid mounted ASME horizontal containers greater than 2000 water gallons, with non-fireproofed steel mounted attached supports, resting on concrete, pavement, gravel or firm packed earth, may be mounted on the attached supports to a maximum of 12 inches from the top of the skid to the bottom of the container.

8.6.7 NFPA, Standard 58, Section 6.6.6 is amended to add the following: (M) All metallic equipment and components that are buried or mounded shall have cathodic protection installed to protect the metal.

8.6.7.1 Sacrificial anodes shall be installed as required by the size of the container. If more than one sacrificial anode is required they shall be evenly distributed around the container.

8.6.7.2 Sacrificial anodes shall be connected to the container or piping as recommended by the manufacturer or using accepted engineering practices.

8.6.7.3 Sacrificial anodes shall be placed as near the bottom of the container as possible and approximately two feet away from the container.

8.6.8 NFPA, Standard 58, Section 6.22.3.13 is added as follows: On dispensing installations, 1000 gallon water capacity or less, where the dispensing cabinet is located next to the LP Gas container, stainless steel wire braid hose of more than 36 inches in length may be used on vapor and liquid return lines only. The hose shall be secured and routed in a safe and professional manner, marked with the date of installation, and shall be replaced every five years from that installation date.

8.6.8 NFPA, Standard 58, Section 8.4.1.1(1) is amended as follows: On line one remove "5ft (1.5m)" and replace it with "10 ft (3m)".

R710-6-9. Penalties.

9.1 Civil penalties for violation of any rule or referenced code shall be as follows:

9.1.1 Concern failure to license - $210.00 to $900.00

9.1.2 Person failure to obtain LPG Certificate - $30.00 to $90.00

9.1.3 Failure of concern to obtain LPG Certificate for employees who dispense LPG - $210.00 to $900.00

9.1.4 Concern doing business under improper class - $140.00 to $600.00

9.1.5 Failure to notify SFM of change of address - $60.00

9.1.6 Violation of the adopted Statute or Rules - $210.00 to $900.00

9.2 Rationale.

9.2.1 Double the fee plus the cost of the license.

9.2.2 Double the fee plus the cost of the certificate.

9.2.3 Double the fee plus the cost of the license.

9.2.4 Double the fee.

9.2.5 Based on two hours of inspection fee at $30.00 per hour.

9.2.6 Triple the fee.

KEY: liquefied petroleum gas
May 23, 2008 **53-7-305**
Notice of Continuation March 30, 2006

R710. Public Safety, Fire Marshal.
R710-7. Concerns Servicing Automatic Fire Suppression Systems.
R710-7-1. Adoption of Codes.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah State Fire Prevention Board adopts rules to provide regulation to those concerns that service Automatic Fire Suppression Systems. These rules do not apply to standpipe systems, deluge systems, or automatic fire sprinkler systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association, Standard 12, Standard on Carbon Dioxide Extinguishing Systems, 2008 edition; N.F.P.A., Standard 12A, Halon 1301 Fire Extinguishing Systems, 2004 edition; N.F.P.A., Standard 12B, Halon 1211 Fire Extinguishing Systems, 1990 edition; N.F.P.A., Standard 17, Standard for Dry Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 17A, Standard for Wet Chemical Extinguishing Systems, 2002 edition; N.F.P.A., Standard 96, Ventilation Control and Fire Protection of Commercial Cooking Operations, 2008 edition; N.F.P.A., Standard 2001, Clean Agent Fire Extinguishing Systems, 2008 edition. The definitions contained in these pamphlets shall pertain to these regulations.

1.2 Validity

If any section, subsection, sentence, clause, or phrase, of these rules is, for any reason, held to be unconstitutional, contrary to statute, or exceeding the authority of the SFM, such decision shall not affect the validity of the remaining portion of these rules.

1.3 Systems Prohibited

No person shall market, distribute, sell, install or service any automatic fire suppression system in this state, unless it meets the following:

1.3.1 It complies with these rules.

1.3.2 It has been tested by, and bears the label of a testing laboratory which is accepted by the SFM as qualified to test automatic fire suppression systems.

1.3.3 All existing automatic fire suppression systems using dry chemical shall be removed and replaced with a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.3.1 Six year internal maintenance service;

1.3.3.2 Recharge;

1.3.3.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.3.4 Reconfiguration of the system piping.

1.3.4 All existing wet chemical automatic fire suppression systems not UL300 listed shall be removed, replaced or upgraded to a UL300 listed system by January 1, 2006 or before that date when any of the following occurs:

1.3.4.1 Six year internal maintenance service;

1.3.4.2 Recharge;

1.3.4.3 Hydrostatic test date as indicated on the manufacturer date of the cylinders;

1.3.4.4 Reconfiguration of the system piping.

1.4 Copies of the above listed codes are on file in the Office of Administrative Rules and the Office of the State Fire Marshal.

R710-7-2. Definitions.

2.1 "Annual" means a period of one year or 365 days.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Branch Office" means any location, other than the primary business location, where business license, telephone, advertising and servicing equipment is utilized.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Concern" means a person, firm, corporation, partnership, or association, licensed by the SFM.

2.6 "Employee" means those persons who work for a licensed concern which may include but are not limited to assigned agents and others who work on a contractual basis with a licensee using service tags of the licensed concern.

2.7 "Hydrostatic Test" means subjecting any cylinders requiring periodic pressure testing procedures specified in these rules.

2.8 "Inspection Authority" means the local fire authority, or the SFM, and their authorized representatives.

2.9 "License" means a written document issued by the SFM authorizing a concern to engage in the business of servicing automatic fire suppression systems.

2.10 "N.F.P.A." means National Fire Protection Association.

2.11 "Recognized Testing Laboratory" means a State Fire Marshal list of acceptable labs.

2.12 "Service" means a complete check of an automatic fire suppression system which includes the required service procedures set forth by a manufacturer of an approved system or the minimum service requirements as provided as set forth in adopted N.F.P.A. standards.

2.13 "System" means an Automatic Fire Suppression System.

2.14 "SFM" means Utah State Fire Marshal or authorized deputy.

2.15 "UCA" means Utah State Code Annotated, 1953 as amended.

R710-7-3. Licensing.

3.1 License Required

No person or concern shall engage in the business of selling, installing, servicing, repairing, testing or modifying any automatic fire suppression system without obtaining a license from the SFM, pursuant to these rules, expressly authorizing such concern to perform such acts.

3.2 Type of License

3.2.1 Every license shall be identified by type. The type of license shall be determined on the basis of the act or acts performed by the licensee or any of the employees. Every licensed concern shall be staffed by qualified personnel and shall be properly equipped to perform the act or acts for the type of license issued.

3.2.2 Licenses shall be any one, or combination of the following:

3.2.2.1 Class H1 - A licensed concern which is engaged in the installation, modification, service, or maintenance of engineered and/or pre-engineered automatic fire suppression systems.

3.2.2.2 Class H2 - A licensed concern which is engaged in service and maintenance only of automatic fire suppression systems to include hydrostatic testing.

3.3 Application

3.3.1 Application for a license to conduct business as an automatic fire suppression system concern, shall be made in writing to the SFM on forms provided by the SFM. A separate application for license shall be made for each separate place or business location of the applicant (branch office).

3.3.2 The application for a license to conduct business as an automatic fire suppression system concern, shall be accompanied with proof of public liability insurance. The public liability insurance shall be issued by a public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage. The licensee shall notify the SFM within thirty days after the public liability insurance coverage required is no longer in effect for any reason.

3.4 Signature of Applicant

The application shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association other than a partnership, it shall be signed by a principal officer.

3.5 Equipment Inspection

The applicant or licensee shall allow the SFM and any of his authorized deputies to enter, examine, and inspect any premises, building, room or vehicle used by the applicant in the service of automatic fire suppression systems to determine compliance with the provisions of these rules. The inspection will be conducted during normal business hours, and the owner or manager shall be given a minimum of 24 hours notice before the appointed inspection. The equipment inspection may be conducted on an annual basis, and consent to inspect will be obtained. The applicant, license holder or certified employee of the license holder, may be asked during the inspection by the SFM or any of his deputies, to demonstrate skills or knowledge used in servicing of automatic fire suppression systems.

3.6 Issuance and Posting of License

Following receipt of the properly completed application, and compliance with the provisions of the statute and these rules, the SFM shall issue a license. Every license issued pursuant to the provisions of these rules shall be posted in a conspicuous place on the premises of the licensed concern.

3.7 Original License and Inspection

Original licenses shall be valid for one year from the date of application. Thereafter, each license shall be renewed annually and renewals shall be valid for one year from issuance. No original license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM.

3.8 Renewal License and Inspection

Application for renewal shall be made as directed by the SFM. The failure to renew the license will cause the license to become invalid. No renewal license will be issued until the satisfactory completion of a materials, equipment and performance inspection by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for licensed concerns will be based upon the inspection date and valid for a one-year period of time. Renewal license fees shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal license fee.

3.9 Duplicate License

A duplicate license may be issued by the SFM to replace any previously issued license, which has been lost or destroyed, upon request.

3.10 Refusal to Renew

SFM may refuse to renew any license that is authorized, pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original license which has been denied by the SFM.

3.11 Change of Address

Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of address or location of business.

3.12 Under Another Name

No licensee shall conduct the licensed business under a name other than the name or names which appears on the license.

3.13 Hiring and Termination

Every licensed concern shall, within thirty (30) days of employment or termination of an employee or contracted agent shall notify the SFM of the name, address, and certification number of that person.

3.14 Minimum Age

No license shall be issued to any person as licensee who is under eighteen (18) years of age.

3.15 Employer Responsibility

Every concern is responsible for the acts of its employees or assigned agents relating to installation and servicing of automatic fire suppression systems.

3.16 Restrictive Use

No license shall constitute authorization for any licensee, or any of the employees or contracted agents, to enter upon, or into, any property, building, or machinery without the consent of the owner or manager. No license shall grant authorization to enforce the Uniform Fire Code or these rules.

3.17 Non-Transferable

No license issued pursuant to this section shall be transferred from one concern to another.

3.18 Registration Number

Every license shall be identified by a number, delineated as H-(number). Such number may only be transferred from one concern to another when approved by the SFM.

3.19 Minimum Materials and Equipment Required

At each business location or vehicle of the applicant where servicing work is performed the following minimum material and equipment requirements shall be maintained:

3.19.1 Calibrated scales with ability to:

3.19.1.1 Weigh gas cartridges to within 1/4 ounce of manufacturers specifications.

3.19.1.2 Weigh cylinders accurately for systems being serviced.

3.19.2 Nitrogen Pressure Filling Equipment

3.19.2.1 Nitrogen Supply

3.19.2.2 Pressure Regulator - 750 p.s.i. minimum

3.19.2.3 Filling Adapters

3.19.3 Dry Chemical Systems

3.19.3.1 Extinguishing agents, compatible with systems serviced

3.19.3.2 Fusible links

3.19.3.3 Safety pins

3.19.3.4 An assortment of gaskets and "O" Rings compatible with systems serviced

3.19.3.5 Gas cartridges as required according to manufacture's specifications

3.19.3.6 Current reference manuals, to include manufacture's service manuals

3.19.3.7 Cocking or Lockout Tool

3.19.4 Halon and CO2 Systems

3.19.4.1 Have access to, or meet the requirements for a U.L. approved filling station.

3.19.4.2 Have available in inventory, or have immediate access to, detectors compatible with systems serviced.

3.19.4.3 Calibration equipment such as electrical testers and detector testers.

3.19.4.4 Control panel components

3.19.4.5 Release valves

3.19.4.6 Current reference manuals

This list does not, however, include all items that may be necessary in order to conduct a complete system installation, modification or service.

3.20 Records

Accurate records shall be maintained for five years back by the licensee of all service work performed. These records shall be made available to the SFM, or authorized deputies, upon request. These records shall include the following:

3.20.1 The name and address of all serviced locations

3.20.2 Type of service performed

3.20.3 Date and name of person performing the work

R710-7-4. Certificates of Registration.

4.1 Required Certificates of Registration

No person shall service any automatic fire suppression system without a certificate of registration issued by the SFM

pursuant to these rules expressly authorizing such person to perform such acts.

4.2 Application

Application for a certificate of registration to work on automatic fire suppression systems shall be made in writing to the SFM on forms provided by the SFM. The application shall be signed by the applicant.

4.3 Examination

The SFM shall require all applicants for a certificate of registration to take and pass a written examination, which may be supplemented by practical tests to determine the applicant's knowledge to work on automatic fire suppression systems. Pictured identification of the applicant for a certificate of registration may be requested by the SFM or his deputies. Examinations will be given according to the following schedule and requirements:

4.3.1 On the first and third Tuesdays of each month. When holidays conflict with these days, the day immediately following will be used. An appointment will be made to take an examination at least 24 hours in advance of the examination date.

4.3.2 Examinations may be given at various field locations as deemed necessary by the SFM. Appointments for field examinations are required.

4.3.3 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

4.3.4 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

4.3.5 Each certification examination taken has a time limit of two hours to completion. Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

4.3.6 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

4.4 Examination - Passing Grade

To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%) in each portion of the examination taken.

4.5 Contents of Examination

The examination required shall include a written test of the applicant's knowledge of the work to be performed, the provisions of these rules, and may include an actual demonstration of his ability to perform the acts indicated on the application.

4.6 Right to Contest

Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination. Every contention as to the validity of individual questions of the examination shall be made in writing within 48 hours after taking said examination. The decision of the SFM shall be final.

4.7 Issuance

Following receipt of the completed application, compliance with the provisions of these rules, and the successful completion of the required examination, the SFM shall issue a certificate of registration.

4.8 Original and Renewal Valid Date

Original certificates of registration will be valid for one year from the date of application. Thereafter, each certificate of registration will be renewed annually and renewals will be valid for one year from issuance. The failure to renew a certificate of registration will cause the certificate of registration to become invalid. The holder of an invalid certificate of registration shall not perform any work on automatic fire suppression systems.

4.9 Renewal Date

Application for renewal will be made as directed by the SFM. Beginning March 4, 2003 through February 29, 2004, renewal dates for certification of registrations will be based upon the license inspection date and valid for a one-year period of time. Renewal certificate of registrations shall be prorated monthly, and monthly fees already paid in that time period shall be credited towards the renewal fee.

4.10 Re-examination

Every holder of a valid certificate of registration will take a re-examination every five (5) years, from the date of original certificate, to comply with the provisions of Section 4.3 of these rules as follows:

4.10.1. The re-examination to comply with the provisions of Section 4.3 of these rules shall consist of one 25 question open book examination to be mailed to the certificate holder at least 60 days before the renewal date.

4.10.2 The 25 question re-examination will consist of questions that focus on changes in the last five years to the NFPA standards, the statute, and adopted practices of concerns noted by the Board or SFM,.

4.10.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

4.10.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

4.11 Refusal to Renew

The SFM may refuse to renew any certificate of registration for the reasons that is authorized pursuant to Section 8 of these rules. The applicant will, upon such refusal, have the same rights as are granted by Section 8 of these rules to an applicant for an original certificate of registration which has been denied by the SFM.

4.12 Inspection

The holder of a certificate of registration will submit such certificate for inspection, upon request of the SFM, any authorized deputies, or any local fire official.

4.13 Change of Address

Any change of address of any holder of a certificate of registration will be reported by the registered person to the SFM within thirty (30) days of such change. Such change will also be made by the holder of the certificate of registration on the reverse side of the certificate of registration card.

4.14 Duplicate

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate which has been lost or destroyed.

4.15 Minimum Age

No certificate of registration shall be issued to any person who is under eighteen (18) years of age.

4.16 Restrictive Use

4.16.1 No certificate of registration will constitute authorization for any person to enter upon or into any property or building.

4.16.2 No certificate of registration will constitute authorization for any person to enforce any provisions of these rules or the Uniform Fire Code.

4.16.3 Regardless of the acts authorized to be performed by the licensed concern, only those acts for which the applicant for a certificate of registration has qualified will be permissible by such applicant.

4.17 Non-Transferable

Certificates of registration will not be transferable. Individual certificates of registration will be carried by the person to whom issued.

4.18 Limited Issuance

No certificate of registration will be issued to any person unless that person is a licensee or an employee of a licensed concern.

4.19 New Employees

New employees of a licensed concern may perform the various acts while under the direct supervision of a person holding a valid certificate of registration for a period not to exceed forty-five (45) days from the initial date of employment.

4.20 Certificate Identification

Every certificate will be identified by a number, delineated as HE-(number).

R710-7-5. Service Tags and Labels.

5.1 Size and Color

Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width. Tags may be any color except red.

5.2 Attaching Tag

One service tag will be attached to each automatic fire suppression system in such a position as to be conveniently inspected

5.3 Signature and Certificate Number

5.3.1 The signature and certificate of registration number of the person performing the work shall be signed legibly on the service tag.

5.3.2 All information pertaining to complete date, type of servicing, and type of system will be indicated on the tag by perforations in the appropriate space provided.

5.4 New Tag

A new service tag will be attached to a properly functioning system each time service is performed. A system not in compliance shall not receive a service tag, but shall receive a non-compliance tag as required in Section 5.8.

5.5 Tag Warning

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE, BY ORDER OF THE STATE FIRE MARSHAL".

5.6 Removal

No person shall deface, modify, alter or remove any active service label or tag attached to or required to be attached to any automatic fire suppression system.

5.7 Service Tag Information

All service tags shall be designed as required by the SFM.

5.8 Six Year Maintenance and Hydrostatic Test Labels

5.8.1 Six year maintenance and hydrostatic test labels will be affixed by a heatless process. The labels will be applied only when the system is recharged or undergoes six year maintenance servicing or hydrostatic testing.

5.8.2 Six year maintenance and hydrostatic test labels shall be durable to withstand the effects of weather and adverse conditions.

5.8.3 Six year maintenance and hydrostatic test labels will be designed as shown below:

EXAMPLE OF SIX YEAR AND HYDROSTATIC TEST LABEL

5.9 Non-Compliance Tags

5.9.1 Non-compliance tags will be affixed to any system failing to meet service specifications and will be placed in a conspicuous location on that system.

5.9.2 Non-compliance tags shall be red in color.

5.9.3 A system shall receive a non-compliance tag, when the system fails to fully comply with manufactures specifications or these rules.

5.9.4 After placing the non-compliance tag on the system, the service person shall notify the local fire chief or his authorized representative. The service person shall also furnish a copy of the service report to the authority having jurisdiction.

5.9.5 Non-compliance tags will be designed as required by the SFM.

R710-7-6. Requirements For All Approved Systems.

6.1 Service

6.1.1 Maintenance will be conducted on extinguishing systems at least every six months or immediately after use or activation.

6.1.2 When fusible links are a required portion of the system, fusible links will be replaced yearly or as required by the manufacturer of the system.

6.1.3 Fusible links will show the date when installed by year only.

6.1.4 Fusible links will not be used after February 1 of the next year showing a previous years date.

6.2 Interchanging of Parts

Interchanging of parts from different manufactured systems is prohibited. Parts shall be specifically listed and compatible for use with the designed system.

6.3 Return of parts

All replaced parts to the system serviced will be returned to the system owner or manager after completion of the service. Parts that are required to be returned to the manufacturer due to warranty are exempt.

6.4 Restricted Service

Any system requiring a hydrostatic test, will not be serviced until such system has been subjected to, and passed, the required test. A non-compliance tag will not be accepted to meet the requirements of this section.

6.5 Service

At the time of installation, and during any service, all servicing will be done in accordance with the manufacturers instructions, adopted statutes, and these rules. Systems will be placed and remain in an operable condition, free from defects which may cause malfunctions. Discharge nozzles and piping will be free of obstructions or substances.

R710-7-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a license or certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant, person employed for, or the person having authority and management of a concern servicing automatic fire suppression systems commits any of the following violations:

7.2.1 The person or applicant is not the real person in interest.

7.2.2 The person or applicant provides material misrepresentation or false statement on the application.

7.2.3 The person or applicant refuses to allow inspection by the SFM, his duly authorized deputies.

7.2.4 The person or applicant for a license or certificate of registration does not have the proper facilities and equipment, to conduct the operations for which application is made.

7.2.5 The person or applicant for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application was made, as evidenced by failure to pass the examination and practical tests pursuant to Section 4.2 of these rules.

7.2.6 The person or applicant has been convicted of one or more federal, state or local laws.

7.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of

registration.

7.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire suppression systems.

7.3 A person whose license or certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a license or certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

R710-7-8. Fees.

8.1 Fee Schedule

8.1.1 Licenses (New and Renewals)

8.1.1.1 Type H1 (Marketing and Installation) . . . $300.00

If the concern currently is licensed to service portable fire extinguishers the fee is $150.00.

8.1.1.2 Type H2 (Service Only) $150.00

If the concern currently is licensed to service portable fire extinguishers the fee is $75.00.

8.1.1.3 Branch Office License. $150.00

8.1.2 Certificates of Registration (New and Renewals)

8.1.2.1 Certificate of Registration. $40.00

If the individual currently is certified as a portable fire extinguisher technician the fee is $10.00

8.1.3 License Transfer $50.00

8.1.4 Examinations

8.1.4.1 Initial Examination. $30.00

8.1.4.2 Re-Examination $30.00

8.1.4.3 Five (5) Year Examination. $30.00

8.2 Payment of Fees

The required fee will accompany the application for license or certificate of registration. License or certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees

8.3.1 Any license or certificate of registration not renewed before January 1 will be subject to an additional fee equal to 10% of the required inspection fee.

8.3.2 When a certificate of registration has expired for more than one year, an application will be made for an original certificate as if the application was being made for the first time. Examinations will be re-taken with initial fees.

KEY: fire prevention, systems
May 23, 2008 **53-7-204**
Notice of Continuation May 31, 2007

R710. Public Safety, Fire Marshal.
R710-11. Fire Alarm System Inspecting and Testing.
R710-11-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules to provide regulation to those who inspect and test fire alarm systems.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 72, National Fire Alarm Code, 2007 edition, except as amended by provisions listed in R710-11-6, et seq.

1.2 International Fire Code (IFC), 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-11-6, et seq.

1.3 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-11-2. Definitions.

2.1 "Annual" means a period of one year or 365 calendar days.

2.2 "Authority Having Jurisdiction (AHJ) means the State Fire Marshal, his duly authorized deputies, the local fire enforcement authority, and building officials.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Certificates of Registration" means a written document issued by the SFM to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.5 "Inspecting and Testing" means work completed to ensure that the system operates properly as required in Section 1.2 of these rules.

2.6 "NFPA" means National Fire Protection Association.

2.7 "NICET" means National Institute for Certification in Engineering Technologies.

2.8 "SFM" means State Fire Marshal or authorized deputy.

2.9 "Service" means inspecting and testing of fire alarm systems.

2.10 "UCA" means Utah State Code Annotated 1953 as amended.

R710-11-3. Certificates of Registration.

3.1 Required Certificates of Registration.

No person shall engage in the inspecting and testing of fire alarm systems without first receiving a certificate of registration issued by the SFM. The following groups are exempted from the requirements of this part:

3.1.1 The AHJ that is performing the initial installation acceptance testing of the fire alarm system or ongoing inspections to verify compliance with the adopted NFPA standards and these rules.

3.1.2 The building owner or designee that performs additional periodic inspections beyond the annual inspection required in Section 6.2 of these rules, to satisfy requirements set by company policy, insurance, or risk management.

3.2 Application.

3.2.1 Application for a certificate of registration to inspect and test fire alarm systems shall be made in writing to the SFM on forms provided by the SFM. The applicant shall sign the application. The SFM or his deputies may request picture identification of the applicant for a certificate of registration.

3.2.2 The applicant shall indicate on the application which of the three technician levels the applicant will apply for:

3.2.2.1 Basic Fire Alarm Technician

3.2.2.2 Fire Alarm Technician

3.2.2.3 Master Fire Alarm Technician

3.2.3 The application for a certificate of registration shall be accompanied with proof of public liability insurance from the certificate holder or employing concern. A public liability insurance carrier showing coverage of at least $100,000 for each incident, and $300,000 in total coverage shall issue the public liability insurance. The certificate of registration holder shall notify the SFM within 30 days after the public liability insurance coverage required is not longer in effect for any reason.

3.3 Technician Examination.

The SFM shall require all applicants for a certificate of registration as a technician to complete the following:

3.3.1 Basic Fire Alarm Technician shall pass a written examination on basic testing of fire alarm systems or shall be certified as a NICET I. The Basic Fire Alarm Technician shall complete the manipulative skills task book. Work as a Basic Fire Alarm Technician shall be performed under direct supervision of a Fire Alarm Technician or Master Fire Alarm Technician.

3.3.2 Fire Alarm Technician shall pass all the requirements listed for Basic Fire Alarm Technician, and shall pass a written examination on basic testing and maintenance of fire alarm systems limited up to and including four story buildings or shall be certified as a NICET II.

3.3.3 Master Fire Alarm Technician shall pass all the requirements listed for Basic Fire Alarm Technician and Fire Alarm Technician, and shall pass a written examination on fire alarm systems in buildings over four stories, voice alarm/evacuation systems, and smoke control systems or shall be certified as a NICET III or as NICET IV.

3.4 Examinations will be given according to the following requirements:

3.4.1 All certification examinations given are open book examinations. The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

3.4.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

3.4.3 Each certification examination taken has a time limit of two hours to completion. To successfully pass the written examination, the applicant must obtain a minimum grade of seventy percent (70%). Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

3.4.4 If there are different levels of proficiency in the subject matter, the lower proficiency level will be fully completed before the next higher proficiency will be administered.

3.4.5 To successfully complete the manipulative skills task book, all required skill tasks shall be signed as completed by a person duly qualified or certified in that skill.

3.5 As required in 3.3 of these rules, those applicants that have successfully completed the requirements and are certified by NICET in the skills that correspond to the work to be performed by the applicant, shall have the requirement for written examination waived, after appropriate documentation is provided to the SFM by the applicant.

3.6 Issuance.

Following receipt of the properly completed application, compliance with Section 3.3 of these rules, the SFM shall issue a certificate of registration.

3.7 Original and Renewal Valid Date.

Original certificates of registration shall be valid for one year from the date of application. Thereafter, each certificate of registration shall be renewed annually and renewals shall be valid for one year from issuance.

3.8 Renewal Date.

Application for renewal shall be made as directed by the SFM.

3.9 Re-examination.

Every holder of a valid certificate of registration shall take a re-examination every three years, from date of original certificate, to comply with the provisions of Section 3.3 of these rules as follows:

3.9.1 The re-examination to comply with the provisions of Section 3.3 of these rules, shall consist of an examination for each level of certification, to be mailed to the certificate holder at least 60 days before the renewal date.

3.9.2 The re-examination will consist of questions that focus on changes in the last three years to the adopted NFPA standards, the statute, and the adopted administrative rules. The re-examination may also consist of questions that focus on practices of concern as noted by the Board or the SFM.

3.9.3 The certificate holder is responsible to complete the re-examination and return it to the SFM in sufficient time to renew.

3.9.4 The certificate holder is responsible to return to the SFM the correct renewal fees to complete that certificate renewal.

3.10 Refusal to Renew.

The SFM may refuse to renew any certificate of registration in the same manner and for any reason that he is authorized, pursuant to Section 7, to deny an original certificate of registration. The applicant shall, upon such refusal, have the same rights as are granted by Section 7 of these rules to an applicant for an original certificate of registration, which has been denied by the SFM.

3.11 Inspection.

The holder of a certificate of registration shall submit such certificate for inspection, upon request of the AHJ.

3.12 Type.

Every certificate of registration shall indicate the type of act or acts to be performed and for which the applicant has qualified.

3.13 Change of Address.

Any change in home address of any holder of a valid certificate of registration shall be reported in writing, by the registered person to the SFM within 30 days of such change.

3.14 Duplicate.

A duplicate certificate of registration may be issued by the SFM to replace any previously issued certificate, which has been lost or destroyed.

3.15 Minimum Age.

No certificate of registration shall be issued to any person who is under 18 years of age.

3.16 Restrictive Use.

3.16.1 A certificate of registration may be used for identification purposes only as long as such certificate remains valid.

3.16.2 Regardless of the acts authorized to be performed by a licensed concern, only those acts for which the applicant for a certificate of registration has qualified shall be permissible by such applicant.

3.17 Right to Contest.

3.17.1 Every person who takes an examination for a certificate of registration shall have the right to contest the validity of individual questions of such examination.

3.17.2 Every contention as to the validity of individual questions of an examination shall be made within 48 hours after taking said examination.

3.17.3 The decision as to the action to be taken on the submitted contention shall be made by the SFM, and such decision shall be final.

3.17.4 The decision made by the SFM, and the action taken, shall be reflected in all future examinations, but shall not affect the grades established in any past examination.

3.18 Non-Transferable.

Certificates of Registration shall not be transferable. The person to whom issued shall carry individual certificates of registration.

3.19 Certificate of Registration Identification.

Every certificate shall be identified by a number. The certificate of registration shall be worn in a visible manner when inspecting and testing fire alarm systems.

3.20 New Employees

New or existing employees desiring to attain a certificate of registration may perform the various acts required while under the constant direct supervision of a person holding a valid certificate of registration for a period not to exceed 90 days from the initial date of employment or beginning service in the field.

R710-11-4. Service Tags.

4.1 Size and Color.

4.1.1 Tags shall be not more than five and one-half inches (5-1/2") in height, nor less than four and one-half inches (4-1/2") in height, and not more than three inches (3") in width, nor less than two and one-half inches (2-1/2") in width.

4.1.2 Tags may be produced in any color except red or a variation of red.

4.1.3 A red tag shall be used to indicate the system fails to ensure a reasonable degree of protection for life and property from fire through inspecting and testing of fire alarm systems as required in NFPA, Standard 72, and the requirements of these rules. After placing the red tag on the system, the certified person shall notify the AHJ and provide the AHJ with a written copy of the noted deficiencies.

4.1.4 If the AHJ reviews the noted deficiencies on the attached red tag and finds the deficiencies are not consistent with the requirements in NFPA, Standard 72, the red tag shall be removed by the certified person that attached the red tag.

4.2 Placement of Tag.

The service tag shall be attached at the fire alarm control panel for each system inspected or at other locations as needed to show compliance. The service tag shall be attached to the control panel in such a position as to be conveniently inspected by the AHJ.

4.3 Tag Information.

4.3.1 Service tags shall bear the following information:

4.3.1.1 Provisions of Section 4.7.

4.3.1.2 Approved Seal of Registration of the SFM.

4.3.1.3 Certificate of registration number of individual who performed or supervised the service or services performed.

4.3.1.4 Signature of individual whose certificate of registration number appears on the tag.

4.3.1.5 Concern's name.

4.3.1.6 Concern's address.

4.3.1.7 Type of service performed.

4.3.1.8 Type of system serviced.

4.3.1.9 Date service is performed.

4.3.2 The above information shall appear on one side of the service tag. All other desired printing or information shall be placed on the reverse side of the tag.

4.4 Legibility.

4.4.1 The certificate of registration number required in Section 4.3.1.3, and the signature required in Section 4.3.1.4, shall be printed or written distinctly.

4.4.2 All information pertaining to date and type of service shall be indicated on the card by perforations in the appropriate space provided. Each perforation shall clearly indicate the desired information.

4.5 Format.

ILLUSTRATION ON FILE IN STATE FIRE MARSHAL'S OFFICE

4.6 New Tag.

A new service tag shall be attached to a system each time a service is performed.

4.7 Tag Wording.

The following wording shall be placed at the top or reinforced ring end of every tag: "DO NOT REMOVE BY ORDER OF THE STATE FIRE MARSHAL".

4.8 Removal.

4.8.1 No person or persons shall remove a service tag except when further service is performed.

4.8.2 No person shall deface, modify, or alter any service tag that is required to be attached to the system.

4.8.3 A red tag can only be removed by written authority from the AHJ. Verbal authority to initially remove the tag is allowed as long as it is followed by written authority.

4.9 Tag Dates.

Service tags may be printed for any number of years not to exceed eight years.

R710-11-5. Seal of Registration.

5.1 Description.

The official seal of registration of the SFM shall consist of the following:

5.1.1 The image of the State of Utah shall be in the center with an outer ring stating, "Utah State Fire Marshal".

5.1.1.1 The top portion of the outer ring shall have the wording "Utah State".

5.1.1.2 The bottom portion of the outer ring shall have the wording "Fire Marshal".

5.1.2 Appending below the bottom portion and in a centered position, shall be a box provided for the displaying of the certification number assigned to the person.

5.2 Use of Seal.

No person shall produce, reproduce, or use this seal in any manner or for any purpose except as herein provided.

5.3 Permissive Use.

Certificate holders or concerns shall use the Seal of Registration on every service tag.

5.4 Cease Use Order.

No person or concern shall continue the use of the Seal of Registration in any manner or for any purpose after receipt of a notice in writing from the SFM to that effect, or upon the suspension or revocation of the certificate of registration.

5.5 Legibility.

Every reproduction of the Seal of Registration and every letter and number placed thereon, shall be of sufficient size to render such seal, letter, and number distinct and clearly legible.

R710-11-6. Amendments and Additions.

6.1 Service.

At the time of service, all servicing shall be done in accordance with the adopted NFPA standard, adopted statutes, and these rules.

6.2 Frequency.

Fire alarm systems shall be inspected annually by a person holding the appropriate certificate of registration as required in Section 3.1 of these rules.

6.3 New Systems.

Newly installed fire alarm systems are exempt from the annual testing requirement required in Section 6.2 of these rules, for one year from the approval date of the initial installation acceptance testing.

6.4 Retroactive Installation of Automatic Fire Alarm Systems.

IFC, Chapter 9, Sections 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.5 National Fire Protection Association

6.5.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.5.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.5.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.5.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.5.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.5.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.5.6 NFPA 72, Chapter 4, Section 4.5.2.1, RECORD OF COMPLETION, or equivalent form approved by the SFM shall be used as the accepted forms for testing and inspecting fire alarm systems.

6.5.7 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.5.8 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.5.9 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.5.10 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

R710-11-7. Adjudicative Proceedings.

7.1 All adjudicative proceedings performed by the agency shall proceed informally as authorized by UCA, Sections 63-46b-4 and 63-46b-5.

7.2 The issuance, renewal, or continued validity of a certificate of registration may be denied, suspended, or revoked, if the SFM finds that the applicant or the person has committed any of the following violations:

7.2.1 The applicant or person is not the real person of interest.

7.2.2 The applicant or person provides material misrepresentation or false statements on the application.

7.2.3 The applicant or person refuses to allow inspection by the SFM, or his duly authorized deputies.

7.2.4 The applicant or person for a certificate of registration does not have the proper equipment to conduct the operations for which application is made.

7.2.5 The applicant or person for a certificate of registration does not possess the qualifications of skill or competence to conduct the operations for which application is made, as evidenced by failure to pass the examination or manipulative skills pursuant to Section 3.3 of these rules.

7.2.6 The applicant or person refuses to take the examination required by Section 3.3 of these rules.

7.2.7 The applicant or person fails to pay the certification of registration, examination or other required fees as required in

Section 8 of these rules.

7.2.8 The applicant or person has been convicted of violating one or more federal, state or local laws.

7.2.9 The applicant or person has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

7.2.10 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a certificate of registration.

7.2.11 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing fire alarm system equipment.

7.3 A person whose certificate of registration is suspended or revoked by the SFM shall have an opportunity for a hearing before the Board if requested by that person within 20 days after receiving notice.

7.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63-46b-3.

7.5 The Board shall act as the hearing authority, and shall convene after timely notice to all parties involved. The Board shall be the final authority on the suspension or revocation of a certificate of registration.

7.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63-46b-5(i).

7.7 Reconsideration of the Board decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63-46b-13.

7.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the certification process or shall direct that the revocation be continued.

7.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63-46b-15.

R710-11-8. Fees.

8.1 Fee Schedule.

8.1.1 Certificates of Registration (new and renewals):

8.1.1.1 Certificate of registration - $40.00

8.1.1.2 Duplicate - $30.00

8.1.2 Examinations:

8.1.2.1 Initial examination - $30.00

8.1.2.2 Re-examination - $30.00

8.1.2.3 Three-year examination - $30.00

8.2 Payment of Fees.

The required fee shall accompany the application for certificate of registration. Certificate of registration fees will be refunded if the application is denied.

8.3 Late Renewal Fees.

8.3.1 Any certificate of registration not renewed on or before the original date of issuance will be subject to an additional fee equal to 10% of the required fee.

8.3.2 When a certificate of registration has expired for more than one year, an application shall be made for an original certificate as if the application was being made for the first time.

KEY: fire alarm systems
May 23, 2008 **53-7-204**

R710. Public Safety, Fire Marshal.
R710-12. Hazardous Materials Training and Certification.
R710-12-1. Adoption, Title, Purpose, and Prohibitions.

Pursuant to Section 53-7-204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts minimum rules establishing ongoing training standards for hazardous materials emergency response agencies. The Board also adopts minimum rules for certification for persons who provide hazardous materials emergency response services.

There is adopted as part of these rules the following codes which are incorporated by reference:

1.1 National Fire Protection Association (NFPA), Standard 472, Standard for Competence of Responders to Hazardous Materials/Weapons of Mass Destruction Incidents, 2008 edition, except as amended by provisions listed in R710-12, et seq.

1.2 A copy of the above-mentioned standard is on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-12-2. Definitions.

2.1 "AHJ" means Authority Having Jurisdiction.

2.2 "Board" means Utah Fire Prevention Board.

2.3 "Certificate" means a written document issued by the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification System, to any person for the purpose of granting permission to such person to perform any act or acts for which authorization is required.

2.4 "Council" means Hazardous Materials Advisory Council.

2.5 "Emergency response agencies" means those agencies that are created and under the control of local, state or federal government or regional inter-governmental agencies to provide emergency response for hazardous materials.

2.6 "Hazardous Material" means a substance that can be solid, liquid or gas, that when released is capable of creating harm to people, the environment and property and includes weapons of mass destruction as well as illicit labs, environmental crimes, and industrial sabotage.

2.7 "Emergency Response Services" means providing or coordinating on-site protective or offensive actions to reduce the risk of harm to people, the environment and property during the initial, time-critical phase of a hazardous materials/WMD incident.

2.8 "Institute of Emergency Services and Homeland Security" means a college entity of Utah Valley University of that same name.

2.9 "NFPA" means National Fire Protection Association.

2.10 "SFM" means State Fire Marshal or authorized deputy.

2.11 "UCA" means Utah State Code Annotated 1953 as amended.

2.12 "Utah Fire Service Certification System" means the system approved by the Board to provide certification to those emergency personnel certifying in hazardous materials.

R710-12-3. Hazardous Materials Advisory Council.

3.1 There is created by the Board, the Hazardous Materials Advisory Council, whose duties are to provide direction to the Board in matters relating to training and certification standards for hazardous materials emergency responders and emergency response agencies.

3.2 The Council's members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:

3.2.1 Representative from the career fire service.

3.2.2 Representative from the volunteer fire service.

3.2.3 Representative from the Department of Environmental Quality.

3.2.4 Representative from the Department of Transportation.

3.2.5 Representative from law enforcement.

3.2.6 Representative from the Fire and Rescue Academy.

3.2.7 Representative from the Hazardous Materials Institute.

3.2.8 Representative from the National Guard.

3.2.9 Representative from a Local Emergency Planning Committee (LEPC).

3.2.10 Representative from private industry.

3.3 The Council shall meet quarterly or as directed, and a majority of the members shall be present to constitute a quorum.

3.4 The Council shall select one of its members to act in the position of chair, and another member to act as vice chair. The chair and vice chair shall serve one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of each calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

3.5 If a Council member has two or more unexcused absences during a 12 month period, from regularly scheduled meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the member to the Board for status review.

3.6 A member of the Council that cannot be in attendance, may have a representative of their respective organization attend and vote by proxy for that member or the member may have another council member vote by proxy, if submitted and approved by the Coordinator prior to the meeting.

3.7 The Chair or Vice Chair of the Council shall report to the Board the activities of the council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the council in the absence of the Chair or Vice Chair.

3.8 The Council shall consider all subjects presented to them, subjects assigned to them by the Board, and shall report their recommendations to the Board at regularly scheduled Board meetings.

3.9 One-half of the members of the Council shall be reappointed or replaced by the Board every two years.

R710-12-4. Training.

4.1 Instruction materials designed for statewide use that will teach minimum core competencies for those persons certifying to provide response services regarding hazardous material emergencies shall be approved by the Council and accepted by the Utah Fire Service Certification Council.

4.2 Written examinations, practical or actual demonstrations, and any other required testing given for core competency, for those persons certifying to provide response services regarding hazardous material emergencies statewide, shall be approved by the Council and accepted by the Utah Fire Service Certification Council.

R710-12-5. Certificates.

5.1 Required Certificates.

No person shall provide hazardous materials services as a member of an emergency response agency without first receiving a certificate issued by the Institute of Emergency Services and Homeland Security or a certification issued by the Utah Fire Service Certification Council.

5.2 Application.

5.2.1 To be certified in hazardous material response, a request for certification shall be made in writing to the Utah Fire Service Certification System.

5.2.2 The applicant shall indicate which of the five certification levels the applicant will apply for:

5.2.2.1 Awareness Level

5.2.2.2 Operations Level Responder

5.2.2.3 Hazardous Materials Technician
5.2.2.4 Hazardous Materials Officer
5.2.2.5 Hazardous Materials Incident Commander
5.3 Examination.
The applicant for a certificate shall complete the following:
5.3.1 An applicant certifying at the Awareness Level shall be trained to meet all the competencies in Chapter 4 of NFPA 472 and pass a written examination with a minimum score of 70%.
5.3.2 An applicant certifying as an Operations Level Responder shall meet all the requirements listed in Section 5.3.1 of these rules, and shall be trained to meet all the competencies in Chapter 5 of NFPA 472, and pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.
5.3.3 An applicant certifying as a Hazardous Materials Technician shall pass all the requirements listed in Sections 5.3.1 and 5.3.2 of these rules, and shall be trained to meet all the competencies in Chapter 7 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.
5.3.4 An applicant certifying as a Hazardous Materials Officer shall meet all the requirements listed in Sections 5.3.1, 5.3.2 and 5.3.3 of these rules, and shall be trained to meet all the competencies in Chapter 10 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.
5.3.5 An applicant certifying as a Hazardous Materials Incident Commander shall meet all the requirements listed in Sections 5.3.1, 5.3.2 and 5.3.3 of these rules, and shall be trained to meet all the competencies in Chapter 8 of NFPA 472, and shall pass a written examination with a minimum score of 70%. The applicant shall also pass a practical or actual demonstration on some selected aspects of hazardous materials consistent with the level seeking certification.
5.4 Issuance.
Following receipt of the properly completed application, compliance with Section 5.3 of these rules, the Institute of Emergency Services and Homeland Security through the Utah Fire Service Certification Council shall issue a certificate.
5.5 Original and Renewal Valid Date.
Original certificates shall be valid for three years from the date of certification issuance. Thereafter, each certificate of registration shall be renewed every three years from issuance, unless otherwise specified by a Utah certification standard.
5.6 Renewal Date.
Renewal shall be made as directed by the Utah Fire Service Certification Council.
5.7 Re-certification Renewal.
Every holder of a valid certificate shall provide to the Utah Fire Service Certification Council written verification from the authorizing agency that they have received continuing training in hazardous materials necessary to maintain competency over the previous three-year period of certification issuance.

R710-12-6. Adjudicative Proceedings.
6.1 All adjudicative proceedings performed with regard to a certificate issued under Section 5 of these rules shall proceed as outlined in the Utah Fire Service Certification System, Policy and Procedures Manual.

R710-12-7. Fees.
7.1 Payment of Fees.
The required fee for certification and recertification shall be paid to the Utah Fire Service Certification System.

KEY: hazardous materials
May 23, 2008 **53-7-204**

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-320. Undercover Identification.
R722-320-1. Purpose.

The purpose of this rule is to establish a program whereby the Department of Public Safety can assist federal, state, county, and local law enforcement agencies in concealing the true identity of undercover peace officers.

R722-320-2. Authority.

This rule is authorized by Subsections 53-10-104(1), 53-10-104(9), and 53-10-104(14).

R722-320-3. Definitions.

(1) "Chief administrative officer" means the commissioner of public safety, a chief of police or sheriff of any municipality or county of this state, or the agent in charge of operations in this state for any federal law enforcement agency.

(2) "Peace officer" means anyone employed in one of the four peace officer classifications in Section 53-13-102.

(3) "Undercover identification" means identification issued to a peace officer which allows the true identity of the officer to be concealed from criminal suspects and their associates.

(4) "Undercover investigation" means a criminal investigation conducted by a peace officer which is authorized by the officer's agency and where the true identity of the officer must be concealed from criminal suspects and their associates.

R722-320-4. Type of Assistance Provided.

The department will assist federal, state, county, and local law enforcement agencies in obtaining identification and personal history information for their peace officers who conduct undercover investigations.

R722-320-5. Issuance of Undercover Identification.

(1) The department may issue an undercover identification after receiving a written request from the chief administrative officer of a law enforcement agency. This request must be on official agency letterhead and shall include:

(a) the reason the undercover identification is needed;

(b) the real name and date of birth of the officer needing undercover identification;

(c) the undercover name, date of birth, social security number, and address to be used by the officer; and,

(d) the original signature of the chief administrative officer.

(2) Each request may be for one officer only. Multiple requests in the same letter will not be honored.

(3) Processing a request for undercover identification is time consuming for the department. Therefore, for the convenience of all parties, the officer intending to apply for undercover identification must call the department's Bureau of Criminal Identification (BCI) at (801) 965-4484 and make an appointment prior to coming in to apply for undercover identification.

(4) At the time of issuance the officer must:

(a) present to BCI (4501 South 2700 West, Second Floor, Salt Lake City, Utah) the original letter of request from the chief administrative officer;

(b) provide a copy of valid identification issued by the officer's agency indicating that he/she is a peace officer; and,

(c) complete the application form provided by the department.

(5) The department may issue an undercover identification if the requirements of this rule are met and the department believes that such issuance is in the best interests of law enforcement.

R722-320-6. Expiration of Undercover Identification.

(1) Undercover identification issued pursuant to this rule:

(a) shall automatically expire six months after it is issued;

(b) must be returned to the department by the officer's agency within 30 days in the case of an officer who is reassigned to a position no longer requiring the use of undercover identification; and

(c) must immediately be returned to the department by the officer's agency in the case of an officer who terminates employment with the agency.

(2) No officer may be issued undercover identification if any undercover identification previously issued to another officer of the same agency is not accounted for to the satisfaction of the department.

(3) A chief administrative officer may request that an undercover identification issued to an officer of his/her agency be extended beyond the six month expiration referred to in this section if:

(a) a written request for extension signed by the chief administrative officer is received by the department prior to the expiration date; and

(b) the written request demonstrates to the satisfaction of the department extenuating circumstances justifying the extension.

R722-320-7. Revocation of Undercover Identification.

The department may revoke an undercover identification:

(1) if the undercover identification was used for a purpose not related to an active undercover investigation;

(2) if the officer has been charged with a crime or is under investigation for any wrong doing that would compromise the undercover identification program or not be in the best interests of law enforcement; or

(3) for any violation of this rule.

R722-320-8. Surrender of Undercover Identification.

A peace officer whose undercover identification has expired or which has been revoked shall immediately surrender his/her undercover identification to the department.

R722-320-9. Appeal.

(1) In accordance with Subsection 63-46b-4(1) the department hereby designates all adjudicative proceedings associated with this rule as informal adjudicative proceedings.

(2) An officer (appellant) whose request for undercover identification has been denied or whose undercover identification has been revoked, may appeal such denial or revocation to the department's administrative law judge (ALJ). The appeal must be filed on a form provided by the department. The appeal shall be considered a request for agency action in accordance with Subsection 63-46b-3(1)(b).

(a) The appeal must be filed within thirty days after the appellant receives notice of the denial or revocation.

(b) The appellant will not receive a hearing on the appeal. The ALJ will review the appeal and issue a written decision on it in compliance with Subsection 63-46b-5(1)(i) within ten days after receiving it.

(3) An appellant who is dissatisfied with the ALJ's decision may file a request for reconsideration with the ALJ within ten days after receipt of the decision. If the ALJ does not issue an order within twenty days after receiving the request for reconsideration, the request for reconsideration shall be considered denied, and the appellant may seek judicial review in accordance with Section 63-46b-15.

R722-320-10. Records Protected.

All records pertaining to the issuance of an undercover identification shall be protected under Subsection 63-2-304 (9).

KEY: law enforcement, criminal investigation, undercover

identification
June 14, 1999 **53-10-104**
Notice of Continuation May 14, 2008

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-340. Emergency Vehicles.
R722-340-1. Purpose.

This rule explains how vehicles can be designated as "authorized emergency vehicles." Authorized emergency vehicles shall be referred to in this rule as "emergency vehicles."

R722-340-2. Authority.

This rule is authorized by Section 41-6-1.5 and Subsection 53-1-108(1)(c).

R722-340-3. Definitions.

As used in this rule:

(1) "Emergency" or "emergencies" means a situation in which property or human life is in jeopardy and the prompt summoning of aid is essential to the preservation of human life or property and justifies the operator of a vehicle to exercise the driving privileges in Subsection 41-6-14(2).

(2) "Industrial ambulance" means an ambulance that is owned and operated by a private company for the sole benefit of its employees.

R722-340-4. Publicly Owned Emergency Vehicles.

(1) A publicly owned fire department vehicle, or publicly owned police vehicle can be designated as an emergency vehicle if the vehicle:

(a) responds to emergencies;

(b) is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(c) is properly insured; and

(d) is approved as an emergency vehicle by the political subdivision that owns it.

R722-340-5. Privately Owned Emergency Vehicles.

Privately owned vehicles can be designated as emergency vehicles by meeting the requirements set forth in this rule.

R722-340-6. Categories of Privately Owned Emergency Vehicles.

(1) Privately owned emergency vehicles shall be divided into the following categories:

(a) private fire response vehicles;

(b) private police vehicles;

(c) private search and rescue vehicles; and

(d) private ambulance vehicles.

R722-340-7. Private Fire Response Vehicles, Private Police Vehicles, and Private Search and Rescue Vehicles.

(1) A private fire response vehicle, private police vehicle, or private search and rescue vehicle can be designated as an emergency vehicle if:

(a) the vehicle is used on a part time basis to assist a governmental agency in responding to emergencies;

(b) the owner of the vehicle receives written authorization to operate the vehicle as an emergency vehicle from the sheriff, chief of police, or fire chief of the governmental agency that the vehicle is authorized to assist;

(c) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(d) the vehicle is licensed and has a current safety inspection certificate; and

(e) the governmental agency that authorizes the vehicle to operate as an emergency vehicle has adopted written policies regarding the operation of emergency vehicles in their jurisdiction. The policies shall require compliance with the statutory restrictions and requirements of Title 41, Chapter 6.

R722-340-8. Ambulance Vehicles.

(1) A publicly owned or privately owned ambulance vehicle can be designated as an emergency vehicle if the vehicle is licensed by the Utah Department of Health, Bureau of Emergency Medical Services to provide emergency and non-emergency ambulance services under Title 26, Chapter 8.

(2) An industrial ambulance vehicle can be designated as an emergency vehicle if:

(a) the vehicle is in compliance with the emergency lights and siren requirements of Title 41, Chapter 6;

(b) the vehicle is properly insured;

(c) the vehicle is licensed and has a current safety inspection certificate; and

(d) the company that owns the vehicle receives written authorization to operate the vehicle as an emergency vehicle from:

(i) the sheriff of the county in which the company is located; and

(ii) the chief of police of the city, if any, in which the company is located.

KEY: emergency vehicle
September 11, 1997 41-6-1.5
Notice of Continuation May 14, 2008 53-1-108(1)©

R746. Public Service Commission, Administration.
R746-100. Practice and Procedure Governing Formal Hearings.
R746-100-1. General Provisions and Authorization.

A. Procedure Governed -- Sections 1 through 14 of this rule shall govern the formal hearing procedures before the Public Service Commission of Utah, Sections 15 and 16 shall govern rulemaking proceedings before the Commission.

B. Consumer Complaints -- Consumer complaints may be converted to informal proceedings, pursuant to Section 63G-4-202.

C. No Provision in Rules -- In situations for which there is no provision in these rules, the Utah Rules of Civil Procedure shall govern, unless the Commission considers them to be unworkable or inappropriate.

D. Words Denoting Number and Gender -- In interpreting these rules, unless the context indicates otherwise, the singular includes the plural, the plural includes the singular, the present or perfect tenses include future tenses, and the words of one gender include the other gender. Headings are for convenience only, and they shall not be used in construing any meaning.

E. Authorization -- This rule is authorized pursuant to Section 54-1-1 which requires the Commission to exercise its rulemaking powers and Subsection 54-1-2.5 which establishes the requirements for Commission procedure, including Hearings, Practice and Procedure, Chapter 7 of Title 54.

R746-100-2. Definitions.

A. "Applicant" is a party applying for a license, right, or authority or requesting agency action from the Commission.

B. "Commission" is the Public Service Commission of Utah. In appropriate context, it may include administrative law judges or presiding officers designated by the Commission.

C. "Committee" is the Committee of Consumer Services, Department of Commerce.

D. "Complainant" is a person who complains to the Commission of an act or omission of a person in violation of law, the rules, or an order of the Commission.

E. "Consumer complaint" is a complaint of a retail customer against a public utility.

F. "Division" is the Division of Public Utilities, Utah State Department of Commerce.

G. "Ex Parte Communication" means an oral or written communication with a member of the Commission, administrative law judge, or Commission employee who is, or may be reasonably expected to be, involved in the decision-making process, relative to the merits of a matter under adjudication unless notice and an opportunity to be heard are given to each party. It shall not, however, include requests for status reports on a proceeding covered by these rules.

H. "Formal proceeding" is a proceeding before the Commission not designated informal by rule, pursuant to Section 63-46b-4.

I. "Informal proceeding" is a proceeding so designated by the Commission.

J. "Party" is a participant in a proceeding defined by Subsection 63G-4-103(1)(f).

K. "Interested person" is a person who may be affected by a proceeding before the Commission, but who does not seek intervention. An interested person may not participate in the proceedings except as a public witness, but shall receive copies of notices and orders in the proceeding.

L. "Intervenor" is a person permitted to intervene in a proceeding before the Commission.

M. "Person" means an individual, corporation, partnership, association, governmental subdivision, or governmental agency.

N. "Petitioner" is a person seeking relief other than the issuance of a license, right, or authority from the Commission.

O. "Presiding officer" is a person conducting an adjudicative hearing, pursuant to Subsection 63G-4-103(1)(h)(i), and may be the entire Commission, one or more commissioners acting on the Commission's behalf, or an administrative law judge, presiding officer, or hearing officer appointed by the Commission. It may also include the Secretary of the Commission when performing duties identified in Section 54-1-7.

P. "Proceeding" or "adjudicative proceeding" is an action before the Commission initiated by a notice of agency action, or request for agency action, pursuant to Section 63G-4-201. It is not an informal or preliminary inquiry or investigation undertaken by the Commission to determine whether a proceeding is warranted; nor is it a rulemaking action pursuant to Title 63G, Chapter 3, the Administrative Rulemaking Act.

Q. "Public witness" is a person expressing interest in an issue before the Commission but not entitled or not wishing to participate as a party.

R. "Respondent" is a person against whom a notice of agency action or request for agency action is directed or responding to an application, petition or other request for agency action.

R746-100-3. Pleadings.

A. Pleadings Enumerated -- Applications, petitions, complaints, orders to show cause, and other traditional initiatory pleadings may be filed with the Commission. Traditional pleadings will be considered requests for agency action, pursuant to Section 63G-4-201, concerning adjudicative proceedings. Answers, protests, and other traditional responsive pleadings may be filed with the Commission and will be considered responses, subject to the requirements of Section 63G-4-204.

1. The following filings are not requests for agency action or responses, pursuant to Sections 63G-4-201 and 63G-4-204:

a. motions, oppositions, and similar filings in existing Commission proceedings;

b. informational filings which do not request or require affirmative action, such as Commission approval.

B. Docket Number and Title --

1. Docket number -- Upon the filing of an initiatory pleading, or upon initiation of a generic proceeding, the Commission shall assign a docket number to the proceeding which shall consist of the year in which the pleading was filed, a code identifying the public utility appearing as applicant, petitioner, or respondent, or generic code designation and another number showing its numerical position among the filings involving the utility or generic proceeding filed during the year.

2. Headings and titles -- Pleadings shall bear a heading substantially as follows:

TABLE

```
Name of Attorney preparing or Signer of Pleading
Address
Telephone Number

     BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH
 ------------------------------------------------------

In the Matter of the          )
Application, petition,        )    Docket Number
etc.-- for complaints,        )
names of both complainant     )    Type of pleading
and respondent should         )
appear                        )

 ------------------------------------------------------
```

C. Form of Pleadings -- With the exception of consumer complaints, pleadings shall be double-spaced and typewritten, which may include a computer or word processor, if the type is easily legible and in the equivalent of at least 12 point type.

Pleadings shall be presented on paper 8-1/2 x 11 inches, shall include the docket number, if known, and shall be dated and time stamped upon receipt by the Commission. Pleadings shall also be presented as an electronic word processing document, an exact copy of the paper version filed, and may be on a 3-1/2" floppy disk or compact disc (CD), using a Commission-approved format. Pleadings over five pages shall be double sided and three-hole punched.

D. Amendments to Pleadings -- The Commission may allow pleadings to be amended or corrected at any time. Initiatory pleadings may be amended without leave of the Commission at any time before a responsive pleading has been filed or the time for filing the pleading has expired. Defects in pleadings which do not affect substantial rights of the parties shall be disregarded.

E. Signing of Pleadings -- Pleadings shall be signed by the party, or by the party's attorney or other authorized representative if the party is represented by an attorney or other authorized representative, and shall show the signer's address. The signature shall be considered a certification by the signer that he has read the pleading and that, to the best of his knowledge and belief, there is good ground to support it.

F. Consumer Complaints --

1. Alternative dispute resolution, mediation procedures -- Before a proceeding on a consumer complaint is initiated before the Commission, the Commission shall try to resolve the matter through referral first to the customer relations department, if any, of the public utility complained of and then to the Division for investigation and mediation. Only after these resolution efforts have failed will the Commission entertain a proceeding on the matter.

2. Request for agency action -- Persons requesting Commission action shall be required to file a complaint in writing, requesting agency action. The Commission shall not act on illegible or incomplete complaints and shall return those complaints to the complainant with instructions for correction or completion.

3. The Division of Public Utilities may participate in a consumer complaint proceeding as determined by the Division or as requested by the Commission.

G. Content of Pleadings --

1. Pleadings filed with the Commission shall include the following information as applicable:

a. if known, the reference numbers, docket numbers, or other identifying symbols of relevant tariffs, rates, schedules, contracts, applications, rules, or similar matter or material;

b. the name of each participant for whom the filing is made or, if the filing is made for a group of participants, the name of the group, if the name of each member of the group is set forth in a previously filed document which is identified in the filing being made;

c. if statute, rule, regulation, or other authority requires the Commission to act within a specific time period for a matter at issue, a specific section of the pleading, located after the heading or caption, entitled "Proceeding Time Period," which shall include: reference or citation to the statute, rule, regulation, or other authority; identification of the time period; and the expiration date of the time period identified by day, month, and year

d. the specific authorization or relief sought;

e. copies of, or references to, tariff or rate sheets relevant to the pleading;

f. the name and address of each person against whom the complaint is directed;

g. the relevant facts, if not set forth in a previously filed document which is identified in the filing being made;

h. the position taken by the participant filing a pleading, to the extent known when the pleading is filed, and the basis in fact and law for the position;

i. the name, address, and telephone number of an individual who, with respect to a matter contained in the filing, represents the person for whom the filing is made;

j. additional information required to be included by Section 63G-4-201, concerning commencement of adjudicative proceedings, or other statute, rule, or order.

H. Motions -- Motions may be submitted for the Commission's decision on either written or oral argument, and the filing of affidavits in support or contravention of the motion is permitted. If oral argument is sought, the party seeking oral argument shall arrange a hearing date with the Commission's Law and Motion calendar and provide at least five days written notice to affected parties, unless the Commission determines a shorter time period is needed.

I. Responsive Pleadings --

1. Responsive pleadings to applications, petitions, or requests for agency action shall be filed in accordance with Section 63G-4-204.

2. Response and reply pleadings may be filed to pleadings other than applications, petitions or requests for agency action.

R746-100-4. Filing and Service.

A. Filing of Pleadings -- Originals of pleadings shall be filed with the Commission in the format described in R746-100-3(C), together with the number of copies designated by the secretary of the Commission.

B. Notice -- Notice shall be given in conformance with Section 63G-4-201.

C. Required Public Notice -- When applying for original authority or rate increase, the party seeking authority or requesting Commission action shall publish notice of the filing or action requested, in the form and within the times as the Commission may order, in a newspaper of general circulation in the area of the state in which the parties most likely to be interested are located.

D. Times for Filing -- Responsive pleadings to requests for agency action shall be filed with the Commission and served upon opposing parties within 30 days after service of the request for agency action or notice of request for agency action, which ever was first received. Motions directed toward initiatory pleadings shall be filed before a responsive pleading is due; otherwise objections shall be raised in responsive pleadings. Motions directed toward responsive pleadings shall be filed within ten days of the service of the responsive pleading. Response or reply pleadings to other than applications, petitions or requests for agency action shall be filed within 15 calendar days and 10 calendar days, respectively, of the service date of the pleading or document to which the response or reply is addressed. Absent a response or reply, the Commission may presume that there is no opposition.

E. Computation of Time -- The time within which an act shall be done shall be computed by excluding the first day and including the last, unless the last day is Saturday, Sunday, or a state holiday, and then it is excluded and the period runs until the end of the next day which is neither a Saturday, Sunday, nor a holiday.

R746-100-5. Participation.

Parties to a proceeding before the Commission, as defined in Section 63G-4-103, may participate in a proceeding including the right to present evidence, cross-examine witnesses, make argument, written and oral, submit motions, and otherwise participate as determined by the Commission. The Division and Committee shall be given full participation rights in any case.

R746-100-6. Appearances and Representation.

A. Taking Appearances -- Parties shall enter their appearances at the beginning of a hearing or when designated by the presiding officer by giving their names and addresses and

stating their positions or interests in the proceeding. Parties shall, in addition, fill out and submit to the Commission an appearance slip, furnished by the Commission.

B. Representation of Parties -- Parties may be represented by an attorney licensed to practice in Utah; an attorney licensed in a foreign state, when joined of record by an attorney licensed in Utah, may also represent parties before the Commission. Upon motion, reasonable notice to each party, and opportunity to be heard, the Commission may allow an attorney licensed in a foreign state to represent a party in an individual matter based upon a showing that local representation would impose an unreasonable financial or other hardship upon the party. The Commission may, if it finds an irresolvable conflict of interest, preclude an attorney or firm of attorneys, from representing more than one party in a proceeding. Individuals who are parties to a proceeding, or officers or employees of parties, may represent their principals' interests in the proceeding.

R746-100-7. Intervention and Protest.

Intervention -- Persons wishing to intervene in a proceeding for any purpose, including opposition to proposed agency action or a request for agency action filed by a party to a proceeding, shall do so in conformance with Section 63G-4-207.

R746-100-8. Discovery.

A. Informal discovery -- The Commission encourages parties to exchange information informally. Informational queries termed "data requests" which have been typically used by parties practicing before the Commission may include written interrogatories and requests for production as those terms are used in the Utah Rules of Civil Procedure. Informal discovery is appropriate particularly with respect to the clarification of pre-filed testimony and exhibits before hearing so as to avoid unnecessary on-the-record cross-examination. The Commission may require an informal exchange of information as it judges appropriate. The Commission, on its own motion or the motion of a party, may require the parties to participate in an informal meeting to exchange information informally and otherwise simplify issues and expedite the proceeding.

B. Formal Discovery -- Discovery shall be made in accordance with Rules 26 through 37, Utah Rules of Civil Procedure, with the following exceptions and modifications.

C. Exceptions and Modifications --

1. If no responsive pleading is required in a proceeding, parties may begin discovery immediately upon the filing and service of an initiatory pleading. If a responsive pleading is required, discovery shall not begin until ten days after the time limit for filing the responsive pleading.

2. Rule 26(b)(4), Utah Rules of Civil Procedure, restricting discovery shall not apply, and the opinions, conclusions, and data developed by experts engaged by parties shall be freely discoverable.

3. At any stage of a proceeding, the Commission may, on its own motion or that of a party, convene a conference of the parties to establish times for completion of discovery, the scope of, necessity for, and terms of, protective orders, and other matters related to discovery.

4. Formal discovery shall be initiated by an appropriate discovery request served on the party or person from whom discovery is sought. Discovery requests, regardless of how denominated, responses to, and transcripts of depositions shall not be filed with the Commission unless the Commission orders otherwise.

5. In the applicable Rules of Civil Procedure, reference to "the court" shall be considered reference to the Commission.

R746-100-9. Prehearing Conference and Prehearing Briefs.

A. Prehearing Conferences -- Upon the Commission's motion or that of a party, the presiding officer may, upon written notice to parties of record, hold prehearing conferences for the following purposes:

1. formulating or simplifying the issues, including each party's position on each issue;

2. obtaining stipulations, admissions of fact, and documents which will avoid unnecessary proof;

3. arranging for the exchange of proposed exhibits or prepared expert or other testimony, including a brief description of the evidence to be presented and issues addressed by each witness;

4. determining procedure to be followed at the hearing;

5. encouraging joint pleadings, exhibits, testimony and cross-examination where parties have common interests, including designation of lead counsel where appropriate;

6. agreeing to other matters that may expedite the orderly conduct of the proceedings or of a settlement. Agreements reached during the prehearing conference shall be recorded in an appropriate order unless the participants stipulate or agree to a statement of settlement made on the record.

B. Prehearing Briefs -- The Commission may require the filing of prehearing briefs which shall conform to the format described in R746-100-3(C) and may include:

1. the issues, and positions on those issues, being raised and asserted by the parties;

2. brief summaries of evidence to be offered, including the names of witnesses, exhibit references and issues addressed by the testimony;

3. brief descriptions of lines of cross-examination to be pursued.

C. Final prehearing conferences -- After all testimony has been filed, the Commission may at any time before the hearing hold a final prehearing conference for the following purposes:

1. determine the order of witnesses and set a schedule for witnesses' appearances, including times certain for appearances of out-of-town witnesses;

2. delineate scope of cross-examination and set limits thereon if necessary;

3. identify and prenumber exhibits.

R746-100-10. Hearing Procedure.

A. Time and Place -- When a matter is at issue, the Commission shall set a time and place for hearing. Notice of the hearing shall be served in conformance with Sections 63G-4-201(2)(b) and 63G-4-201(3)(e) at least five days before the date of the hearing or shorter period as determined by the Commission.

B. Continuance -- Continuances may be granted upon good cause shown. The Commission may impose the costs in connection with the continuance as it judges appropriate.

C. Failure to Appear -- A party's default shall be entered and disposed of in accordance with Section 63G-4-209.

D. Subpoenas and Attendance of Witnesses -- Commissioners, the secretary to the Commission, and administrative law judges or presiding officers employed by the Commission are delegated the authority to sign and issue subpoenas. Parties desiring the issuance of subpoenas shall submit them to the Commission. The parties at whose behest the subpoena is issued shall be responsible for service and paying the person summoned the statutory mileage and witness fees. Failure to obey the Commission's subpoena shall be considered contempt.

E. Conduct of the Hearing --

1. Generally -- Hearings may be held before the full Commission, one or more commissioners, administrative law judges or presiding officers employed by the Commission as provided by law and as the Commission shall direct. Hearings shall be open to the public, except where the Commission closes a hearing for the presentation of proprietary, trade secret or

confidential material. Failure to obey the rulings and orders of the presiding officer may be considered contempt.

2. Before commissioner or administrative law judge -- When a hearing is conducted before less than the full Commission, before an administrative law judge or presiding officer, the presiding officer shall ensure that the taking of evidence and subsequent matters proceed as expeditiously as practicable. The presiding officer shall prepare and certify a recommended decision to the Commission. Except as otherwise ordered by the Commission or provided by law, the presiding officer may schedule and otherwise regulate the course of the hearing; recess, reconvene, postpone, or adjourn the hearing; administer oaths; rule on and receive evidence; cause discovery to be conducted; issue subpoenas; hold conferences of the participants; rule on, and dispose of, procedural matters, including oral or written motions; summarily dispose of a proceeding or part of a proceeding; certify a question to the Commission; permit or deny appeal of an interlocutory ruling; and separate an issue or group of issues from other issues in a proceeding and treat the issue or group of issues as a separate phase of the proceeding. The presiding officer may maintain order as follows:

a. ensure that disregard by a person of rulings on matters of order and procedure is noted on the record or, if appropriate, is made the subject of a special written report to the Commission;

b. if a person engages in disrespectful, disorderly, or contumacious language or conduct in connection with the hearing, recess the hearing for the time necessary to regain order;

c. take appropriate action, including removal from the proceeding, against a participant or counsel, if necessary to maintain order.

3. Before full Commission -- In hearings before the full Commission, the Commission shall exercise the above powers and any others available to it and convenient or necessary to an orderly, just, and expeditious hearing.

F. Evidence --

1. Generally -- The Commission is not bound by the technical rules of evidence and may receive any oral or documentary evidence; except that no finding may be predicated solely on hearsay or otherwise incompetent evidence. Further, the Commission may exclude non-probative, irrelevant, or unduly repetitious evidence. Testimony shall be under oath and subject to cross-examination. Public witnesses may elect to provide unsworn statements.

2. Exhibits --

a. Except as to oral testimony and items administratively noticed, material offered into evidence shall be in the form of an exhibit. Exhibits shall be premarked and parties offering exhibits shall, before the hearing begins, provide copies of their exhibits to the presiding officer, other participants or their representatives, and the original to the reporter, if there is one, otherwise to the presiding officer. If documents contain information the offering participant does not wish to include, the offering party shall mark out, excise, or otherwise exclude the extraneous portion on the original. Additions to exhibits shall be dealt with in the same manner.

b. Exhibits shall be premarked, by the offering party, in the upper right corner of each page by identifying the party, the witness, docket number, and a number reflecting the order in which the offering party will introduce the exhibit.

c. Exhibits shall conform to the format described in R746-100-3(C) and be double sided and three-hole punched. They shall also be adequately footnoted and if appropriate, accompanied by either narrative or testimony which adequately explains the following: Explicit and detailed sources of the information contained in the exhibit; methods used in statistical compilations, including explanations and justifications; assumptions, estimates and judgments, together with the bases, justifications and results; formulas or algorithms used for calculations, together with explanations of inputs or variables used in the calculations. An exhibit offered by a witness shall also be presented as an electronic document, an exact copy of the paper version, filed on a 3-1/2" floppy disk or CD, using a format previously approved by the Commission.

3. Administrative notice -- The presiding officer may take administrative or official notice of a matter in conformance with Section 63G-4-206(1)(b)(iv).

4. Stipulations -- Participants in a proceeding may stipulate to relevant matters of fact or the authenticity of relevant documents. Stipulations may be received in evidence, and if received, are binding on the participants with respect to any matter stipulated. Stipulations may be written or made orally at the hearing.

5. Settlements --

a. Cases may be resolved by a settlement of the parties if approved by the Commission. Issues so resolved are not binding precedent in future cases involving similar issues.

b. Before accepting an offer of settlement, the Commission may require the parties offering the settlement to show that each party has been notified of, and allowed to participate in, settlement negotiations. Parties not adhering to settlement agreements shall be entitled to oppose the agreements in a manner directed by the Commission.

G. Prefiled Testimony -- If a witness's testimony has been reduced to writing and filed with the Commission before the hearing, in conformance with R746-100-3(C), at the discretion of the Commission, the testimony may be placed on the record without being read into the record; if adverse parties shall have been served with, or otherwise have had access to, the prefiled, written testimony for a reasonable time before it is presented. Except upon a finding of good cause, a reasonable amount of time shall be at least ten days. The testimony shall have line numbers inserted at the left margin and shall be authenticated by affidavit of the witness. To aid in the identification of text and the examination of witnesses, written testimony shall have each line of written test numbered consecutively throughout the entire written testimony. Internal charts, exhibits or other similar displays included within or attached to written testimony need not be included within the document's internal line numbering. If admitted, the testimony shall be marked and incorporated into the record as an exhibit. Parties shall have full opportunity to cross-examine the witness on the testimony. Unless the Commission orders otherwise, parties shall have witnesses present summaries of prefiled testimony orally at the hearing. Witnesses may be required to reduce their summaries to writing and either file them with their prefiled testimony or deliver them to parties of record before or at the hearing. At the hearing, witnesses shall read their summaries into the record. Opposing parties may cross-examine both on the original prefiled testimony and the summaries.

H. Joint Exhibits -- Both narrative and numerical joint exhibits, detailing each party's position on each issue, shall be filed with the Commission before the hearing. These joint exhibits shall:

a. be updated throughout the hearing;

b. depict the final positions of each party on each issue at the end of the hearing; and

c. be in conformance with R746-100-3(C).

I. Recording of Hearing and Transcript -- Hearings may be recorded by a shorthand reporter licensed in Utah; except that in non-contested matters, or by agreement of the parties, hearings may be recorded electronically.

1. Unless otherwise ordered by the Commission, scheduling conferences and technical conferences will not be recorded.

2. If a party requests that a scheduling conference or

technical conference be recorded, the Commission may require that party to pay some or all of the costs associated with recording.

J. Order of Presentation of Evidence -- Unless the presiding officer orders otherwise, applicants or petitioners, including petitioners for an order to show cause, shall first present their case in chief, followed by other parties, in the order designated by the presiding officer, followed by the proposing party's rebuttal.

K. Cross-Examination -- The Commission may require written cross-examination and may limit the time given parties to present evidence and cross-examine witnesses. The presiding officer may exclude friendly cross-examination. The Commission discourages and may prohibit parties from making their cases through cross-examination.

L. Procedure at Conclusion of Hearing -- At the conclusion of proceedings, the presiding officer may direct a party to submit a written proposed order. The presiding officer may also order parties to present further matter in the form of oral argument or written memoranda.

R746-100-11. Decisions and Orders.

A. Generally -- Decisions and orders may be drafted by the Commission or by parties as the Commission may direct. Draft or proposed orders shall contain a heading similar to that of pleadings and bear at the top the name, address, and telephone number of the persons preparing them. Final orders shall have a concise summary of the case containing the salient facts, the issues considered by the Commission, and the Commission's disposition of them. A short synopsis of the order, placed at the beginning of the order, shall describe the final resolutions made in the order.

B. Recommended Orders -- If a case has been heard by less than the full Commission, or by an administrative law judge, the official hearing the case shall submit to the Commission a recommended report containing proposed findings of fact, conclusions of law, and an order based thereon.

C. Final Orders of Commission -- If a case has been heard by the full Commission, it shall confer following the hearing. Upon reaching its decision, the Commission shall draft or direct the drafting of a report and order, which upon signature of at least two Commissioners shall become the order of the Commission. Dissenting and concurring opinions of individual commissioners may be filed with the order of the Commission.

D. Deliberations -- Deliberations of the Commission shall be in closed chambers.

E. Effective Date -- Copies of the Commission's final report and order shall be served upon the parties of record. Orders shall be effective the date of issuance unless otherwise stated in the order. Upon petition of a party, and for good cause shown, the Commission may extend the time for compliance fixed in an order.

F. Review or Rehearing -- Petitions for review or rehearing shall be filed within 30 days of the issuance date of the order in accordance with Section 63G-4-301 and served on other parties of record. Following the filing of a petition for review, opposing parties may file responsive memoranda or pleadings within 15 days. Proceedings on review shall be in accordance with Section 54-7-15. A petition for reconsideration pursuant to Section 63G-4-302 is not required in order for a party to exhaust its administrative remedies prior to appeal.

R746-100-12. Appeals.

Appeals from final orders of the Commission shall be to a court of appropriate jurisdiction.

R746-100-13. Ex Parte Communications.

A. Ex Parte Communications Prohibited -- To avoid prejudice, real or perceived, to the public interest and persons involved in proceedings pending before the Commission:

B. Persons Affected -- Except as permitted in R746-100-13(C), no person who is a party, or the party's counsel, agent, or other person acting on the party's behalf, shall engage in ex parte communications with a commissioner, administrative law judge, presiding officer, or any other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process regarding a matter pending before the Commission. No commissioner, administrative law judge, presiding officer, or other employee of the Commission who is, or may reasonably be expected to be, involved in the decision-making process shall request or entertain ex parte communications.

C. Exceptions -- The prohibitions contained in R746-100-13(B) do not apply to a communication:

1. from an interceder who is a local, state, or federal agency which has no official interest in the outcome and whose official duties are not affected by the outcome of the on-the-record proceedings before the Commission to which the communication relates;

2. from a party, or the party's counsel, agent, or other person acting on the party's behalf if the communication relates to matters of procedure only;

3. from a person when otherwise authorized by law;

4. related to routine safety, construction, and operational inspections of project works by Commission employees undertaken to investigate or study a matter pending before the Commission;

5. related to routine field audits of the accounts or the books or records of a company subject to the Commission's accounting requirements not undertaken to investigate or study a matter pending in issue before the Commission in a proceeding;

6. related solely to a request for supplemental information or data necessary for an understanding of factual materials contained in documents or other evidence filed with the Commission in a proceeding covered by these rules and which is made in the presence of or after coordination with counsel.

D. Records of Ex Parte Communications -- Written communications prohibited by R746-100-13(B), sworn statements reciting the substance of oral communications, and written responses and sworn statements reciting the substance of oral responses to prohibited communications shall be delivered to the secretary of the Commission who shall place the communication in the case file, but separate from the material upon which the Commission can rely in reaching its decision. The secretary shall serve copies of the communications upon parties to the proceeding and serve copies of the sworn statement to the communicator and allow him a reasonable time to file a response.

E. Treatment of Ex Parte Communications -- A commissioner, administrative law judge, presiding officer, or an employee of the Commission who receives an oral offer of a communication prohibited by R746-100-13(B) shall decline to hear the communication and explain that the matter is pending for determination. If unsuccessful in preventing the communication, the recipient shall advise the communicator that the communication will not be considered. The recipient shall, within two days, prepare a statement setting forth the substance of the communication and the circumstances of its receipt and deliver it to the secretary of the Commission for filing. The secretary shall forward copies of the statement to the parties.

F. Rebuttal -- Requests for an opportunity to rebut on the record matters contained in an ex parte communication which the secretary has associated with the record may be filed in writing with the Commission. The Commission may grant the requests only if it determines that fairness so requires. If the communication contains assertions of fact not a part of the record and of which the Commission cannot take administrative

notice, the Commission, in lieu of receiving rebuttal material, normally will direct that the alleged factual assertion on proposed rebuttal be disregarded in arriving at a decision. The Commission will not normally permit a rebuttal of ex parte endorsements or oppositions by civic or other organizations by the submission of counter endorsements or oppositions.

G. Sanctions -- Upon receipt of a communication knowingly made in violation of R746-100-13(B), the presiding officer may require the communicator, to the extent consistent with the public interest, to show cause why the communicator's interest in the proceeding should not be dismissed, denied, disregarded, or otherwise adversely affected because of the violation.

H. Time When Prohibitions Apply -- The prohibitions contained in this rule shall apply from the time at which a proceeding is noticed for hearing or the person responsible for the communication has knowledge that it will be noticed for hearing or when a protest or a request to intervene in opposition to requested Commission action has been filed, whichever occurs first.

R746-100-14. Rulemaking.

A. How initiated --

1. By the Commission -- When the Commission perceives the desirability or necessity of adopting a rule, it shall draft or direct the drafting of the rule. During the drafting process, the Commission may request the opinion and assistance of any appropriate person. It may also, in its discretion, conduct public hearings in connection with the drafting. When the Commission is satisfied with the draft of the proposed rule, it may formally propose it in accordance with the Utah Rulemaking Act, 63G-3-301.

2. By others -- Persons may petition the Commission for the adoption of a rule. The petitions shall be accompanied by a draft of the rule proposed. Upon receipt the Commission shall review the petition and draft and if it finds the proposed rule desirable or necessary, it shall proceed as with proposed rules initiated by the Commission, including amending or redrafting. If the Commission finds the proposal unnecessary or undesirable, it shall so notify the petitioner in writing, giving reasons for its findings. No public hearing shall be required in connection with the Commission's review of a petition for rulemaking.

B. Hearing Procedure -- Hearings conducted in connection with rulemaking shall be informal, subject to requirements of decorum and order. Absent a finding of good cause to proceed otherwise, testimony and statements shall be unsworn, and there shall be no opportunity for participants to cross-examine. The Commission shall have the right, however, to freely question witnesses. Public hearings shall be recorded by shorthand reporter or electronically, at the discretion of the Commission, and the Commission may allow or request the submission of written materials.

R746-100-15. Deviation from Rules.

The Commission may order deviation from a specified rule upon notice, opportunity to be heard and a showing that the rule imposes an undue hardship which outweighs the benefits of the rule.

KEY: government hearings, public utilities, rules and procedures

April 1, 2004 **54-1-6**
Notice of Continuation December 3, 2007 **54-4-1**
54-7-17
63G-4

R746. Public Service Commission, Administration.
R746-101. Statement of Rule for the Filing and Disposition of Petitions for Declaratory Rulings.
R746-101-1. Definitions.

A. Terms used in this rule are defined in Section 63-46a-2, except that "agency" shall mean the Utah Public Service Commission.

B. In addition:

1. "Order" shall mean a Commission action of particular applicability which determines the legal rights, duties, privileges, immunities, or other legal interests of one or more specific persons and not a class of persons;

2. "Declaratory Ruling" shall mean an administrative interpretation or explanation of rights, status, interests or other legal relationships under a statute, rule or order; and

3. "Applicability" shall mean a determination of the relationship of a statute, rule or order to a given set of facts.

R746-101-2. Petition Procedure.

A. A person or agency may petition the Commission for a declaratory ruling.

B. The petition shall be addressed to the Commission and directed to the chairman of the Commission.

C. The Commission will stamp upon the petition the date of its receipt.

D. The petitioner shall serve a copy of the petition upon the public utility which could or would be adversely affected by a Commission ruling favorable to the petitioner and shall file with the Commission the certificate of service within five days of the filing of the petition; or petitioner shall include in the petition a statement to the effect that no public utility under the Commission's jurisdiction will be adversely affected by a ruling favorable to the petitioner.

R746-101-3. Petition Form.

A. The petition shall:

1. be clearly designated a request for a declaratory ruling;

2. identify the statute, rule or order to be reviewed;

3. describe adequately the facts and circumstances in which applicability is to be reviewed;

4. describe the reason or need for the review;

5. include an address and telephone number where petitioner can be reached; and

6. be signed by the petitioner or petitioner's duly authorized representative and be notarized.

R746-101-4. Petition Review and Disposition.

A. The Commission shall:

1. review and consider the petition;

2. prepare a declaratory ruling in compliance with the requirements of 63G-4-503(6) and stating:

a. the applicability or non-applicability of the statute, rule or order in question;

b. the reasons for the applicability or non-applicability of the statute, rule or order in question;

c. requirements imposed upon the Commission, petitioner, or a person as a result of the ruling.

B. The Commission may:

1. interview the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take action which the Commission, in its discretion and judgment, deems necessary to provide the petitioner with adequate review and due consideration of the petition.

C. The Commission shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner and each party a copy of the ruling.

D. The Commission shall retain the petition and a copy of the declaratory ruling in its records.

KEY: public utilities, rules and procedures, government hearings
1992 63G-3-102
Notice of Continuation December 5, 2007 63G-4-503(6)

R746. Public Service Commission, Administration.
R746-110. Uncontested Matters to be Adjudicated Informally.
R746-110-1. Requests.

When a request for agency action is filed with the Commission and the party filing the request anticipates and represents in the request that the matter will be unopposed and uncontested, or when the Commission determines that the matter can reasonably be expected to be unopposed and uncontested the request may be adjudicated informally in accord with Section 63G-4-203 and the following:

R746-110-2. Procedure.

The applicant shall file in support of the request sworn statements and documents as may be necessary to establish the pertinent facts of the matter. Thereupon, the Commission may, without hearing, enter its Report and Order in tentative form not to be effective for a minimum of 20 days after its issuance. Provided, however, that in cases where the applicant shall establish good cause, the Commission may waive the 20-day tentative period and issue a final order. Section 63G-4-301 provides for review of final agency orders. The order shall provide that any person may file a protest prior to its effective date and that if the Commission finds the protest to be meritorious, the effective date shall be suspended pending further proceedings. The order shall be served by the applicant upon all persons deemed by the Commission to have an interest or potential interest in the subject matter, and the Commission may require public notice in the form designated by the Commission.

Absent meritorious protest, the order shall automatically become effective without further action.

R746-110-3. Rate Increases.

In cases where a public utility seeks an increase in rates, fees, or charges, informal summary procedure may be invoked if the applicant files in addition to supporting documentation a sworn statement from each person impacted by the increase that such person has no objection to the increase. This provision does not apply to energy-cost pass-through cases, which are provided for in Section 54-7-12(3)(d), nor does it apply to cases brought under Section 54-7-12(6).

KEY: public utilities, rules and procedures
1988 54-4-1
Notice of Continuation June 25, 2003 63G-4-203

R746. Public Service Commission, Administration.
R746-349. Competitive Entry and Reporting Requirements.
R746-349-1. Applicability.

These rules shall be applicable to each telecommunications corporation applying to be a competitor in providing local exchange services or other public telecommunications services in all or part of the service territory of an incumbent telephone corporation.

R746-349-2. Definitions.

As used in these rules:

A. "CLEC" means competitive local exchange carrier.

B. "Division" means the Division of Public Utilities.

C. "GAAP" means generally accepted accounting principles.

R746-349-3. Filing Requirements.

A. In addition to any other requirements of the Commission or of Title 63G, Chapter 4 and pursuant to 54-8b-2.1, each applicant for a certificate shall file, in addition to its application:

1. testimony and exhibits in support of the company's technical, financial, and managerial abilities to provide the telecommunications services applied for and a showing that the granting of a certificate is in the public interest. Informational requirements made elsewhere in these rules can be included in testimony and exhibits;

2. proof of a bond in the amount of $100,000. This bond is to provide security for customer deposits or other liabilities to telecommunications customers of the telecommunications corporation. An applicant may request a waiver of this requirement from the Commission if it can show that adequate provisions exist to protect customer deposits or other customer liabilities;

3. a statement as to whether the telecommunications corporation intends to construct its own facilities or acquire use of facilities from other than the incumbent local exchange carrier, or whether it intends to resell an incumbent local exchange carrier's and other telecommunications corporation's services;

4. a statement regarding the services to be offered including:

a. which classes of customer the applicant intends to serve,

b. the locations where the applicant intends to provide service,

c. the types of services to be offered;

5. a statement explaining how the applicant will provide access to ordinary intralata and interlata message toll calling, operator services, directory assistance, directory listings and emergency services such as 911 and E911;

6. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

7. summaries of the professional experience and education of all managerial personnel who will have responsibilities for the applicant's proposed Utah operations;

8. an organization chart listing all the applicant's employees currently working or that plan to be working in or for Utah operations and their job titles;

9. a chart of accounts that includes account numbers, names and brief descriptions;

10. financial statements that at a minimum include:

a. the most recent balance sheet, income statement and cash flow statement and any accompanying notes, prepared according to GAAP,

b. a letter from management attesting to their accuracy, integrity and objectivity, and that the statements were prepared in accordance with GAAP,

c. if the applicant is a start-up company, a balance sheet following the above principles must be filed,

d. if the applicant is a subsidiary of another corporation, financial statements following the above principles must also be filed for the parent corporation;

11. financial statements to demonstrate sufficient financial ability on the part of the applicant. At a minimum, the applicant's statements must show:

a. positive net worth for the applicant CLEC,

b. sufficient projected and verifiable cash flow to meet cash needs as shown in a five-year projection of expected operations,

c. proof of bond as specified in R746-349-3(A)(2);

12. a five-year projection of expected operations including the following:

a. proforma income statements and proforma cash flow statements,

b. when applicable, a technical description of the types of technology to be deployed in Utah including types of switches and transmission facilities,

c. when applicable, detailed maps of proposed locations of facilities including a description of the specific facilities and services to be deployed at each location;

13. an implementation schedule pursuant to 47 U.S.C. 252(c)(3) of the Telecommunications Act of 1996 which shall include the date local exchange service for residential and business customers will begin;

14. evidence of sufficient managerial and technical ability to provide the public telecommunications services contemplated by the application must be demonstrated by a showing of at least the following:

a. proof of certification in other jurisdictions; and that service is currently being offered in other jurisdictions by the applicant,

b. or the corporation has had at least two years of recent experience in providing telecommunications services related to the type of services the CLEC intends to provide;

15. a statement as to why entry by the applicant is in the public interest;

16. proof of authority to conduct business in Utah;

17. a statement regarding complaints or investigations of unauthorized switching, otherwise known as slamming, or other illegal activities of the applicant or any of its affiliates in any jurisdiction. This statement should include the following:

a. sanctions imposed against the applicant for any of these activities,

b. copies of any written documents related to these complaints, investigations, or sanctions, including: orders or other materials from the FCC or state commissions, any courts, or other government bodies, and any complaint letters or other documents from any non-government entities or persons,

c. the applicant's responses to any of these issues;

18. statement about the applicant's written policies regarding the solicitation of new customers and a description of efforts made by the applicant's to prevent unauthorized switching of Utah local service by the applicant, its employees or its agents.

B. Additional questions relating to the technical, financial, and managerial capabilities of the applicant and public interest issues may be submitted by the Division or other parties in accordance with R746-100-8, Discovery.

R746-349-4. Reporting Requirements.

A. When a telecommunications corporation files a request for negotiation with another telecommunications corporation for interconnection, unbundling or resale, the requesting telecommunications corporation shall file a copy of the request with the Commission.

B. Each certificated telecommunications corporation shall

file an updated chart of accounts by March 31, of each year.

C. Each certificated telecommunications corporation with facilities located in Utah shall maintain network route maps that include all areas where the corporation is providing or offering to provide service in Utah. These maps will, at a minimum, include central office locations, types of switches, hub locations, ring configurations, and facility routes, accompanied by detailed written explanations. These route maps will be provided to the Division or the Commission upon request.

D. Each certificated telecommunications corporation shall file a map with the Division that identifies the areas within the state where the corporation is offering service. The map should separately identify areas being served primarily through resale and by facilities owned by the carrier. This map shall be updated within 10 days after changes to the service territory occur. The map shall be made available for public inspection.

E. At least five days before offering any telecommunications service through pricing flexibility, a telecommunications corporation shall file with the Commission a price list or the prices, terms, and conditions of a competitive contract. Each filing may be made electronically and shall:

1. describe the public telecommunications services being offered;

2. set forth the terms and conditions upon which the public telecommunications service is being offered;

3. list the prices to be charged for the telecommunications service or the basis on which the service will be priced; and

4. be made available to the public through the Division.

F. The certificated CLEC shall file an annual report with the Division on or before March 31 for the preceding year, unless the CLEC requests and obtains an extension from the Commission. The annual report shall contain the following information, unless specific forms are provided by the Division:

1. annual revenues from operations attributable to Utah by major service categories. That information would be provided on a "Total Utah" and "Utah Intrastate" basis. "Total Utah" will consist of the total of interstate and intrastate revenues. "Utah Intrastate" will reflect only revenues derived from intrastate tariffs, price lists, or contracts. Both Total Utah and Utah Intrastate revenues shall be reported according to at least the following classes of service:

a. private line and special access,

b. business local exchange,

c. residential local exchange,

d. measured interexchange,

e. vertical services,

f. business local exchange, residential local exchange and vertical service revenue will be reported by geographic area, to the extent feasible;

2. annual expenses and estimated taxes attributed to operations in Utah;

3. year-end balances by account for property, plant, equipment, annual depreciation, and accumulated depreciation for telecommunications investment in Utah. The actual depreciation rates which were applied in developing the annual and accumulated depreciation figures shall also be shown;

4. financial statements prepared in accordance with GAAP. These financial statements shall, at a minimum, include an income statement, balance sheet and statement of cash flows and include a letter from management attesting to their accuracy, integrity and objectivity and that the statements follow GAAP;

5. list of services offered to customers and the geographic areas in which those services are offered. This list shall be current and shall be updated whenever a new service is offered or a new area is served;

6. number of access lines in service by geographic area, segregated between business and residential customers;

7. number of messages and minutes of services for measured services billed to end users;

8. list of officers and responsible contact personnel updated annually;

9. a report of gross revenue on a form supplied by the Division. This report shall be used in calculating the Public Utility Regulation Fee owed by the CLEC.

G. The annual report and the report of gross revenue filed by a CLEC shall be considered protected documents under the Government Records Access Management Act. The CLEC shall prominently mark in red each report with the word "Confidential."

R746-349-5. Change of Service Provider.

A. All requests for termination of local exchange or intrastate toll service from an existing telecommunications corporation and subsequent transfer to a new carrier must be in compliance with 47 CFR 64.1100 and 1150, 1996, incorporated by this reference.

B. A telecommunications provider will be held liable for both the unauthorized termination of a customer's service with an existing carrier and the subsequent unauthorized transfer to the providers's own service. Telecommunications providers are responsible for unauthorized service terminations and transfers resulting from the actions of their agents. A carrier that engages in the unauthorized activity shall restore the customer's service to the original carrier without charge to the customer. Customer charges during the unauthorized period shall be the lesser of the charges charged by the original provider or the unauthorized provider. Violators may be punished pursuant to 54-7-25 through 54-7-28. The telecommunications provider responsible for the unauthorized transfer shall reimburse the customer or the original carrier for reestablishing service to the customer at the applicable tariff, price list or contract rate of the original carrier.

R746-349-6. CLEC and ILEC Subject to Pricing Flexibility Exemptions.

A. Unless otherwise ordered by the Commission either in the CLEC's or ILEC's certificate proceeding or in a proceeding instituted by the Commission or other party, a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3 is exempt from the following statues and rules. All other rules of the Commission and all other duties of public utilities not specifically exempted by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3. All powers of the Commission not specifically altered by these rules apply to a CLEC or ILEC subject to pricing flexibility pursuant to 54-8b-2.3.

1. Exemptions from Title 54:

54-3-8, 54-3-19 -- Prohibitions of discrimination

54-7-12 -- Rate increases or decreases

54-4-21 -- Establishment of property values

54-4-24 -- Depreciation rates

54-4-26 -- Approval of expenditures

2. Exemptions from Commission rules:

R746-340-2 (D) -- Uniform System of Accounts (47 CFR 32)

R746-340-2 (E) (1) -- Tariff filings required

R746-340-2 (E) (2) -- Exchange Maps

R746-34l -- Lifeline (CLEC with ETC status)

R746-344 -- Rate case filing requirements

R746-401 -- Reporting of construction, acquisition and disposition of assets

R746-405 -- Tariff formats

R746-600 -- Accounting for post-retirement benefits

3. The CLEC will be exempted from the Lifeline rule, R746-341, only until the Commission establishes Lifeline rules that may include the CLEC or until the CLEC begins to provide residential local exchange service. The ILEC will not be exempted from the R746-341. Lifeline Rule.

R746-349-8. CLEC's Obligations with Respect to Provision of Services.

A. The CLEC agrees to provide service within specified geographic areas upon reasonable request and subject to the following conditions:

1. the CLEC's obligation to furnish service to customers is dependent on the availability of suitable facilities on its network at company-designated locations as identified in its annual network route map filing;

2. the CLEC will only be responsible for the installation, operation, and maintenance of services that it provides;

3. the CLEC will furnish service if it is able to obtain, retain and maintain suitable access rights and facilities, without unreasonable expense, and to provide for the installation of those facilities required incident to the furnishing and maintenance of that service;

4. at its option, the CLEC may require payment of construction or line-extension charges by the customer ordering telephone service. Those charges will be in addition to the normal rates and charges applicable to the service being provided;

5. when potential customers are so located that it is necessary or desirable to use private or government right-of-way to furnish service, those potential customers may be required, at the CLEC's option, to provide or pay the cost of providing the right-of-way in addition to any other charges;

6. all construction of facilities will be undertaken at the discretion of the CLEC, consistent with budgetary responsibilities and consideration for the impact on the CLEC's other customers and contractual responsibilities.

R746-349-9. Pricing Flexibility Revocation, Conditions, or Restrictions.

A. The Commission may initiate, or the Division, the Committee, or any interested person may request agency action for the Commission to initiate, a proceeding to revoke or impose conditions or restrictions on a telecommunications corporation's pricing flexibility as authorized by section 54-8b-2.3(8).

1. A request to initiate any proceeding pursuant to this rule shall:

a. Identify the telecommunications corporation or corporations and the public telecommunications service or services whose pricing flexibility the requesting party believes may be subject to revocation or imposition of conditions or restrictions;

b. The basis for the belief; and

c. The relief sought.

2. A request to initiate a proceeding shall be served upon the telecommunications corporation or corporations the requesting party has identified in the request, the Division and the Committee.

3. The telecommunications corporation or corporations against whom the request is directed and any other interested party may respond to the request in accordance with the Commission's procedural rules and standard practices.

4. If a proceeding is initiated, an interested party may request to review confidential information retained by the Commission or the Division that is reasonably related to any potential grounds for revocation, conditioning or restriction under section 54-8b-2.3(8). The party shall certify that it seeks to review that confidential information solely for purposes of determining whether a sufficient factual basis exists to and that the confidential information will not be used for any other purpose or disclosed to any persons who may be able to use the confidential information in business decisions to any party's competitive advantage. Prior to disclosing any confidential information, the Commission or the Division:

a. Shall require the requesting party to execute an appropriate nondisclosure agreement;

b. Shall notify any telecommunications corporation whose company-specific information would be disclosed of the request at least 14 calendar days before the planned date for disclosing such information; and

c. Shall not disclose the company-specific information of any telecommunications corporation that objects to disclosure of its confidential information, if such telecommunications corporation files with the Commission or Division and serves upon other parties an objection to the disclosure of such confidential information within 10 calendar days after receiving the notice required by 349-9.4.b. The Commission shall conduct a hearing at which the telecommunications corporation whose confidential information may be disclosed is given the opportunity to present its objections or request terms and conditions for disclosure and during which other parties may respond to the telecommunications corporation whose confidential information is sought to be disclosed.

5. In any proceeding conducted, the Commission will enter an appropriate protective order to ensure protection for confidential, proprietary, and competitively sensitive information that has been or is provided to the Commission, the Division, the Committee, or another party to the proceeding.

6. Nothing in this rule limits the ability of any party or the Commission to raise or address any issue in any other proceeding or as permitted by law.

KEY: essential facilities, imputation, public utilities, telecommunications

October 11, 2005 54-7-25 through 28
Notice of Continuation March 8, 2007 54-8b-2
54-8b-3.3
63G-4

R746. Public Service Commission, Administration.
R746-400. Public Utility Reports.
R746-400-1. Scope and Applicability.

This rule is promulgated by Section 54-3-21 and applies to public utilities and telecommunications corporations operating in the state of Utah. This rule shall not limit the ability of the Commission, or the Division, to otherwise obtain information from these entities, as provided by other rules or statutes.

R746-400-2. Division Authority.

The Division shall ensure compliance with this rule, prepare and distribute report forms, collect and store the completed reports and information provided by reporting entities subject to in this rule.

R746-400-3. General Definitions.

For purposes of this rule, the terms listed below shall bear the following meanings:

A. "Reporting entity" means a public utility as defined in Section 54-2-1, and a telecommunications corporation as defined in Section 54-8b-2.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities within the Department of Commerce of the State of Utah.

R746-400-4. Reports to the Commission.

A. Report Form Purposes -- The Division shall design report forms that will provide information from reporting entities useful to the Commission and the Division in performing their statutory duties and to administer Commission supervised or directed programs. These forms shall include, but are not limited to, reports used to provide information on a reporting entity's monthly and annual operations, reports concerning an entity's gross revenues used to calculate the public utilities' regulation fee under Section 54-5-2, reports and supplements used to prepare the Commission's annual report to the Governor and Legislature required by Subsection 54-8b-2.5, reports used in the administration the State of Utah Universal Public Telecommunications Service Support Fund, lifeline programs, and telephone relay program.

B. Acceptable Report Forms --

1. The Division shall make report forms available to all reporting entities. Applicable report forms for any report shall be available at least 60 days prior to the date the report is due to be completed by a reporting entity. The Division shall design report forms that clearly state the due date for the report and shall provide, as needed, directions, definitions and other information that will assist a reporting entity in completing a report form.

2. The Division may accept a reporting entity's request that an alternative report form or document, used to furnish information to federal government agencies, other agencies of this or other states, or for the entity's other needs or uses, be used in lieu of all or part of a Commission report form. The Division may require that the alternative report form or document be supplemented with other or additional information in order to obtain the same information as sought in the Utah report form.

C. Report Certification and Corrections -- Each report shall be signed by a responsible officer of the public utility certifying that the report is true and correct. If a reporting entity learns that any portion of a filed report is incorrect, it shall file corrected pages as soon as possible with an explanation of the corrections. The utility shall file an electronic copy of the report, in addition to a paper copy, if the report is prepared electronically.

R746-400-5. Copies of Reports to Federal Government Agencies.

Upon request of the Division, each reporting entity shall provide the Division with a copy of any report filed with the following federal government agencies: Federal Energy Regulatory Commission, Federal Communications Commission, Rural Utility Services, Securities and Exchange Commission, and Surface Transportation Board. The reporting entity shall provide to the Division the requested reports within 10 days of receiving the Division's request.

R746-400-6. Copies of Reports to Shareholders and Audited Financial Reports.

A. Annual Report -- Each reporting entity shall provide the Division with a copy of any annual report sent to shareholders within 10 days of its issuance.

B. Audited Financial Statements -- Upon request of the Division, a reporting entity shall provide the Division with a copy of any audited financial statements, including the opinion statements of the auditor, if the statements are prepared for the reporting entity.

R746-400-7. Confidentiality.

A. Public Information -- Reports filed pursuant to this rule shall be considered public information unless otherwise provided.

B. Protected Documents -- If a reporting entity desires that any report, copy or document, or any portion thereof, required by this rule, be treated in any manner other than as public information, it shall comply with the provisions of the Government Records Access and Management Act, Title 63G, Chapter 2, and provide a written claim of confidentiality and the reasons supporting that claim. If the records, or portions thereof, are classified as protected under GRAMA, the Division shall maintain the confidential reports in a separate file and disclosure to anyone outside of the Commission, its staff, the Division, and the staff of the Committee of Consumer Services, shall only be as allowed by GRAMA.

KEY: public utilities, reports, rules and procedures

October 30, 2002	**54-2-1**
Notice of Continuation June 19, 2007	**54-8b-2**
	54-5-2
	63G-2-101

R746. Public Service Commission, Administration.
R746-500. Americans With Disabilities Act Complaint Procedure.
R746-500-1. Authority and Purpose.

A. This rule is promulgated pursuant to Section 54-1-1 and Section 63G-3-201(2) of the State Administrative Rulemaking Act. The Commission, pursuant to 28 CFR 35.107 adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act.

B. The provision of 28 CFR 35 implements the provisions of Title II of the Americans With Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of that disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity or be subjected to discrimination by a public entity.

R746-500-2. Definitions.

A. "ADA" means Americans With Disabilities Act.

B. "The ADA coordinator" means the Commission Secretary or designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

1. Office of Planning and Budget;
2. Department of Human Resource Management;
3. Division of Risk Management;
4. Division of Facilities Construction Management; and
5. Office of the Attorney General.

D. "CFR" means Code of Federal Regulations, 1991 edition.

E. "Disability" means, with respect to an individual with a disability, a physical or mental impairment that substantially limits one or more of the major life activities of an individual; a record of the impairment; or being regarded as having an impairment.

F. "Individual with a disability," hereafter individual, means a person who has a disability which limits one of his major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by a public entity, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the Commission.

G. "Major life activities" means functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

H. "Public Entity" means a state or local government; a department, agency, special purpose district, or other instrumentality of a state or local government.

R746-500-3. Filing of Complaints.

A. An individual who feels he has been discriminated against by or at the Commission may file a complaint by filing in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 60 days from the date of the alleged act of discrimination. However, a complaint alleging an act of discrimination occurring before the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. Each complaint shall be filed with the Commission's ADA coordinator in writing or in another accessible format suitable to the individual.

C. Each complaint shall:

1. include the individual's name and address;
2. include the nature and extent of the individual's disability;
3. describe the Commission's alleged discriminatory action in sufficient detail to inform the public entity of the nature and date of the alleged violation;
4. describe the action and accommodation desired; and
5. be signed by the individual or by a legal representative of that individual.

D. A complaint filed on behalf of a class or third party shall describe or identify by name, if possible, the alleged victims of discrimination.

R746-500-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure that relevant facts are determined and documented. This may include gathering the information listed in Subsection 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the Commission's staff in determining what action shall be taken on the complaint. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable within the Commission's budget and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the coordinator shall consult with the ADA State Coordinating Committee.

R746-500-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing, or in another suitable format, what action shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability, in writing or other suitable format, why the decision is being delayed and what additional time is needed to reach a decision.

R746-500-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within five working days from the receipt of the decision.

B. The appeal shall be filed in writing with the chairman of the Commission or a designee other than the Commission's ADA coordinator.

C. The filing of an appeal shall be considered as authorization by the individual to allow review by the Commission's chairman, or designee, of information, including information classified as private or controlled.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Commission chairman or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making a decision that would involve:

1. an expenditure of funds which is not absorbable and would require appropriation authority;
2. facility modifications; or
3. reclassification or reallocation in grade; the Commission chairman or designee shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days

after receiving the appeal and shall be in writing or another format suitable to the individual.

G. If the Commission chairman or his designee is unable to reach a decision within the ten working day period the individual shall be notified, in writing or other suitable format, why the decision is being delayed and the additional time needed to reach a decision.

R746-500-7. Classification of Records.

The record of each complaint and appeal, and the written records produced or received as part of those actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, Commission chairman or their designee issues the decision, when a portion of the record that may pertain to the individual's medical condition shall remain classified private as defined under Section 63G-2-302, or as controlled as defined in Section 63G-2-304. Other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator, Commission chairman or designees shall be classified as public information.

R746-500-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures at 28 CFR Subpart F, beginning with Part 35.170; or other state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

1993	**63G-3-201(2)**
Notice of Continuation August 4, 2003	**63G-2-302**
	63G-2-304
	63G-2-305
	67-19-32

R746. Public Service Commission, Administration.
R746-510. Funding for Speech and Hearing Impaired Certified Interpreter Training.
R746-510-1. Authority and Purpose.

A. Authority -- This rule is authorized by 54-8b-10(5)(c) which requires the Public Service Commission to adopt rules in accordance with its responsibilities.

B. Purpose -- The purpose of this rule is to establish uniform administrative requirements for the distribution of funds from the telephone surcharge to be awarded by contract to institutions within the state system of higher education, or to the Division of Services to the Deaf and Hard of Hearing, for training persons to qualify as certified interpreters for deaf, hard of hearing or severely speech impaired persons, pursuant to 54-8b-10(5)(b)(vi).

R746-510-2. Definitions.

A. Definitions -- The meaning of terms used in these rules shall be consistent with the definitions provided in 54-8b-10(1), R746-343-2 or these rules. As used in these rules, the following definitions shall apply.

1. "Certified Interpreter" means a person who is certified as meeting the certification requirements of Title 53A, Chapter 26a, the Interpreter Services for the Hearing Impaired Act.

2. "Contract" means an award of a contractual agreement by the Commission to an eligible recipient.

3. "DaHH Division" means the Division of Services to the Deaf and Hard of Hearing, as created by 53A-24-402.

4. "Recipient" means the legal entity to which a contract is awarded and which is accountable for the use of the funds provided. The recipient is the entire legal entity even if a particular component of the entity is designated in the contract document. The term "recipient" shall also include all subcontractors.

5. "Subcontractor" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, or any other private legal entity, who has a contract with any recipient to perform any portion of the services or work required under a contract. A "subcontractor" does not include suppliers who provide property, including equipment, materials, and printing to a recipient or subcontractor.

R746-510-3. Eligibility Requirements.

A. Eligibility -- An organization is eligible if it is:

1. an institution within the state system of higher education listed in Section 53B-1-102 that offers a program approved by the Board of Regents for training persons to qualify as certified interpreters; or

2. the DaHH Division.

R746-510-4. Proposal and Funding.

A. Process -- The Commission will solicit proposals in conformity to the Utah Procurement Code, Title 63G, Chapter 6, and applicable rules.

1. Eligible organizations shall submit a proposal to request funding.

2. Funds will be disbursed pursuant to the terms of contracts that may be negotiated from the proposals submitted.

3. Contracts, allocations and distributions shall be at the discretion of the Commission.

R746-510-5. Subcontractors.

A. Identification of subcontractors -- A proposal may not include subcontract work covered by this rule unless:

1. the subcontractor is specifically identified in the proposal;

2. the subcontractor complies with all applicable Board requirements;

3. the proposal provides the same information for each subcontractor in the same manner as if the subcontract work was procured directly by the Commission;

4. the proposal includes a copy of all subcontractor contracts; and

5. all subcontractors look solely to recipient for payment.

R746-510-6. Accountability.

A. On-site visits -- In addition to any request for proposal or contact requirements, organizations that seek or have a contract will permit the Commission, it representatives or its designees to visit prior to and during a contract period to evaluate the organization's effectiveness and preparedness.

B. Recipient Report Filing -- A recipient receiving funding shall file an annual report with the Commission on or before July 1 for the preceding year.

C. Report contents -- The annual report shall contain the following information:

1. a budget expenditure report and income source report; and

2. description of its program, which includes, but is not limited to, the number of students and teachers served, the graduation rate and the number of students who become certified as a certified interpreter, employment information for graduating students and those who become certified interpreters;

3. a description of services provided by the recipient pursuant to the contract, and if requested, copies of any and all materials developed; and

4. other information which may be specified in the contract.

R746-510-7. General Administrative Responsibilities.

A. Administration -- A recipient shall comply with applicable statutes, regulations, and the contract, and shall use funds in accordance with those statutes, regulations, and the contract.

B. Supervision -- A recipient shall directly supervise the administration of the contract and funds received.

C. Accounting -- A recipient shall use fiscal control and fund accounting procedures that insure proper disbursement of and accounting for funds received.

R746-510-8. Records.

A. Records -- In addition to any contract requirement,

1. A recipient shall keep records that record:

a. The amount of funds awarded and received under the contract;

b. How the recipient uses the funds;

c. The total cost of the proposal;

d. The share of the costs provided from other sources and identification of such sources;

e. The identity of students participating in a program supported by the contract; and

f. Other records to facilitate an effective audit.

2. A recipient shall keep records that demonstrate its compliance with contract and rule requirements.

3. A recipient is responsible for managing and monitoring each program supported by the contract.

B. Retention and Access Requirements for Records--

1. All financial records, supporting documents, statistical records, and all other records pertinent to a contract shall be retained for a period consistent with Government Records Access and Management Act, Title 63G, Chapter 2 and any term specified in a contract.

2. The Commission or any of its duly authorized representatives or designees, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the contracts, in order to make audits, examinations, excerpts, transcripts, and copies of documents. This right also includes timely and reasonable

access to a recipient's personnel for the purpose of interview and discussion related to these documents and a contract program. The rights of access are not limited to the required retention period, but shall last as long as records are retained.

3. All procurement records shall be retained and disposed of in accordance with the Government Records Access and Management Act, Title 63G, Chapter 2.

R746-510-9. Termination of Awards.

A. Termination of Contracts -- Contracts may be terminated in whole or in part:

1. By the Commission if a recipient fails to comply with the terms and conditions of a contract; or

2. With the consent of the Commission; or

3. Pursuant to the terms of a contract.

4. No provision of this rule shall preclude or prevent the Commission from terminating or modifying a contract for any reason or means not listed in this rule.

R746-510-10. Enforcement.

A. Enforcement -- If a recipient fails to comply with the terms and conditions of a contract, in addition to any remedy provided by law or contract, the Commission may take one or more of the following actions, as the Commission may deem appropriate in the circumstances:

1. Withhold payments pending correction of the deficiency by the recipient or more severe enforcement action by the Commission.

2. Deny the use of contract funds for all or part of the cost of the activity or action not in compliance.

3. Wholly or partly suspend or terminate the current contract.

4. Or any other action which the Commission may determine appropriate.

KEY: speech impaired, hearing impaired, training, interpreters
August 25, 2005 54-8b-10(5)(b)(vi)

R765. Regents (Board of), Administration.
R765-134. Informal Adjudicative Procedures Under the Utah Administrative Procedures Act.
R765-134-1. Purpose.

To provide guidelines and procedures for the application of the Administrative Procedures Act Title 63G, Chapter 4, and associated regulations, to the public institutions of higher education, the State Board of Regents, and the Utah Higher Education Assistance Authority.

R765-134-2. References.

2.1. Section 53B-1-103

2.2. Section 63G-4-102 et seq.

R765-134-3. Definitions.

3.1. "Adjudicative proceeding" means an institutional action or proceeding described in Section 63G-4-102, Utah Code Annotated (1953).

3.2. "Institution" means the State Board of Regents, the Utah Higher Education Assistance Authority, the University of Utah, Utah State University, Weber State University, Southern Utah University, Snow College, Dixie College, the College of Eastern Utah, Utah Valley State College, Salt Lake Community College, and other public post-high school educational institutions as the Legislature may designate to be included in the State System of Higher Education.

3.3. "Party" means the institution or other person commencing an adjudicative proceeding, all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and all persons authorized by statute or institutional rule to participate as parties in an adjudicative proceeding.

3.4. "Person" means an individual, group of individuals, partnership, corporation, association, institution, agency, political subdivision or its units, governmental subdivision or its units, public or private organization or entity of any character.

3.5. "Presiding officer" means the chief executive officer of the institution, or an individual or body of individuals designated by the chief executive officer, by institutional rules, or by statute to conduct an adjudicative hearing.

3.6. "Respondent" means a person against whom an adjudicative proceeding is initiated, whether by an institution or any other person.

R765-134-4. Policy.

4.1. The Utah Administrative Procedures Act, Section 63G-4-102, provides certain exemptions from the Act which affect higher education institutions.

As a consequence of the foregoing statutory provisions adjudicative proceedings relating to the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, to personnel matters for all employees, to contracts for the purchase and sale of goods and services by the institutions, or to actions required by federal statute or regulation to be conducted solely according to federal procedures are not governed by the Utah Administrative Procedures Act.

4.2. Campus traffic and parking - Section 53B-3-106(2), provides that "State institutions of higher education are 'political subdivisions' . . . as these terms are used in Chapter 6, Title 41." relating to Traffic Rules and Regulations. The Utah Administrative Procedures Act applies to "agencies" which as defined in 63G-4-103(1)(b) does not include "any political subdivision of the state, or any administrative unit of a political subdivision of the state." Consequently, the institutions are exempt from the Act in matters involving campus traffic regulations not only where students and employees are involved but also where they impact persons other than students and employees. However, since some aspects of parking and parking lot management may not be covered by Chapter 6, Title 41, hearings relating to parking matters which involve persons other than students and employees may be subject to the Act.

4.3. Informal adjudicative proceedings for certain admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, former employee matters, and other matters not exempted from the Administrative Procedures Act - Adjudicative proceedings, undertaken by an institution, which affect matters other than (a) the evaluation, discipline, employment, transfer, reassignment, or promotion of students and faculty, (b) personnel matters for all employees, (c) campus traffic, (d) contracts for the purchase and sale of goods and services by the institution, or (e) actions required by federal statute or regulation to be conducted solely according to federal procedures, are to be conducted informally according to the procedures set forth in these rules, enacted under the authority of the Utah Administrative Procedures Act. Adjudicative proceedings where parties other than students or employees are involved hereby authorized to be handled informally include, but are not limited to, admissions, residence for tuition purposes, financial aid (including the eligibility for and collection of student loans), campus parking, campus event participation, former student matters, and former employee matters.

4.4. Board findings as to appropriateness of informal adjudicative proceedings - The use of informal procedures as provided in paragraph 4.3 does not violate any procedural requirement imposed by a statute other than Chapter 4, Title 63G; the rights of the parties to the proceedings will be reasonably protected by the informal procedures; the institutions' administrative efficiency will be enhanced by this categorization; and the cost of formal adjudicative proceedings outweighs the potential benefits to the public of a formal adjudicative proceeding.

4.5. Substitution of presiding officer - If fairness is not compromised, an institution may substitute one presiding officer for another during any proceeding. A person who acts as a presiding officer at one phase of a proceeding need not continue as presiding officer through all phases of a proceeding.

4.6. Institutional variances with this rule - Each institution is authorized to adopt its own categorizations and procedures duly enacted under the authority of Chapter 4, Title 63G. Significant variations from the Board's rules and procedures must be approved by the Board.

R765-134-5. Procedures for Informal Adjudicative Proceedings.

5.1. Commencement - An informal adjudicative proceeding shall be commenced by either (a) a notice of institutional action, if proceedings are commenced by the institution; or (b) a request for institutional action, if proceedings are commenced by persons other than the institution.

5.2. Notice - A notice of institutional action or a request for institutional action shall be filed and served according to the following requirements: The notice shall be in writing, signed by a presiding officer if the proceeding is commenced by the institution, or by the person invoking the jurisdiction of the institution, or by his representative, and shall include:

5.2.1. the names and mailing addresses of all respondents and other persons to whom notice is being given;

5.2.2. the institution's file number or other reference number;

5.2.3. the name of the adjudicative proceeding;

5.2.4. the date that the notice of institutional action or the request for institutional action was mailed;

5.2.5. if a hearing is to be held, a statement of the time and place of any scheduled 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;

5.2.6. if a hearing is not scheduled, a statement that a party may request a hearing within 20 days of the mailing of the notice or such other time as prescribed by institutional rule;

5.2.7. a statement of the legal authority and jurisdiction under which the adjudicative proceeding is to be maintained or institutional action is requested;

5.2.8. a statement of the purpose of the adjudicative proceeding, the questions to be decided (to the extent known) or the facts and reasons forming the basis for relief, and the relief or decision sought by the commencing party; and

5.2.9. the name, title, mailing address, and telephone number of the presiding officer.

5.2.10. The institution shall mail the notice of institutional action or the request for institutional action to each party.

5.3. Answer not required - No answer or other pleading responsive to the allegations contained in the notice of institutional action or the request for institutional action need be filed.

5.4. Hearings - The institution shall hold a hearing only if a hearing is required by statute or rule, or if a hearing is permitted by statute and a hearing is requested by a party within 20 days of the mailing of the notice, or such other time as prescribed by institutional rule. "Hearing" includes not only a face-to-face proceeding but also a proceeding conducted by telephone, television or other electronic means.

5.5. Rights of parties to testify, present evidence, and comment on the issues - In any hearing, the parties named in the notice of institutional action or in the request for institutional action shall be permitted to testify, present evidence, and comment on the issues. Participation is normally limited to the named parties.

5.6. Timely notice - Hearings will be held only after timely notice to all parties.

5.7. No discovery or subpoenas - Discovery is prohibited, and the institution may not issue subpoenas or other discovery orders. This prohibition against discovery is not intended to discourage the non-coercive gathering or sharing of information by the parties.

5.8. Access to institution's files - All parties shall have access to information contained in the institution's files and to all materials and information gathered in any investigation, to the extent permitted by law.

5.9. Intervention prohibited - Intervention is prohibited, except that the institution may enact rules permitting intervention where a federal statute or rule requires that a state permit intervention.

5.10. Hearings open to parties - All hearings shall be open to all parties. If the hearing is conducted by telephone, television or other electronic means this criterion is met if each participant in the hearing has an opportunity to participate in, to hear, and, if technically feasible, to see that aspect of the entire proceeding which is significant to the viewer while the proceeding is taking place.

5.11. Order of the presiding officer - Within a reasonable time after the close of the hearing, or after the parties' failure to request a hearing within the time prescribed by the institution's or this rule, the presiding officer shall issue a signed order in writing that states the following:

5.11.1. the decision;

5.11.2. the reasons for the decision;

5.11.3. a notice of any right of administrative or judicial review available to the parties; and

5.11.4. the time limits for filing an appeal or request for review.

5.12. Basis of order - The presiding officer's order shall be based on the facts appearing in the institution's files and on the facts presented in evidence at any hearings.

5.13. Hearings recorded - All hearings shall be recorded at the institution's expense. Any party, at his own expense, may have a reporter approved by the institution prepare a transcript from the institution's record of the hearing.

5.14. Institution's investigative rights - Nothing in this rule restricts or precludes any investigative right or power given to an institution by a statute other than Chapter 4, Title 63G.

5.15. Default - The presiding officer may enter an order of default against a party if that party fails to participate in the adjudicative proceeding. The order shall include a statement of the grounds for default and shall be mailed to all parties. A defaulted party may seek to have the institution set aside the default order according to procedures outlined in the Utah Rules of Civil Procedure. After issuing the order of default, the presiding officer shall conduct any further proceedings necessary to complete the adjudicative proceeding without the participation of the party in default and shall determine all issues in the adjudicative proceeding, including those affecting the defaulting party.

5.16. Institutional review - If a statute or the institution's rules permit parties to any adjudicative proceeding to seek review of an order, the aggrieved party may file a written request for review within ten days after the issuance of the order with the person or entity designated for that purpose by statute or rule. The form and procedures for such a request are set forth in 63G-12-301, Utah Code Annotated (1953).

5.17. Institutional reconsideration - Within ten days after the date that an order on review is issued, or within ten days after the date that a final order is issued for which institutional review is unavailable, any party may file a written request for reconsideration, stating the specific grounds upon which relief is requested. Unless otherwise provided by statute, the filing of the request is not a prerequisite for seeking judicial review of the order or the order on review. The request for reconsideration shall be filed with the institution and one copy shall be sent by mail to each party by the person making the request. The institution president, or a person designated for that purpose, shall issue a written order granting the request or denying the request. If the president or his designee does not issue an order within 20 days after the filing of the request, the request for rehearing shall be considered to be denied.

5.18. Exhaustion of administrative remedies - A party aggrieved may obtain judicial review of final institutional action except in actions where judicial review is expressly prohibited by statue, only after exhausting all administrative remedies available, except that:

5.18.1. a party seeking judicial review need not exhaust administrative remedies if a statute states that exhaustion is not required;

5.18.2. the court may relieve a party seeking judicial review of the requirement to exhaust any or all administrative remedies if the administrative remedies are inadequate, or exhaustion of remedies would result in irreparable harm disproportionate to the public benefit derived from requiring exhaustion.

5.19. Filing for judicial review - A party shall file a petition for judicial review of final institutional action within 30 days after the date that the order constituting the final institutional action is issued. The petition shall name the institution and all other appropriate parties as respondents and shall meet the form requirements specified in Chapter 4, Title 63G.

5.20. Judicial review - The district courts shall have jurisdiction to review by trial de novo all final institutional action resulting from an adjudicative proceeding hereunder, except that final institutional action from proceedings based on a record shall be reviewed by the district courts on the record according to the standards of 63G-4-403(4). The form of the

petition and procedures for this process are set forth in 63G-4-402, Utah Code Annotated (1953).

5.21. Stay and other temporary remedies pending final disposition on judicial review - Unless precluded by statute, the institution may grant a stay of its order, or other temporary remedy during the pendency of judicial review, according to the institution's rules. If the institution denies a stay or denies other temporary remedies requested by a party, the institution's order of denial shall be mailed to all parties and shall specify the reasons why the stay or other temporary remedy was not granted.

5.22. Emergency adjudicative proceedings - An institution may issue an order on an emergency basis without complying with the requirements of Chapter 4, Title 63G if the facts known by the institution or presented to the institution show that an immediate and significant danger to the public health, safety, or welfare exists, and the threat requires immediate action by the institution. In issuing its emergency order, the institution shall:

5.22.1. limit its order to require only the action necessary to prevent or avoid the danger to the public health, safety, or welfare;

5.22.2. issue promptly a written order, effective immediately, that includes a brief statement of findings of fact, conclusions of law, and reasons for the institutions utilization of emergency adjudicative proceedings; and

5.22.3. give immediate notice to the persons who are required to comply with the order. If the emergency order issued under this section will result in the continued infringement or impairment of any legal right or interest of any party, the institution shall commence appropriate adjudicative proceedings in accordance with the other provisions of these rules and Chapter 4, Title 63G.

5.23. Declaratory orders - Any person may file a request for institutional action, requesting that the institution issue a declaratory order determining the applicability of a statute, rule, or order within the primary jurisdiction of the institution to specified circumstances. An institution may issue a declaratory order that would substantially prejudice the rights of a person who would be a necessary party, only if that person consents in writing to the determination of the matter by a declaratory proceeding. After receipt of a petition for a declaratory order, the institution may issue a written order: (a) declaring the applicability of the statute rule, or order in question to the specified circumstances; (b) setting the matter for adjudicative proceedings; (c) agreeing to issue a declaratory order within a specified time; or (d) declining to issue a declaratory order and stating the reasons for its action. The declaratory order shall contain: (a) the names of all parties to the proceeding on which it is based; (b) the particular facts on which it is based; and (c) the reasons for its conclusions.

KEY: colleges, higher education, adjudicative procedures
July 2, 1997 63G-4
Notice of Continuation October 23, 2007

R765. Regents (Board of), Administration.
R765-136. Language Proficiency in the Utah System of Higher Education.
R765-136-1. Purpose.

To provide for the use of languages other than English for communications with non-English speakers, to promote English proficiency, and to encourage enhanced language training in the Utah System of Higher Education.

R765-136-2. References.

2.1. Utah Code 53B-2-106 (Duties and Responsibilities of the President).

2.2. Utah Code 63G-1-201 (Official State Language).

R765-136-3. Policy.

3.1. Official State Language - English is the official language of Utah and is the sole language of the government. Pursuant to Utah Code 63G-1-201 institutions and the Utah Higher Education Assistance Authority (UHEAA) may use languages other than English for communications with non-English speakers in accordance with this rule.

3.2. Communications in Order to Encourage English Proficiency - System institutions and UHEAA may use languages other than English to establish communications with non-English speakers. These communications may explain educational opportunities and institutional or UHEAA policies and procedures in order to encourage and support participation in institutional and UHEAA education, training and other related programs, including English proficiency training. Such communications shall promote the principle that non-English speaking children and adults should become able to read, write, and understand English as quickly as possible.

3.3. Foreign Language Instruction - System institutions and UHEAA shall continue to emphasize and support foreign language instruction as an integral and important function of Utah higher education.

3.4. English as a Second Language Instruction - System institutions and UHEAA shall support, initiate, continue and expand formal and informal programs in English as a Second Language.

KEY: English proficiency, language proficiency, higher education
May 29, 2003 53B-2-106
Notice of Continuation May 27, 2008 63G-1-201

R765. Regents (Board of), Administration.
R765-254. Secure Area Hearing Rooms.
R765-254-1. Purpose.

To provide guidelines for the establishment of institutional policy and standards for secure areas associated with hearing rooms on the campuses of the System.

R765-254-2. References.

2.1. Utah Code Section 53B-2-106 (Duties and Responsibilities of the President).

2.2. Utah Code Section 53B-3-103 (Power of the Board to Adopt Rules and Enact Regulations).

2.3. Utah Code Section 76-8-311.1 (Secure Areas -- Items Prohibited -- Penalty).

2.4. Utah Code Title 76, Chapter 8, Part 7 (Criminal Offenses Against Colleges and Universities).

2.5. Utah Code Section 76-10-306 (Explosive, Chemical, or Incendiary Device and Parts -- Definitions -- Persons Exempted -- Penalties).

2.6. Utah Code Section 76-10-523.5 (Compliance with Rules for Secure Areas).

2.7. Policy and Procedures R120, Bylaws of the State Board of Regents; Section 3.3.3.1. (Responsibility of Presidents).

2.8. Policy and Procedures R253, Campus Discipline.

R765-254-3. Policy.

3.1. Secure Area Associated with a Hearing Room - A USHE institution may establish a secure area to protect a hearing room as prescribed in Utah Code Section 76-8-311.1 and prohibit or control in that area any firearm, ammunition, dangerous weapon, or explosive. Only one area at each institution shall be designated a secure area for the purpose of a hearing room at any given time.

3.2. Size of Secure Area - A secure area associated with a hearing room shall be as large as warranted by the number of individuals involved in the hearing.

3.3. Duration of Secure Area Designation - The restriction of firearms, ammunition, dangerous weapons, or explosives in the secure area associated with a hearing room shall be in effect only during the time the secure area hearing room is in use for hearings and for a reasonable time before and after its use.

3.4. Notice to Invitees - An individual required or requested to attend a hearing in a secure area hearing room shall be notified in writing of the requirements related to entering a secured area associated with a hearing room under this rule and Utah Code Section 76-8-311.1.

3.5. Notice at Each Entrance - At least one notice shall be prominently displayed at each entrance to the secure area associated with a hearing room in which a firearm, ammunition, dangerous weapon, or explosive is restricted.

3.6. Secure Weapons Storage - Provisions shall be made to provide a secure weapons storage area so that persons entering the secure area may store their weapons prior to entering the secure area. The institution shall be responsible for weapons while they are stored in the storage area.

3.7. Reasonable Means to Detect Violations - Reasonable means such as mechanical, electronic, x-ray, or similar devices may be used to detect firearms, ammunition, dangerous weapons, or explosives contained in the personal property of or on the person of any individual attempting to enter a secure area associated with a hearing room.

3.8. Criminal Penalties - Any person who knowingly or intentionally transports into a secure area of an institution any firearm, ammunition, or dangerous weapon is guilty of a third degree felony. Any person violates Utah Code Section 76-10-306 who knowingly or intentionally transports, possesses, distributes, or sells any explosive in a secure area of an institution.

3.9. Institutional Enforcement - As provided in Utah Code Section 53B-3-103(3), an institution may enforce these policies by the assessment of fines, the imposition of probation, suspension, or expulsion from the institution, the revocation of privileges, the refusal to issue certificates, degrees, and diplomas, through judicial process, or by any reasonable combination of these alternatives.

3.10. Compliance with Rules a Defense - It is a defense to any prosecution under Utah Code Section 76-8-311.1 and these rules that the accused, in committing the act made criminal by that section, acted in conformity with the Board's and institution's rules or policies established pursuant to that section.

KEY: secure area hearing rooms
May 29, 2003 **76-8-311.1**
Notice of Continuation May 27, 2008

R765. Regents (Board of), Administration.
R765-605. Utah Centennial Opportunity Program for Education.
R765-605-1. Purpose.

To provide Board of Regents ("the Board") policy and procedures for implementing the Utah Centennial Opportunity Program for Education ("UCOPE," or "program"), UCA 53B-13a, enacted in H.B. 64 by the 1996 General Session of the Utah Legislature, as amended in 1997, 1998 and 2004 by S.B. 40, Cesar Chavez Scholarship Program.

R765-605-2. References.

2.1. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 102.

2.2. Utah Code. Title 53B, Utah System of Higher Education, Chapter 8, Section 106.

2.3. Utah Code. Title 53B, Utah System of Higher Education, Chapter 13a.

2.4. State Board of Regents Policy R512, Determination of Resident Status.

R765-605-3. Effective Date.

These policies and procedures are effective October 16, 2004.

R765-605-4. Policy.

4.1. Program Description - UCOPE is a State supplement to increasingly inadequate grant and work assistance from Federal Government student financial aid programs. In UCA 53B-13a-103(1), the Legislature finds "that the general welfare and well-being of the state are directly related to the educational levels and skills of the citizens of the state, and that limited financial aid for students with demonstrated financial need to help finance costs of attendance at Utah postsecondary institutions is a necessary component for ensuring access to postsecondary education and training as the state enters its second century of statehood". Program funds may be used for either grants or work-study awards to students with demonstrated financial need, with no more than 3.0% of funds allocated to an eligible institution permitted to be used for administrative costs. These are the only purposes for which program funds may be used.

4.2. Award Year - The award year for UCOPE is the twelve-month period designated by an eligible institution, coinciding approximately with the state fiscal year beginning July 1 and ending June 30. An institution may choose to have its Summer enrollment period as either the first or the final enrollment period of the award year for UCOPE purposes.

4.3. Institutions Eligible to Participate - Eligible institutions include the ten institutions of the Utah System of Higher Education, and Utah private nonprofit postsecondary institutions which are accredited by a regional accrediting organization recognized by the Board. These are the only institutions eligible to participate. For purposes of this section, the Board recognizes the Northwest Association of Schools and Colleges. Utah private nonprofit postsecondary institutions accredited by the Northwest Association of Schools and Colleges are Brigham Young University, Westminster College and LDS Business College.

4.4. Students Eligible to Participate - To be eligible for grant or work-study assistance from UCOPE funds, a student must:

4.4.1. Be a resident student of the State of Utah under UCA 53B-8-102 and Board Policy R512 or exempt from paying the nonresident portion of total tuition under Utah Code Section 53B-8-106. For purposes of this section, in addition to the qualification methods set forth in Policy R512, an institution may recognize a student, other than a nonimmigrant alien, as a resident student of the State of Utah if the student graduated from a Utah high school within 12 months of enrolling in the institution.

4.4.2. Be unconditionally admitted and currently enrolled in an eligible institution on at least a half-time basis as defined in Federal regulations applicable to Title IV of the Higher Education Act, in a post-high school program of at least nine months duration, leading to an Associate or Bachelor's degree, or to a diploma or certificate in an applied technology or other occupational specialty. This does not include unmatriculated students or students enrolled in postbaccalaureate programs or in remedial or developmental programs to prepare for admittance to a degree, diploma, or occupational certificate program.

4.4.3. Be maintaining satisfactory progress, as defined by the institution, toward the degree, diploma, or certificate objective in which enrolled.

4.4.4. Meet all requirements of general eligibility for Federal Higher Education Act Part IV Student Financial Aid Programs, as defined in applicable U. S. Department of Education Regulations and the current edition of the Department of Education Student Aid Handbook.

4.4.5. Have a demonstrated need for financial assistance based on the defined Cost of Attendance for the applicable student category at the institution and the expected family contribution as determined by the Federal need analysis process for Higher Education Act Title IV student financial assistance programs, and, to qualify for a Cesar Chavez Scholarship, have a family income less than 200% of the federal poverty guideline issued each year by the U.S. Department of Education for the family size.

4.5. Program Administrator - The program administrator for UCOPE is the Associate Commissioner for Student Financial Aid, or a person designated in a formal delegation of authority by the Associate Commissioner, under executive direction of the Commissioner of Higher Education.

4.6. Determination of Funds Available for The Program - Funds available for UCOPE allotments to institutions may come from specifically earmarked state appropriations, from the statewide student financial aid line item appropriation to the Board, or from other sources such as private contributions. Amounts available for allotment each year are determined as follows:

4.6.1. Consistent with the original purposes of the Statewide Student Financial Aid line item appropriation to the Board, funds appropriated in the line item are applied in the following priority order:

4.6.1.1. First priority is given to matching funds for Utah System of Higher Education institutional awards from the Federal Government for campus-based Federal Perkins Loan Program capital contributions, Federal Supplemental Educational Opportunities Grant Program funds, and partial matching for the Federal College Work Study Program.

4.6.1.2. Second priority is given to providing the required state match for allocations of Leveraging Educational Assistance Partnership Program funds to the State of Utah.

4.6.1.3. All remaining funds are used for UCOPE.

4.6.2. All funds appropriated by specific legislation, or in a specific line item for UCOPE, and any funds from other sources contributed for UCOPE, are added together with funds available for UCOPE pursuant to subsection 4.6.1, to determine the total amount available for the program.

4.7. Allotment of Program Funds To Institutions.

4.7.1. The chief executive officer or chief student services officer of an eligible institution wishing to participate in UCOPE is required to submit to the program administrator a letter of intent to participate by the 15th of May preceding the beginning of the fiscal year (July 1 through June 30), and to include in the letter of intent a certification, subject to audit, of: (a) the total dollar amount of Federal Pell Grant funds awarded

in the most recent completed award year to all students at the institution; and (b) the total dollar amount of Pell Grant funds awarded specifically to students at the institution who were resident students of the state of Utah under UCA 53B-8-102 and Board Policy R512.

4.7.2. Failure to submit its letter of intent with the required Pell Grant information by the specified date constitutes an automatic decision by an eligible institution not to participate in the program for the specific fiscal year.

4.7.3. An eligible institution which submits a qualifying letter of intent by the specified date for a specific fiscal year is a participating institution for that fiscal year.

4.7.4. Allotment of program funds to participating institutions is in the same proportion as the amount of Federal Pell Grant funds received by each participating institution for resident undergraduate students bears to the total of such funds received for such students in the most recently completed award year by all participating institutions.

4.7.5. The program administrator sends official notification of its allotment, together with a program participation agreement, and blank copies of the format for institutional UCOPE reports to be submitted within 30 days of the end of the applicable fiscal year, to the chief executive officer of each participating institution, by the 20th of May preceding the fiscal year.

4.8. Annual Institutional Participation Agreements - To receive UCOPE funds for an award year, a participating institution is required to submit a participation agreement, signed by the chief executive officer, accepting the funds and agreeing to the following terms and conditions:

4.8.1. Use of Program Funds Received by the Institution.

4.8.1.1. The institution may at its discretion place up to, but in no case more than, 3.0% of the total amount of program funds allotted to it for the award year in a budget for student financial aid administrative expenses of the institution, and will expend all funds so budgeted before the end of the state fiscal year for which allotted.

4.8.1.2(a). For the 1996-97 award year and award years 2000-01 and 2001-02, if the institution's allotment for the fiscal year is $100,000 or more, the institution will place at least 30% of the total amount of program funds allotted to it for the award year in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.9 herein). For award years 1997-98 through 1999-2000, if the institution's allotment for the fiscal year is $50,000 or more, the institution will place at least 50% of the total amount of program funds allotted to it in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under FWSP regulations or in jobs provided in accordance with Section 4.9.

4.8.1.2(b). For any award year, the institution may, at its option, place all or any portion of its allotted UCOPE funds in a budget to be used only for payment of work-study stipends to eligible students, for employment during the award year either in jobs provided under Federal Work-Study Program (FWSP) regulations or in jobs provided in accordance with UCOPE Work-Study Program (UWSP) policies (Section 4.0 herein).

4.8.1.2(c). Work-study payments from the institution's UCOPE work-study budget, for jobs under either FWSP regulations or UWSP policies, will be counted as UCOPE awards for purposes of subsection 4.8.2.3.

4.8.1.3. All work-study jobs provided using UCOPE funds from the budget pursuant to this subsection, including those established under FWSP regulations, will be identified to the recipient as UCOPE work-study awards. No portion of the institution's UCOPE allotment may be used as institutional match for Federal Work-Study Program allocations.

4.8.1.4. The institution will place the total remainder of program funds allotted to it for the award year, after amounts budgeted pursuant to subsections 4.8.1.1 and 4.8.1.2, in a budget to be used only for payment of UCOPE grants to eligible students during and for periods of enrollment within the award year. Grants awarded from this budget will be identified to the recipient as Utah Centennial Opportunity Program Grants.

4.8.1.5. The institution may carry forward or carry back from one fiscal year to another up to 10% of the amount of its UCOPE allocation for the fiscal year, or a larger percentage if approved in advance by the UCOPE program administrator, except for any portion budgeted for administrative expenses pursuant to Section 4.8.1.1.

4.8.2. Determination of Awards to Eligible Students.

4.8.2.1. Student Cost of Attendance budgets will be established by the institution, in accordance with Federal regulations applicable to student financial aid programs under Title IV of the Higher Education Act as amended, for specific student categories authorized in the Federal regulations, and providing for the total of costs payable to the institution plus other direct educational expenses, transportation and living expenses.

4.8.2.2. UCOPE work-study or grant amounts will be awarded based on financial aid information and cost of attendance budgets at the time the awards are determined, with first priority given to eligible students who qualify for Federal Pell Grant assistance.

4.8.2.3. The total amount of any UCOPE grant award to an eligible student in an award year will not exceed $5,000, and the minimum UCOPE grant and/or work-study award to an eligible student will be $300, except that:

4.8.2.3(a). the minimum amount may be the amount of funds remaining in the institution's allotment for the award year in the case of the last eligible student receiving a UCOPE grant award for the year; and

4.8.2.3(b). An eligible student whose period of enrollment is less than the normally-expected period of enrollment within the award year (such as two semesters, three quarters, nine months, or 900 clock hours) will be awarded a minimum or maximum grant amount in proportion to the portion of the normally-expected period of enrollment represented by the quarter(s), semester(s) or other defined term for which the student is enrolled.

4.8.2.4. UCOPE Grants and work-study stipends will be awarded and packaged on an annual award year basis. Grants will be paid one quarter or semester at a time (or in thirds, if applicable to some other enrollment basis such as total months or total clock hours), contingent upon the student's maintaining satisfactory progress as defined by the institution in published policies or rules. Work-study wages will be paid regularly as earned, provided the student is continuing to make satisfactory progress.

4.8.2.5. All awards under the program will be made without regard to an applicant's race, creed, color, religion, ancestry, or age.

4.8.2.6. Students receiving financial aid under the program will be required to agree in writing to use the funds received for expenses covered in the student's cost of attendance budget.

4.8.2.6(a). The student's signature on the Free Application for Federal Student Aid satisfies this requirement.

4.8.2.6(b). If the institution determines, after opportunity for a hearing on appeal according to established institutional procedures, that a student used UCOPE grant or work-study funds for other purposes, the institution will disqualify the student from UCOPE eligibility beginning with the quarter, semester, or other defined enrollment period after the one in which the determination is made.

4.8.2.7. In no case will the institution initially award

program grants or work-study stipends or both in amounts which, with Federal Stafford, Ford, and/or Perkins Loans and other financial aid from any source, both need and merit-based, and with expected family contributions, exceed the cost of attendance for the student at the institution for the award year.

4.8.2.8. If, after the student's aid has been packaged and awarded, the student later receives other financial assistance (for example, merit or program-based scholarship aid) or the student's cost of attendance budget changes, resulting in a later overaward of more than $500, the institution will appropriately reduce the amount of financial aid disbursed to the student so that the total does not exceed the cost of attendance.

4.8.3. Unit-Record Information - The institution agrees to cooperate with the program administrator and the Commissioner of Higher Education in development of a unit-record data base on student financial aid and related demographic information, to be used for: (a) research into the effects of student financial aid on students' access to and participation in postsecondary education and training; and (b) planning and modifying the design of the program.

4.8.4. Notification and Reports - The institution will inform the program administrator immediately if it determines it will not be able to utilize all program funds allotted to it for an award year, and will submit an annual report within 30 days after completion of the award year, providing information on individual awards and such other program-relevant information as the board may reasonably require.

4.8.5. Records Retention and Cooperation in Program Reviews - The institution will cooperate with the program administrator in providing records and information requested for any scheduled audits or program reviews, and will maintain records substantiating its compliance with all terms of the participation agreement for three years after the end of the award year, or until a program review has been completed and any exceptions raised in the review have been resolved, whichever occurs first. If at the end of the three year retention period, an audit or program review exception is pending resolution, the institution will retain records for the award year involved until the exception has been resolved.

4.8.6. Dissemination of Employment Opportunity Information - The institution will cooperate with the program administrator in disseminating to its students periodic information provided by the board, regarding employment opportunities determined from marketplace surveys.

4.9. UCOPE Work-Study Program Guidelines - If an institution elects to utilize its UCOPE Work-Study funds for the Utah Work-Study Program (UWSP) instead of in accordance with Federal Work-Study (FWSP) regulations, the following guidelines apply.

4.9.1. The institution may establish designated UWSP institutional jobs on campus or in other institutional operating sites, and administer such jobs in accordance with the following conditions.

4.9.1.1. The job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time institutional employee in the three months immediately prior to establishment of the UWSP institutional job.

4.9.1.2. The hourly wage for the UWSP institutional job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the institution in equivalent positions in the institution's personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.1.3. The institution may pay up to one hundred percent of the hourly wage for the institutional job from its UCOPE work-study budget established pursuant to subsection 4.9.1, provided the total wages paid to a student for the job from UCOPE and any other institutional funds do not exceed the amount of the award to the student for the award year.

4.9.2. The institution may establish designated UWSP school assistant jobs for volunteer tutors, mentors, or teacher assistants, to work with educationally disadvantaged and high risk school pupils, by contract with individual schools or school districts, and administer such jobs in accordance with the following conditions.

4.9.2.1. The hourly wage for the UWSP school assistant job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the school or school district in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.2.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.2 , provided the total wages paid to a student for the job from any source do not exceed the amount of the award to the student for the award year.

4.9.3. The institution may establish designated UWSP community service jobs with volunteer community service organizations certified by the program administrator on advice of the Utah Commission on Volunteers, and administer such jobs in accordance with the following conditions.

4.9.3.1. The hourly wage for the UWSP community service job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.3.2. The institution may pay up to one hundred percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.3, provided the total wages paid to a student for the position from any source do not exceed the amount of the award to the student for the award year.

4.9.4. The institution may establish designated UWSP matching jobs by contract with government agencies, private businesses, or non-profit corporations, and administer such jobs in accordance with the following conditions.

4.9.4.1. The matching job may not involve any religious or partisan political activities, or be with an organization whose primary purpose is religious or political.

4.9.4.2. The matching job must be supplemental to, and not displace, any regularly-established job held by a greater-than-half-time employee in the government agency, private business, or non-profit corporation in the three months immediately prior to establishment of the UWSP matching job.

4.9.4.3. The hourly wage for the UWSP matching job must be no less than the current Federal minimum wage, and no more than the hourly wage paid to regular employees of the organization in equivalent positions in its personnel system, unless the hourly wage of equivalent positions is less than the current Federal minimum wage.

4.9.4.4. The institution may pay up to fifty percent of the hourly wage for the job from its UCOPE work-study budget established pursuant to subsection 4.9.4, provided the total wages (including the employer-paid portion) paid to the student do not exceed the amount of the award to the student for the award year.

4.9.5. Institutions are strongly encouraged to place students, when possible, in UWSP jobs which have a relationship to the student's field of study or training.

4.9.6. If an institution employs students in work-study jobs or other institutional jobs cumulatively over time to a point at which the institution is required to pay employee benefits other than the direct job wages for a UCOPE-funded work-study job, the institution is required to pay the costs of any such required employee benefits from institutional funds other than UCOPE-allotted funds.

4.10. Cesar Chavez Scholarship - The Cesar Chavez Scholarship Program is part of the Utah Centennial Opportunity Program for Education.

4.10.1. Students Eligible - To qualify for a Cesar Chavez Scholarship, a student must:

4.10.1.1. be an eligible student as defined in Section 53B-13a-102; and

4.10.1.3. have a family income less than 200% of the federal poverty guideline for the family size.

4.10.2. Scholarship Amounts - Cesar Chavez Scholarships shall be awarded in the following amounts:

4.10.2.1. if the scholarship recipient is enrolled at a public institution, an amount not to exceed the total of resident tuition and general fee charges; or

4.10.2.2. if the scholarship recipient is enrolled at a private, nonprofit institution, an amount not to exceed the total of tuition and general fee charges, but a scholarship for a student enrolled at a private, nonprofit institution may not exceed the maximum program grant established by the board for the fiscal year.

4.10.3. Allocation of UCOPE Funds to Cesar Chavez Scholarships - The board may allocate up to 10% of the money appropriated to the board for the Utah Centennial Opportunity Program in Education for the Cesar Chavez Scholarship Program.

KEY: financial aid, higher education
September 1, 2005 53B-8-102
Notice of Continuation May 9, 2008 53B-13a

R765. Regents (Board of), Administration.
R765-606. Utah Leveraging Educational Assistance Partnership Program.
R765-606-1. Purpose.

To provide for the Leveraging Educational Assistance Partnership Program and incorporate by reference Federal statutes and regulations governing this program which awards grants to eligible students attending public or private non-profit institutions of higher education or public postsecondary vocational institutions.

R765-606-2. References.

2.1. Utah Code Section 53B-7-103 (Board Designated State Educational Agent for Federal Contracts and Aid).

2.2. Higher Education Act of 1965, as amended (i.e. U.S. Code Title 20, Chapter 28, Subchapter IV, Part F).

2.3. 34 CFR Parts 600, 668 and 692.

2.4. Education Department General Administration Regulations (EDGAR).

R765-606-3. Definitions.

3.1. "Academic Year" - A period as determined by the educational institution in accordance with U.S. Code Title 20, Chapter 28, Subchapter IV, Part F, Section 1088 to :

3.1.1. require a minimum of 30 weeks of instructional time in which a full-time student is expected to complete at least:

3.1.1.1. 24 semester or 24 trimester or 36 quarter hours at an institution that measures program length in credit hours, or

3.1.1.2. 900 clock hours at an institution that measures program length in clock hours.

3.2. "Award Year" - As defined in 34 CFR Part 600.2, namely, the period of time from July 1 of one year through June 30 of the following year.

3.3. "Decentralized Program" - A program which delegates certain functions and sub-allocates LEAP funds to participating institutions for approved awards to LEAP recipients which have been selected by the participating institutions.

3.4. "Full-time Student" - As defined in 34 CFR Part 692.4c, namely, a student carrying a full-time academic workload - other than by correspondence - as measured by both of the following: 1) Coursework or other required activities, as determined by the institution that the student attends or by the State. 2) Tuition and fees normally charged for full-time study by that institution.

3.5. "Full-time Equivalent Students" - A measure of annual instructional output calculated according to the following formulas:

3.5.1. For institutions that measure program length in quarter credit hours, the total number of undergraduate instructional credit hours attributed to the institution's fiscal year divided by 45, plus the total number of graduate instructional credit hours attributed to the institution's fiscal year divided by 30.

3.5.2. For institutions that measure program length in semester credit hours, the total number of undergraduate instructional credit hours attributed to the institutions fiscal year divided by 30, plus the total number of graduate instructional credit hours attributed to the institution's fiscal year divided by 20.

3.5.3. For institutions that measure program length in clock hours, the total number of instructional clock hours attributed to the institution's fiscal year divided by 792.

3.6. "Institution of Higher Education" - As defined in Section 101a of the Higher Education Act of 1965 as amended and 34 CFR Part 600.4.

3.7. "LEAP" - Leveraging Educational Assistance Partnership.

3.8. "Non-Profit" - As defined in 34 CFR Part 77.1 of EDGAR.

3.9. "Participating Institution" - A public or private non-profit institution of higher education or postsecondary vocational institution which has entered into a participation agreement with the UHEAA.

3.10. "Postsecondary Vocational Institution" - As defined in 34 CFR Part 600.6.

3.11. "SLEAP" - Special Leveraging Educational Assistance Partnership

3.12. "Substantial Financial Need" - The difference computed to equal or exceed $200 for an entire academic year between a student's cost of education (including tuition and fees; books and supplies; living expenses such as room and board, personal, miscellaneous, and transportation) and the student's sum of that student's expected family contribution and other student aid to be received.

R765-606-4. Policy.

Part I - Program Administration

4.1 State Board of Regents - The Utah State Board of Regents is the designated state agency for the LEAP program in the state of Utah. The responsibility for administration of the LEAP program has been assigned to the Utah Higher Education Assistance Authority (UHEAA). The Utah LEAP program is administered as a decentralized program.

4.2. Institutional Administration - The President of each institution shall be responsible for the administration of the LEAP program at the institutional level in compliance with Federal and state regulations. The institutional administration of the program may be delegated to the financial aid director or other appropriate institutional officers.

4.3. Fiscal Control and Fund Accounting - UHEAA shall provide fiscal control and fund accounting services for awards made under the program.

4.4. Governing Statutes and Regulations - UHEAA incorporates by reference the following Federal statutes and regulations:

4.4.1. The Higher Education Act of 1965, as amended (i.e. U.S. Code Title 20, Chapter 28, Subchapter IV, Part F);

4.4.2. Final Regulations of the U.S. Department of Education (i.e., 34 CFR Parts 600, 668, and 692); and

4.4.3. Education Department General Administration Regulations (EDGAR)

4.5. State Agency Rules - UHEAA establishes, from time to time, agency rules governing the operation of the Utah LEAP Program in accordance with Federal requirements as referenced in 4.4.1, 4.4.2 and 4.4.3.

4.6. Statutes and Regulations Available - A copy of all Federal and state rules, regulations and statutes directly affecting the Utah LEAP Program can be obtained from UHEAA at the Board of Regents Building, The Gateway, 60 South 400 West, Salt Lake City, Utah 84101-1284.

Part II - Transfer of LEAP Federal Funds

4.7. Transfer of LEAP federal Funds - UHEAA shall:

4.7.1. have a separate account number assigned from the Office of the State Director of Finance for Federal LEAP funds.

4.7.2. ensure that the custodian of Federal funds is the State Treasurer, Utah State Capitol, Salt Lake City.

4.7.3. make disbursements of Federal funds through the State Disbursing Office, Finance Department, Utah State Capitol, Salt Lake City, Utah.

4.7.4. have the receiving and approving officer for Federal funds be the Administrator of the Utah LEAP Program, a UHEAA staff member.

Part III - Allocation of all Federal and State LEAP funds

4.8. Matching of Federal LEAP funds - The state matching funds for the LEAP program are appropriated by the Utah State Legislature to the State Board of Regents for the Utah LEAP program. The Federal funds shall be matched:

4.8.1. at a program level; and

4.8.2. at a level of at least fifty percent state funds to fifty percent Federal funds; and

4.8.3. at a level not less than the average annual aggregate expenditures for the preceding three fiscal years or the average annual expenditure per full-time equivalent student for such years.

4.9. Allocation of Federal and State LEAP Funds - UHEAA shall allocate Federal and state LEAP funds by using a formula based on the number of Utah resident, full-time equivalent students enrolled at each participating institution during the most recently completed fiscal year. The allocation of funds to a participating institution shall be in the same proportion to the total funds available to all Utah institutions as the number of resident, full-time equivalent students at the participating institution is to the total number of resident, full-time equivalent students at all participating institutions.

4.10 Inability of an Institution to Use the Full Allocation - When an institution indicates the inability to use its total allocation of LEAP Program funds in compliance with the guidelines during an award year, UHEAA may reallocate such excess funds to other eligible institutions within the state or provide for the Federal funds to be reallocated to other states through the U.S. Secretary of Education, as provided in the Federal regulations.

4.11. Disbursements - LEAP funds shall be disbursed by UHEAA on an as needed basis or just prior to the start of a new term. For institutions on a semester system this will be twice a year, for institutions on a quarter system this will be three times a year, for institutions operating on an open enrollment system this will be a minimum of three times a year.

4.12. Participation Agreement - The LEAP funds will be released to an institution upon receipt of a Participation Agreement signed by the President of the institution which certifies that the institution will follow all requirements of the program including the following;

4.12.1. The institution will maintain a separate account for Federal and state LEAP funds under this program.

4.12.2. LEAP funds allocated to institutions will be used only for direct financial assistance to students qualifying under the program.

4.12.3. LEAP funds allocated by UHEAA to support this program will not be transferred by the institution to other student aid programs.

4.12.4. LEAP funds not used by an institution will be returned to UHEAA within 30 days of the institution's determination that the funds will not be used and in no case later than 30 days before the end of the award year.

4.12.5. LEAP funds will not be disbursed to the student prior to the time the student completes registration.

4.12.6. The institution will maintain, on a current basis, adequate records sufficient to demonstrate that the program has been administered in accordance with the program requirements, to file a year-end report, to provide the Department of Education and UHEAA access to all records pertinent to the grant program, and provide student rosters to UHEAA upon request.

Part IV - Student Participation

4.13. President or Designee's Responsibilities - The President of each institution or the President's designee, as the institutional administrator shall:

4.13.1. accept applications for Utah LEAP program funds consistent with institutional policy as it relates to applications, and the provisions of the Act and regulations.

4.13.2. determine the student's eligibility for participation in the program on the basis of an annually documented substantial financial need, using the congressional methodology of needs analysis. If eligible applicants exceed available funding levels, awards will start with the most needy students who meet all other application requirements.

4.13.3. ensure that no student shall be excluded from participation in this program on the basis of sex, race, color, age, religion, handicap, national origin, marital status or other constitutionally or legally impermissible grounds.

4.14. Student Eligibility - To be eligible for a grant from the Utah LEAP Program, a student must:

4.14.1. be a Utah Resident as defined in the Utah code 53B-8-102.

4.14.2. be an eligible student as defined in Section 484 of the Higher Education Act of 1965, as amended, and 34 CFR Part 668.7.

Part V - LEAP Annual Limits

4.15. Maximum Annual Limit - A student may receive an LEAP award up to $2,500 for each award year for which the student is eligible for an LEAP award.

4.15.1. The maximum total grant under this program to any full-time student shall be $2,500 in any academic year.

4.15.2. Summer school awards are to be part of the student's $2,500 maximum.

4.15.3. LEAP awards shall be committed and disbursed before the end of the award year.

4.16. Estimated Cost of Attendance - In no case may the amount of the LEAP award exceed the student's estimated cost of attendance for the award period for which the grant is intended, less the sum of that student's expected family contribution and other student aid to be received.

4.17. Less than Full-time Students - At the discretion of the Financial Aid Officer, grant funds may be awarded to less than full-time students. Aid awarded to less than full-time students shall not exceed that proportion of $2,500 which the less than full-time student's academic work load bears to a full academic work load.

Part VI - Record Retention and Reporting

4.18. Record Retention and Reporting - The President of each institution or the President's designee, as the institutional administrator shall:

4.18.1. maintain adequate records to show the utilization of the LEAP program.

4.18.2. submit such reports and information as may be required by the U.S. Department of Education, UHEAA, or the Utah State Board of Regents in connection with the administration of the program.

4.19. Records to be Maintained - In accordance with 34 CFR Part 692.21, UHEAA requires a participating institution to retain complete and accurate records of each LEAP awarded, including the following:

4.19.1. The Federal student aid application;

4.19.2. A record of each disbursement of grant proceeds; and

4.19.3. Any additional records that are necessary to document the accuracy of reports submitted to UHEAA, the Utah State Board of Regents, or the U.S. Department of Education.

4.20. Records Retention - An institution shall retain the records required for each LEAP award for at least five years after the award is disbursed. The U.S. Secretary of Education, or the Administrator of the Utah LEAP program, may, in particular cases, require the retention of records beyond the three-year minimum period.

4.21. Records Organization - The records must be organized in such a way as to permit ready identification of the current status of each grant. The records specified in subsections 4.19.1 through 4.19.3 of this policy may be stored on microfilm or computer format.

4.22. Records Retention Violations - In the event the institution violates the record retention policy as outlined above, the administrator of the Utah LEAP program, may take such corrective action as is deemed necessary.

Part VII - SLEAP Program

4.23. Special Leveraging Educational Assistance

Partnership (SLEAP) Program - SLEAP assists States in providing grants, scholarships, and community service work-study assistance to eligible students who attend institutions of higher education and demonstrate financial need.

4.24. Related Regulations and Definitions - The LEAP regulations and definitions listed above also apply to the SLEAP Program.

4.25. Program Requirements for the State - To receive SLEAP Program funds for any fiscal year, Utah must:

4.25.1. Participate in the LEAP Program;

4.25.2. Meet the requirements in 34 CFR Part 692.60; and

4.25.3. Have a program that satisfies the requirements in 34 CFR Part 692.21(a), (b), (d), (e), (f), (g), (j), and (k).

4.26. Student Eligibility Requirements - To receive assistance under the SLEAP Program, a student must meet the eligibility requirements of the LEAP Program above.

4.27. Requirements to Receive a SLEAP Allotment - To receive an allotment under the SLEAP Program, UHEAA will:

4.27.1. Submit an application in accordance with the provisions in 34 CFR Part 692.20;

4.27.2. Identify the activities in 4.28 for which it plans to use the SLEAP Federal and non-Federal funds;

4.27.3. Ensure that the non-Federal funds used as matching funds represent dollars that are in excess of the total dollars that the State of Utah spent for need-based grants, scholarships, and work-study assistance for fiscal year 1999, including the State funds reported as part of its LEAP Program;

4.27.4. Provide an assurance that for the fiscal year prior to the fiscal year for which Utah is requesting Federal funds, the amount the State expended from non-Federal sources per student, or the aggregate amount the State expended, for all the authorized activities in 34 CFR Part 692.71 will be no less than the amount the State expended from non-Federal sources per student, or in the aggregate, for those activities for the second fiscal year prior to the fiscal year for which the State is requesting Federal funds; and

4.27.5. Ensure that the Federal share will not exceed one-third of the total funds expended under the SLEAP Program.

4.28. Permitted Activities - Utah may use the funds it receives under the SLEAP Program for one or more of the following activities:

4.28.1. Supplement LEAP grant awards to eligible students who demonstrate financial need by:

(a) Increasing the LEAP grant award amounts for students; or

(b) Increasing the number of students receiving LEAP grant awards.

4.28.2. Supplement LEAP community service work-study awards to eligible students who demonstrate financial need by:

(a) Increasing the LEAP community service work-study award amounts for students; or

(b) Increasing the number of students receiving LEAP community service work-study awards.

4.28.3. Award scholarships to eligible students who demonstrate financial need and who:

(a) Demonstrate merit or academic achievement; or

(b) Wish to enter a program of study leading to a career in:

(i) Information technology;

(ii) Mathematics, computer science, or engineering;

(iii) Teaching; or

(iv) Other fields determined by Utah to be critical to the State's workforce needs.

4.29. Administrative Costs - Utah may not use any of the funds it receives under the SLEAP Program to pay any administrative costs.

4.30. Community Service Work-Study Program - When administering its community service work-study program, Utah must follow the provisions in 34 CFR Part 692.30, other than the provisions of paragraph (a)(1) of that section.

KEY: higher education assistance, LEAP, SLEAP
June 30, 2003 53B-7-103
Notice of Continuation May 9, 2008

R765. Regents (Board of), Administration.
R765-993. Records Access and Management.
R765-993-1. Purpose.

To provide policy related to State Board of Regents and Office of the Commissioner records access and management matters pursuant to the Government Records Access and Management Act (GRAMA), Title 63G, Chapter 2, Utah Code Annotated 1953.

R765-993-2. References.

2.1. 63G-2-204(2)
2.2. 63A-12-104(2)
2.4. 53B-16-301 through 305
2.5. The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), 20 U.S.C. Section 1232g
2.6. Policy and Procedures R132, Government Records Access and Management Act Guidelines

R765-993-3. Definitions.

3.1. Classification - "Classification," "classify," and their derivative forms mean determining whether a record series, record, or information within a record is public, private, controlled, protected, or exempt from disclosure under GRAMA Section 201(3)(b).

3.2. Designation - "Designation," "designate," and their derivative forms mean indicating, based on the Records Officer's familiarity with a record series, the primary classification that a majority of records in a record series would be given if classified.

3.3. Exempt records - "Exempt records" are records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation, such as, for higher education institutions, Restricted Sponsored Research/Technology Transfer Records (53B-16-301 through 305); and The Family Educational Rights and Privacy Act of 1974 (Buckley Amendment), 20 U.S.C. Section 1232g.

R765-993-4. Policy Guidelines.

4.1. Records sub units in the Office of the Commissioner - There shall be two records sub units within the Office of the Commissioner: the general State Board of Regents and Office of the Commissioner records sub unit and the student financial aid records sub unit.

4.2. Records Officers - The Commissioner shall appoint a Records Officer for each sub unit to provide for the care, maintenance, scheduling, disposal, classification, designation, access, and preservation of the records of the sub unit.

4.3. Written requests for access to records - All written requests for access to records shall be directed as follows, and shall be made in a format as specified by the cognizant Records Officer:

4.3.1. General Board of Regents and Office of the Commissioner - Requests for records of general Board of Regents and Office of the Commissioner functions shall be directed to the Records Officer of the State Board of Regents and Office of the Commissioner sub unit.

4.3.2. Student Financial Aid - Requests for records of student financial aid functions shall be directed to the Records Officer of the Student Financial Aid sub unit.

4.4. Officers responsible to undertake the various requirements of GRAMA - The various requirements of GRAMA shall be undertaken, as follows:

4.4.1. Designation of records - The Records Officer shall designate each record or record series retained by the sub unit as either public, private, controlled, protected, restricted under 53B-16-302, or otherwise exempt from disclosure under GRAMA 201(3)(b). The Records Officer shall report the designations to state archives. (See GRAMA Section 306.)

4.4.2. Statement of purpose for collecting information - When the Records Officer designates a record as private or controlled, the Records Officer must also file a statement with state archives explaining the purposes for which the records are collected and used. (See GRAMA Section 601.) The Office may use the record only for the purposes listed in that statement. However, sharing of records with other governmental entities is allowed, subject to the restrictions of GRAMA Section 206.

4.4.3. Weighing of privacy and access interests - The Commissioner may weigh privacy interests against access interests and allow access to specific private or protected records if the interests favoring access outweigh the interests favoring restriction of access. (See GRAMA Section 201(5)(b).)

4.4.4. Appeals to the Commissioner - Appeals regarding questions of access to records shall be directed to the Commissioner. (See GRAMA Section 401.)

4.4.5. Fees - If duplication, or compilation of records in a form other than that maintained, is necessary, the cognizant Records Officer may charge a fee to the requestor of the records to cover the actual cost of duplicating or compiling the records. (See GRAMA Section 203(3).)

4.4.6. Access for research purposes - The cognizant Records Officer may make determinations regarding requests for access to records for research purposes, as provided by GRAMA Section 202(3).

4.4.7. Intellectual property rights - The Commissioner shall make determinations regarding the duplication and distribution of materials held by either sub unit and for which the State Board of Regents or Office of the Commissioner owns the intellectual property rights, as permitted by GRAMA Section 201(10).

4.4.8. Sponsored research and technology transfer - The Commissioner may restrict access to portions of technology transfer and sponsored research records for the purpose of securing and maintaining proprietary protection of intellectual property rights, or for competitive or proprietary purposes as a condition of actual or potential participation in a sponsored research or technology transfer agreement, as provided by sections 53B-16-301 through 305.

4.4.9. Written claim of business confidentiality - A Records Officer may accept a written claim of business confidentiality in a form specified by the Records Officer and subject to the Records Officer's review of the claim for reasonableness. (See GRAMA 304(2) and 308.)

4.4.10. Segregation - A Records Officer may choose to segregate records or information within records that a future requester will be entitled to inspect, from records or information within records that the requester will not be entitled to inspect, in order to simplify the segregation process at the time the request for access is made. (See GRAMA Section 307.)

4.5. Appeals of the accuracy or completeness of personal records - An individual may contest the accuracy or completeness of records concerning him or her. Appeals from such decisions are governed by the Utah Administrative Procedures Act (UAPA). Appeals from such decisions shall be conducted informally rather than formally pursuant to R134, Informal Adjudicative Proceedings Under the Utah Administrative Procedures Act. (See GRAMA Section 603.)

4.6. Anonymity of donors and prospective donors - A donor or prospective donor may request anonymity in writing. The written request shall be submitted to a Records Officer and shall be accompanied by a written statement which does not reveal the identity of the donor or prospective donor but which contains any terms, conditions, restrictions, or privileges relating to the donation, which information may not be classified protected by the Office of the Commissioner under GRAMA Section 304(36).

KEY: colleges, higher education, records access, records

management	
July 2, 1997	**63G-2**
Notice of Continuation October 23, 2007	**53B-7**
	53B-16

R784. Regents (Board of), Salt Lake Community College.
R784-1. Government Records Access and Management Act Rules.
R784-1-1. Purpose.

The purpose of the following rules is to provide procedures for access to government records at Salt Lake Community College.

R784-1-2. Authority.

The authority for the following rule is Section 63G-2-204 and Section 63A-12-104 of the Government Access and Management Act (GRAMA), effective July 1, 1992.

R784-1-3. Allocation of Responsibility Within Entity.

Salt Lake Community College (including all campuses, centers, satellites and locations) shall be considered a single governmental entity and the President of Salt Lake Community College shall be considered the head.

R784-1-4. Requests for Access.

(a) Requests for access to government records of Salt Lake Community College should be written and made to the Office of Risk Management in the Administration Building Room 150. Response to a request submitted to other persons within Salt Lake Community College may be delayed.

(b) Students requesting their own records and employees requesting their own official personnel file are exempted from using the written request outlined in this document.

(c) Any appeals of denied requests will be reviewed by an Appeals Officer. Requests for appeal should be written and made to the Institutional Advancement Vice President in the Administration Building Room 011A. See Subsections 63G-2-204(2) and 63G-2-204(6).

R784-1-5. Fees.

A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from Salt Lake Community College by contacting the Office of Risk Management in the Administration Building Room 150. Salt Lake Community College may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00, or if the requester has not paid fees from previous requests.

R784-1-6. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63G-2-203(3). Requests for this waiver of fees may be made to the Office of Risk Management in the Administration Building Room 150.

R784-1-7. Request for Access for Research Purposes.

Access to private or controlled records for research purposes is allowed by Subsection 63G-2-202(8). Requests for access to such records for research purposes may be made to the Office of Risk Management in the Administration Building Room 150.

R784-1-8. Requests for Intellectual Property Records.

Materials, to which Salt Lake Community College owns the intellectual property rights, may be duplicated and distributed in accordance with Subsection 63G-2-201(10). Decisions with regard to these rights will be made by the Office of Risk Management in the Administration Building Room 150. Any questions regarding the duplication and distribution of such materials should be addressed to that office.

R784-1-9. Requests to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to him/her pursuant to Section 63G-2-603. Such request should be made to the Office of Risk Management in the Administration Building Room 150.

R784-1-10. Appeals of Request to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

R784-1-11. Time Period Under GRAMA.

All written requests made to the Office of Risk Management will be responded to according to the time periods specified under GRAMA 63G-2-204. Response to a request submitted to other persons within Salt Lake Community College may be delayed.

R784-1-12. Forms.

(a) The forms described as follows shall be completed by requester in connection with records requests.

(1) SLCC GRAMA Request for Records form is for use by all entities requesting records from SLCC. This form is intended to assist entities, who request records, to comply with the requirements of Section 63G-2-204(1) regarding the contents of a request.

KEY: GRAMA, SLCC
March 18, 1999 63G-2-204
Notice of Continuation March 12, 2004 63G-12-104

R805. Regents (Board of), University of Utah, Administration.
R805-2. Government Records Access and Management Act Procedures.
R805-2-1. Purpose.

The purpose of this rule is to establish procedures for the University of Utah in accordance with the Government Records Access and Management Act.

R805-2-2. Authority.

This rule is authorized by Sections 63G-2-204(2), 63A-12-104(2), and 63G-3-201.

R805-2-3. Allocation of Responsibility.

All departments, institutes, offices, divisions, centers, schools, colleges, related functions and organizations of the University of Utah shall be considered as a single government entity for purposes of this rule.

R805-2-4. University Records Officer Designated.

Pursuant to Section 63A-12-103, the University of Utah shall maintain the appointment of a Records Officer, Marriott Library, University of Utah, 84112.

R805-2-5. Requests for Access.

Requests for access to records held by the University of Utah shall be made in writing. Such requests shall be directed as follows:

(1) Requests for personnel records of University Hospital personnel shall be sent to: Manager, Hospital Human Resources, Room 140, 421 Wakara Way, University of Utah, Salt Lake City, Utah 84112.

(2) Requests for personnel records of all other personnel shall be sent to: Director, Personnel Administration, 101 Annex, University of Utah, Salt Lake City, Utah 84112.

(3) Requests pertaining to financial records of the University shall be sent to: Director, Finance 408 Park Building, University of Utah, Salt Lake City, Utah 84112.

(4) Requests pertaining to student records shall be sent to: University Registrar, 250 N Student Services Building, University of Utah, Salt Lake City, Utah 84112.

(5) All other requests shall be sent to the office of the vice-president responsible for overseeing the division of the University in which the records are maintained. The list of those vice-presidents is as follows.

(a). Vice President, Budget and Planning, 201 Park Building, University of Utah, Salt Lake City, Utah 84112.

(b). Vice President, Health Sciences, 211 Park Building, University of Utah, Salt Lake City, Utah 84112.

(c). Vice President, Academic Affairs, 205 Park Building, University of Utah, Salt Lake City, Utah 84112.

(d). Vice President, Research, 210 Park Building, University of Utah, Salt Lake City, Utah 84112.

(e). Vice President, Student Affairs and Services, 208 Park Building, University of Utah, Salt Lake City, Utah 84112.

(f). Vice President, Development, 304 Park Building, University of Utah, Salt Lake City, Utah 84112.

(g). Vice President, Administrative Services, 209 Park Building, University of Utah, Salt Lake City, Utah 84112.

(h). Vice President, University Relations, 206 Park Building, University of Utah, Salt Lake City, Utah 84112.

R805-2-6. Fees.

As provided by Section 63G-2-203, a fee schedule reflecting actual costs of duplication or compiling a record may be obtained from the Records Officer, 546 Marriott Library, University of Utah 84112.

R805-2-7. Appeals of Access, Classification or Designation Determination.

Appeals of access, classification or designation determinations shall be directed to the Records Officer, 546 Marriott Library, University of Utah 84112, who has been designated by the President to hear appeals on his behalf pursuant to Section 63G-2-401(9).

R805-2-8. Appeals of Denial of Request to Amend Record.

A denial of a request to amend a record may be appealed to the Records Officer, who shall act as the presiding officer for such appeals.

KEY: higher education, GRAMA*, records
1993 63G-2-204(2)
Notice of Continuation July 23, 2003 63A-12-104
63G-3-201

R909. Transportation, Motor Carrier.
R909-75. Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes.
R909-75-1. Adoption of Federal Regulations.

Safety Regulations for Motor Carriers Transporting Hazardous Materials and/or Hazardous Wastes, 49 CFR, Sub-Chapter C, Parts 100 through 180, of the January 7, 2008 (Volume 73, Number 4) edition of the Federal Register, are incorporated by reference. These changes apply to all private, common, and contract carriers by highway in commerce.

KEY: hazardous materials transportation, hazardous substances, hazardous waste, safety regulations
February 8, 2007 72-9-103
Notice of Continuation November 29, 2006 72-9-104

R986. Workforce Services, Employment Development.
R986-300. Refugee Resettlement Program.
R986-300-301. Authority for the Refugee Resettlement Program (RRP) and Other Applicable Rules.

(1) The Department provides services to eligible refugees pursuant to 45 CFR 400 and 45 CFR 401 et seq., (2000) which are incorporated herein by reference.

(2) The Department has opted to operate a Publicly-Administered Refugee Cash Assistance Program as provided in 45 CFR 400.65 through 400.68.

(3) Rule R986-100 applies to RRP.

(4) Applicable provisions of R986-200 apply to RRP except as noted in this rule.

R986-300-302. Refugee Resettlement Program (RRP).

(1) RRP provides resettlement assistance to refugees to help them achieve economic self-sufficiency within the shortest possible time after entry into the state.

(2) Financial and medical assistance may be provided to eligible refugees who meet the time limit requirements of R986-300-306 as funding permits.

(3) Refugee Social Services as identified in 45 CFR 400.154, and 400.155 may be provided to eligible refugees who meet the eligibility requirements of 45 CFR 400.152.

(4) Refugee child welfare services will be provided to refugee unaccompanied minor children in accordance with 45 CFR 400 Subpart H.

(5) The following definitions apply to RRP:

(a) "Appropriate employment" means employment that pays a wage which meets or exceeds the applicable federal or state minimum wage law and has daily and weekly hours customary to the occupation. If the minimum wage laws do not apply, the wage must equal what is normally paid for similar work and in no case less than three-fourths of the minimum wage rate.

(b) "Good cause" for quitting or refusing work can be established if the client shows:

(i) the job is vacant due to a strike, lockout, or other genuine labor dispute;

(ii) the client is required to work contrary to his membership in the union governing that occupation;

(iii) the employment was deemed a risk to the health or safety of the worker;

(iv) the employment lacked Workers' Compensation Insurance; or

(v) the individual is unable to engage in employment for physical reasons or lack of child care or transportation.

R986-300-303. Eligibility, Income Standards, and Amount of Assistance.

(1) An applicant for RRP must provide proof, in the form of documentation issued by the USCIS, of being or having been:

(a) paroled as a refugee or asylee under Section 212(d)(5) of the INA;

(b) admitted as a refugee under Section 207 of the INA;

(c) granted asylum under Section 208 of the INA;

(d) a Cuban or Haitian entrant, in accordance with the requirements of 45 CFR Part 401;

(e) certain Amerasians from Vietnam who are admitted to the United States as immigrants pursuant to Public Law 100-202 and Public Law 100-461;

(f) a victim of trafficking;

(g) admitted for permanent residence, provided the individual previously held one of the statuses listed in (a) through (f) of this section; or

(h) admitted for permanent residence under Special Immigrant Visas and provided benefits under federal law and in accordance with that federal law.

(2) The following aliens are not eligible for assistance:

(a) an applicant for asylum unless otherwise provided by federal law;

(b) humanitarian parolees;

(c) public interest parolees; and

(d) conditional entrants admitted under Section 203(a)(7) of the INA.

(3) Refugees who are parents or specified relatives with dependent children must meet the eligibility and participation requirements, including cooperating with ORS to establish paternity and establish and enforce child support, of FEP or FEPTP and will be paid financial assistance under one of those programs.

(4) An applicant for RRP who voluntarily quit or refused appropriate employment without good cause within 30 calendar days prior to the date of application is ineligible for financial assistance for 30 days from the date of the voluntarily quit or refusal of employment. If the applicant is living with a spouse who is ineligible, the income and assets of the ineligible refugee will be counted in determining eligibility but the amount of financial assistance payment will be made as if the household had one less member.

(5) Refugees who are 65 years of age or older will be referred to SSA to apply for assistance under the SSI program.

(6) Income and asset eligibility and the amount of financial assistance available is determined under FEP rules, R986-200-230 through R986-200-240.

(7) If an otherwise eligible client demonstrates an urgent and immediate need for financial assistance, payment will be made on an expedited basis.

R986-300-304. Participation Requirements.

(1) All refugee applicants must comply with the assessment and employment plan requirements in R986-200-207 and R986-200-209. If the assessment cannot be completed or an employment plan negotiated and signed within the time proscribed because of a lack of staff with language skills, the application shall be approved, the assessment completed, and employment plan negotiated and signed as soon as possible.

(2) The goal of participation is to promote family economic self-sufficiency and social adjustment within the shortest possible time after entrance to the state to enable the family to become self-supporting through the employment of one or more members of the family.

(3) If a refugee claims an inability to participate due to incapacity, medical proof is required. Acceptable proof is the same as for FEP found in R986-200-202(3).

(4) Refugees 65 years of age or older, blind, or disabled, are exempt from the work participation requirements of FEP or RRP.

(5) In addition to the requirements of an employment plan as found in R986-200-210, a refugee must, as a condition of receipt of financial assistance:

(a) unless already employed full time, register for work with the Department within 30 days of receipt of refugee financial assistance and participate in employment activities as required by the Department and other appropriate agency providing employment services;

(b) accept any and all offers of appropriate employment as determined by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee; and

(c) participate in any available social adjustment service or targeted assistance activities determined to be appropriate by the Department or the local resettlement agency which was responsible for the initial resettlement of the refugee.

(6) Education and training cannot be approved for any program which cannot be completed within one year.

(7) English language instruction funded under RRP must be provided concurrently with employment or employment

related services.

R986-300-305. Failure to Comply with an Employment Plan.

(1) If a client who is required to participate in an employment plan consistently fails to show good faith in complying with the employment plan, the client is required to participate in the conciliation process in R986-200-212 with the following exceptions:

(a) the client will be disqualified for a period of three months for the first occurrence and six months for the second occurrence. There is no reduction period as provided in R986-200-212(2),

(b) because the disqualification period for RRP is a time certain, there is no trial period as provided in R986-200-212(2), (3), and (5).

(2) If there are other household members included in the financial assistance payment, the other household members will continue to receive assistance provided those household members are eligible and complying with all of the requirements of RRP.

(3) If eligible, food stamps and medical assistance may be continued for the person who is disqualified for failure to comply with the requirements of an employment plan.

R986-300-306. Time Limits.

(1) Except as provided in paragraph (2) below, a refugee is eligible for financial assistance only during the first eight months after entry into the United States, regardless of when the refugee applies for financial assistance. Financial assistance cannot be paid for any months prior to the date of application.

(2) An asylee's entry date is determined to be the date that the individual was granted asylum in the United States.

(3) The date of entry for a victim of trafficking is established by the certification date.

KEY: refugee resettlement program
May 20, 2008 **35A-3-103**
Notice of Continuation September 14, 2005

R994. Workforce Services, Unemployment Insurance.
R994-106. Combined Wage Claims.
R994-106-101. General Definition.

(1) An unemployed individual who has covered employment and wages in more than one state has the right to combine such wages and employment in the base period of one state if the combination will provide benefits for which he could not otherwise qualify or will increase the benefits for which he qualifies in a single state. He must file a combined wage claim if he is eligible to do so rather than claim extended benefits. If he wishes, he has the right to reject a combined-wage claim and file against a state in which he is separately eligible or to cancel the combined wage claim and file no claim.

(2) Section 35A-4-106 provides for the wages earned in other states to be used to qualify for unemployment insurance benefits. Many of the restrictions and guidelines contained in this Rule are required by federal regulations which govern the establishment and payment of unemployment benefits when a claimant uses wages earned outside the state or his residence at the time the claim is filed. If there is a conflict between this Rule and federal regulations, the federal regulations will be followed.

R994-106-102. Definition of Terms.

(1) Agent State.

Agent state means any state in which an individual files a claim for benefits from another state or states.

(2) Combined-Wage Claim.

A combined-wage claim is a claim using wage credits from more than one state.

(3) Combined-Wage Claimant.

A claimant who uses wages from more than one state to establish monetary entitlement to benefits.

(4) Commuter.

Commuter applies to each individual who, immediately before becoming unemployed, customarily commuted from his residence in the agent state to his work in the liable state.

(5) Employment and Wages.

"Employment" refers to all services which are covered under the unemployment compensation law of a state, whether expressed in terms of weeks of work or otherwise. "Wages" refers to all remuneration for such employment.

(6) Interstate Benefit Payment Plan.

This is the plan approved by the Interstate Conference of Employment Security Agencies under which benefits are payable to unemployed individuals absent from the state (or states) in which benefit credits have been accumulated.

(7) Liable State.

The liable state is the same as the paying state.

(8) Paying State.

The paying state is the state against which the claimant is filing that actually issues the benefit checks.

(9) State.

State includes the states of the United States of America, the District of Columbia, the Commonwealth of Puerto Rico and the Virgin Islands.

(10) State Agency.

The agency which administers the unemployment compensation law of a state.

(11) Transferring State.

A transferring state is one in which the claimant had covered employment and wages within the base period of the paying state that can be transferred to establish a claim. Wages from more than one transferring state can be used to establish a combined wage claim.

R994-106-103. Restrictions on Combined Wage Claims.

(1) Any unemployed individual who has had covered employment in two or more states may file a combined wage claim unless:

(a) he has established a claim under any other state;

(b) the benefit year has not ended;

(c) and there are still unused benefit rights.

(2) Unused Benefit Rights.

A claimant will not be considered to have unused benefit rights on a prior claim if:

(a) all benefits have been exhausted, or

(b) benefits have been denied by a seasonal restriction, or

(c) benefits have been postponed for an indefinite period or for the remainder of the benefit year. A disqualification imposed because a claimant is not able to work or available for work is not considered a denial of a claimant's benefit rights.

(3) Use of Wages in Paying State.

If an individual files a combined wage claim, all wages and employment in all states during the base period of the paying state must be included. He may not select a paying state but must accept that state which is determined under Subsection 35A-4-106(1)(b) and R994-106-103.

(4) Base Period for a Combined Wage Claim.

The base period for a combined wage claim means the "base period" as established in the paying state.

(5) Benefit Year for a Combined Wage Claim.

The benefit year for a combined wage claim is the "benefit year" of the paying state.

R994-106-104. Determining the Paying State.

(1) The paying state is determined in order of the following priorities:

(a) the state in which the combined wage claim is filed if the claimant qualifies for unemployment benefits in that state on the basis of combined employment and wages; then

(b) if the claimant is not monetarily eligible for benefits in the state of filing, a combined wage claim must be considered against the state of last employment. If the claimant is not eligible under the law of this state, the state of next-to-last employment must be considered and so on through the order in which the work was performed; or

(c) if the combined wage claim is filed in Canada, the paying state will be that state where the combined wage claimant was last employed in covered employment among the states with wages used in determining the claim.

(2) The claimant has the right to claim against another state or states if he receives an ineligible monetary determination. If such request is made in accordance with instructions from the local office or within the appeal period of the monetary determination, a claim may be taken against another state(s) with the effective date of the original claim.

R994-106-105. Responsibilities of Utah when Transferring Wages.

(1) Transfer of Employment and Wages.

Wages earned in Utah in covered employment during the base period of the combined wage claim filed by a claimant will be promptly transferred to the paying state. Such wages will be transferred without restriction as to their use for determination and benefit payments under the provisions of the Paying state's law.

(2) Employment and Wages Not Transferrable.

Wages earned in Utah will not be transferred if the employment and wages have been:

(a) transferred to any other paying state and have not been returned unused, or which have been previously used as the basis of a monetary determination which establishes a benefit year; or

(b) canceled or are otherwise unavailable to the claimant as a result of a monetary determination made prior to its receipt of the request for transfer, if such determination has become final or is subject to a pending appeal. If the appeal is finally

decided in favor of the combined wage claimant, any employment and wages determined eligible for use as wages in establishing monetary eligibility will be transferred to the paying state and any necessary redetermination will be made by the paying state.

R994-106-106. Non-Monetary Eligibility Determination.

When a combined wage claim is filed, the law and eligibility requirements of the paying state apply, except the paying state may not determine an issue that has previously been adjudicated by the transferring state. Such exception will not apply, however, if the transferring state's determination of the issue resulted in making the combined-wage claim possible as provided in 20 CFR 616.8 of the Code of Federal Regulations.

R994-106-107. Conditions for Withdrawing a Combined Wage Claim.

(1) Because of the complexities of combining wages, disadvantages to the claimant may not be apparent until after the monetary determination has been received. Therefore, the claimant has the right to withdraw from a combined wage claim anytime before the monetary determination of the paying state becomes final. The claimant's right to withdraw is inherent and need not be supported by reasons, provided that he either:

(a) repays in full any benefits paid to him, or

(b) authorizes the state against which he will claim benefits to withhold and forward to the former paying state a full repayment of benefits.

R994-106-108. Notification and Appeals.

(1) Notification.

A combined wage claimant will receive a monetary determination notice from the paying state once the wage information from all states is received. If a transferring state refuses to transfer wages because the wage credits were canceled under a disqualification or because the work was not covered, the claimant will be sent an appealable determination by the transferring state.

(2) Protests and Appeals.

A protest of a monetary determination from a transferring state or from a paying state other than Utah may be made. If the paying state or any transferring state makes any decision, monetary or nonmonetary, adverse to a combined-wage claimant's interest, the claimant is entitled to a written determination and the right to request reconsideration or an appeal in accordance with the law of the state making the determination.

KEY: unemployment compensation, interstate compacts
May 30, 2008 35A-4-106(1)
Notice of Continuation May 17, 2007

R994. Workforce Services, Unemployment Insurance.
R994-201. Definition of Terms in Employment Security Act.
R994-201-101. General Definitions and Acronyms.

These definitions are in addition to those defined in Section 35A-4-201.

(1) "Act" means the Utah Employment Security Act, and amendments thereto.

(2) "ALJ" means Administrative Law Judge.

(3) "Appeals Unit" means the Division of Adjudication.

(4) "Board" means the Workforce Appeals Board.

(5) Bona Fide Employment.

"Bona fide employment" is work that was an authentic employer-employee relationship entered into in good faith without fraud or deceit rather than an arrangement or report of non-existent work calculated to overcome a disqualification.

(6) Burden of Proof.

The person or party with the burden of proof has the initial responsibility to show that the fact at issue is worthy of belief. Burden of proof requires proof by a preponderance of the evidence.

(7) Calendar Quarter.

"Calendar quarter" means the period of three consecutive calendar months ending on March 31, June 30, September 30, or December 31.

(8) Claimant.

"Claimant" is an individual who has filed the necessary documents to apply for unemployment insurance benefits.

(9) Covered Employment.

"Covered employment" is employment subject to a state or federal unemployment insurance laws, including laws pertaining to railroad unemployment and active military duty, which can be used to establish monetary eligibility for unemployment insurance benefits. Active military duty in a full time branch of the US military service can be used, even if the duty was for less than 90 days, if the claimant was released under honorable conditions. National Guard or Reserve wages may be used only if the claimant has completed 90 consecutive days of active duty and if the claimant was released under honorable conditions.

(10) Department.

"Department" means the Department of Workforce Services.

(11) Employment Center.

"Employment Center" means an office operated by the Department of Workforce Services.

(12) Itinerant Service.

"Itinerant service" means a service maintained by the Department of Workforce Services at specified intervals and at designated outlying points within the jurisdiction of an Employment Center.

(13) Local Office.

"Local office" means the Employment Center of any geographical area.

(14) MBA means maximum benefit amount.

(15) Person.

"Person" includes any governmental entity, individual, corporation, partnership, or association.

(16) Preponderance of Evidence.

A "preponderance of evidence" is evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it, more convincing to the mind, evidence that best accords with reason or probability. Preponderance means more than weight; it denotes a superiority of reliability. Opportunity for knowledge, information possessed and manner of testifying determines the weight of testimony.

(17) Separation.

"Separation" means curtailment of employment to the extent that the individual meets the definition of "unemployed" as stated in Subsection 35A-4-207(1) with respect to any week.

(18) Transitional Claim.

A claim that is filed effective the day after the prior claim ends provided an eligible weekly claim was filed for the last week of the prior claim.

(19) WBA means weekly benefit amount.

KEY: unemployment compensation, definitions
November 16, 2004 35A-4-201
Notice of Continuation May 20, 2008

R994. Workforce Services, Unemployment Insurance.
R994-202. Employing Units.
R994-202-101. Legal Status of Employing Unit.

The Department may, on its own motion or if requested by an employer, determine the legal status of an employing unit according to Section 35A-4-313. The determination will be based on the best available information including, registration forms, income tax returns, financial and business records, regulatory licenses, legal documents, and information from the involved parties. The Department's determination is subject to review and may be appealed according to rule R994-508, Appeal Procedures.

(1) Sole Proprietorship.

A sole proprietorship is a legal entity that is owned by one person. The sole proprietor is the employing unit. The sole proprietor's services are exempt from coverage pursuant to rule R994-208-103(1)(j). The services of the sole proprietor's spouse, children under age 21, and parents are also exempt from coverage and those individuals are not entitled to unemployment benefits based on the compensation received from the sole proprietorship.

(2)(a) Partnership.

A partnership is a legal entity composed of two or more persons or business entities that agree to contribute money, assets, labor, or skills to the business. Each partner shares the profits, losses, and management of the business and each partner is personally and wholly liable for debts of the partnership. The partners are the employing unit. The partners' services are exempt from unemployment coverage and the partners are not entitled to unemployment benefits based on compensation received from the partnership pursuant to rule R994-208-103(1)(k). The services of individuals working for partners who are also employing units, such as corporations and limited liability companies, are subject or exempt as provided under this section. If partners are added or one or more of the partners leaves the partnership, the partnership ceases to exist at the point the change occurs, and any remaining entity becomes a different employing unit. Rule R994-205-102(2) explains partnership family employment that is exempt from coverage.

(b) Limited Partnership (LP) and Limited Liability Partnership (LLP).

LPs and LLPs are partnerships composed of one or more general partners and one or more limited partners. The general partners manage the business and share fully in its profits and losses. Limited partners share in the profits of the business, but their losses are limited to the extent of their investment. The general partner's services are exempt from unemployment insurance coverage, but any payments to limited partners for services are wages subject to unemployment insurance contributions pursuant to rule R994-208-103(1)(k).

(3) Corporation.

A corporation is a legal entity granted a state charter legally recognizing it as a separate entity having its own rights, privileges, and liabilities distinct from those of its owners. The corporation is the employing unit. Corporations must be registered and in good standing with the Utah Department of Commerce. If a corporation is not registered or is in an expired status, it is treated as a proprietorship or partnership, based upon the best available information.

(a) A change of ownership occurs when the corporate assets are sold or transferred according to successorship rule R994-303-106. The sale, transfer, or exchange of corporate stock is not a change of ownership except as specified in rule R994-304-101.

(b) All individuals employed by the corporation, including officers, are employees of the corporation. Compensation to officers who perform services for the corporation is considered wages. Payments to corporate employees of dividends, loans, property distributions, and expenses in lieu of compensation for services may be reclassified as wages by the Department based on the extent and significance of the work performed and the documentation supporting the payments. This applies to all corporations regardless of income tax reporting status. The following payments to officers are generally not wages:

(i) directors fees that are uniform and reasonable;

(ii) reimbursement for expenses that are reasonable and documented. The Department may require receipts to document questionable expenses. Section R994-208-103, Payments Not Considered to be Wages, contains additional information on expense reimbursements;

(iii) loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; or

(iv) documented return of an investment where the officer has loaned money to, or invested money in, the corporation.

(4) Limited Liability Company (LLC).

A LLC is a legal entity that combines the limited liability protection of a corporation and the pass through taxation of a sole proprietorship or partnership. The LLC is the employing unit and must be registered and in good standing with the Utah Department of Commerce. A LLC that is not registered or is in an expired status is treated as a proprietorship or partnership, based upon the best available information.

(a) Members of a LLC are not employees of the LLC and payments to them are exempt from coverage provided all of the following criteria are met;

(i) the LLC is registered and in good standing with the Utah Department of Commerce,

(ii) the member has a bona fide ownership interest in the LLC and is listed in the articles of organization, the operating agreement, or federal income tax return, and

(iii) the LLC has not been approved by the IRS as an "eligible entity" which allows the LLC to file with the IRS as a corporation. Approval may be obtained by the IRS accepting a written application or form, or the IRS accepting the filing of a U.S. Corporation Income Tax Return or U.S. Income Tax Return for an S Corporation.

(b) A nonmember manager is an employee of the LLC.

(c) Legal actions, subpoenas, and court orders will be issued to a member or manager of record.

(d) Assessments and liens will be issued in the name of the LLC, and not against the members of record.

(5) Trust.

A trust is a legal entity created to transfer property to a trustee to hold and manage for the benefit and profit of designated persons. The trust is the employing unit. A trust instrument or document must exist in order for the entity to be recognized. If the trustee does not independently perform fiduciary and management responsibilities, the trustee is an employee of the trust.

(6) Association.

An association is an entity consisting of a collection or organization of persons or other legal entities that have joined together for a certain common objective. Payments to association members for business services such as accounting and maintenance are considered wages unless the member is exempt as an independent contractor as defined in Section R994-204-301, Independent Contractor. Documented expense reimbursements paid to members are not wages.

(7) Joint Venture.

A joint venture is a legal entity consisting of a one-time grouping of two or more persons or legal entities in a business undertaking. Unlike a partnership, a joint venture does not entail a continuing relationship among the parties. The exempt or employment status of proprietors, partners, LLC members, or corporate officers is not lost in the formation of the joint venture.

(8) Estate.

An estate is a legal entity consisting of the property of a living, deceased, or bankrupt person. An estate established to manage a person's business is the employing unit. The executor or administrator of the estate is not considered to be an employee of the estate.

R994-202-102. Temporary Help Company.

(1) "Temporary help services" means services consisting of an organization:

(a) recruiting and hiring its own employees;

(b) finding other organizations that need the services of those employees;

(c) assigning those employees to perform work at or services for the other organizations to support or supplement the other organizations' workforces;

(d) providing assistance in special work situations such as employee absences, skill shortages, seasonal workloads, or to perform special assignments or projects with a definite ending date; and

(e) customarily attempting to reassign the employees to other organizations when they finish each assignment by a definite ending date.

(2) A company that provides all or substantially all of the client company's regular workers with no restrictions or limitation on the duration of employment, is not the employing unit for those workers and, therefore, the client company is considered the employing unit subject to all of the provisions of the Employment Security Act as an employer, unless the company is registered as a Professional Employer Organization (PEO) pursuant to the provisions of Section 58-59-101 et seq.

(3) Individuals and services exempt under the Act based on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of the temporary help services company or the services are rendered by an employee of the temporary help services company.

R994-202-103. Common Paymaster.

(1) A common paymaster relationship exists when two or more related corporations concurrently employ the same individual and one of the corporations compensates the individual for the concurrent employment. The Internal Revenue Service will recognize a common paymaster if the closely related corporations satisfy all of the following criteria:

(a) each related company is a corporation;

(b) there must be at least 50 percent common ownership of stock or interest, or there must be at least 50 percent common officers in the related companies, or 30 percent of the employees work for all of the related companies;

(c) the reporting for any calendar year must be consistent with FUTA annual 940 reporting; and

(d) the employee(s) must be performing concurrent service for some or all of the related companies.

(2) The Department does not allow or recognize common paymaster reporting as of March 1, 2005, even if the relationship is approved by the Internal Revenue Service. Each corporation is required to register with the Department and obtain a Utah Employer Registration Number.

R994-202-104. Payrolling.

(1) Payrolling is defined as the practice of an employing unit paying wages to the employees of another employer or reporting those wages on its payroll tax reports. Generally an employee is reportable by the employer:

(a) who has the right to hire and fire the employee;

(b) who has the responsibility to control and direct the employee; and

(c) for whom the employee performs the service.

(2) Payrolling is not allowed. Exceptions to this provision are contained in the Professional Employer rule R994-202-106 and the Temporary Help Services rule R994-202-102.

R994-202-105. Constructive Knowledge of Work Performed.

(1) If an individual is hired to perform or assist in performing the work of an employee, the individual is deemed to be employed by the employer provided the employer had actual or constructive knowledge of the work performed by the individual. This is the case even when the individual who is hired to assist the employee is hired or paid by that employee.

(2) The employer must report and pay contributions for all actual and constructive employment.

(3) An employer has actual or constructive knowledge if:

(a) The employer knows or should have known the employee hires an assistant;

(b) The employer knows or should have known that the employee's duties require an assistant;

(c) The employer instructs the employee to perform duties without an assistant, but the employee disregards the instructions and hires an assistant. If the employer becomes aware of the situation and takes no action to discontinue the current or future working relationship between the employee and the assistant, the assistant is considered to be employed by the employer for both the past and future work performed. However, if the employer takes action to prevent the employee from hiring an assistant in the future, then the assistant is not considered employed by the employer for the work already performed; or

(d) The employer gives the employee the option of hiring an assistant. The employee hires an assistant but does not inform the employer of the hire.

R994-202-106. Professional Employer Organizations (PEO).

(1) Definitions.

(a) "Agent" means an individual or organization authorized to act on behalf of an employer.

(b) "Client" or "client company" means a person or entity that enters into a professional employer agreement with a PEO.

(c) "Employment agreement" means a written contract between the PEO and each individual hired to provide services to a client.

(d) "Organization" means any individual, partnership, corporation, limited liability company, association, or any other form of legally recognized entity.

(e) "Professional employer agreement" means a written contract by and between a client and a PEO.

(f) "Professional employer organization" or "PEO" means any organization engaged in the business of providing professional employer services. "Employee leasing company" is a term also used to describe a PEO.

(g) "Professional employer services" means the service of entering into a relationship with a client as defined in the PEO Registration Act, Section 58-59-101 et seq.

(2) Before the employer is considered to be a PEO, it must comply with the requirements of Sections 58-59-101 through 58-59-503 of the Utah Code. In the absence of such compliance, the Department may choose to hold each "client company" as the employing unit.

(3) A PEO that fails to qualify as an employer under Sections 58-59-101 through 58-59-501 of the PEO Registration Act and as an employing unit under 35A-4-202(1), is considered to be the agent of the client company. The client's workers are not the employees of the agent. The client company remains the employer of its workers for all purposes of the Employment Security Act. An employee not covered by a professional employment agreement or employment agreement remains the employee of the client company.

(4) Individuals and services exempt under the Act based

on the nature of service or due to a specific exemption continue to be exempt if the individual is an employee of a PEO or the services are rendered by an employee of a PEO. The exemptions for domestic and agricultural services contained in Section 35A-4-205 are taken into consideration for the PEO's clients in the aggregate, and not on an individual client basis.

(5) A PEO cannot elect reimbursable coverage even if the client company could independently qualify as a reimbursable employer.

(6) Reporting Requirements.

(a) Any entity conducting business as a PEO must register with the Department and complete all forms and reports required by the Department. Licensing penalties for failure to file reports or pay contributions are outlined in Section 58-59-501 et. seq. of the PEO Registration Act:

(b) Within 30 days of the effective date of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of the contract;

(ii) the client's name and address;

(iii) the client's Federal Employer Identification Number (FEIN) if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department; and

(iv) the client's principal business activity.

(c) Within 30 days of the termination of a contract with a client, a PEO must submit to the Department the following information:

(i) the effective date of contract termination;

(ii) the client's name and address; and

(iii) the client's FEIN if registered with the IRS, and the client's Employer's Utah Registration Number if previously registered with this Department.

(7) The Department may directly contact a PEO or its clients in order to conduct investigations, audits and otherwise obtain information necessary for the administration of the Employment Security Act as permitted by Section 35A-4-312.

(8) The rules pertaining to "payrolling" in R994-202-104 do not apply to a PEO that is in compliance with the PEO Registration Act, Sections 58-59-101 through 58-59-501.

KEY: unemployment compensation, employment
July 1, 2007 35A-4-202(1)
Notice of Continuation May 20, 2008

R994. Workforce Services, Unemployment Insurance.
R994-208. Wages.
R994-208-101. Definition of Wages.

Section 35A-4-208 defines "wages".

(1) Wages means all payments for employment including the cash value of all payments in any medium other than cash, except payments excluded under Subsection 35A-4-208(5) and Section R994-208-103. Wages are subject to the Act only if they are for services that are employment as defined in Section 35A-4-204.

(2) Wages are reportable by the employer in the quarter actually paid or constructively paid. Wages are constructively paid, as defined in 26 CFR 31.3301-4. Wages are constructively paid when they are credited to the account of or set apart for a worker so that they may be drawn upon by the worker at any time without any substantial limitation or restriction as to the time, manner, or condition upon which the payment is to be made. The payment must also be within the worker's control and disposition.

(3) Wages subject to the Act are taxable only to the extent of the yearly taxable wage base. Wages in excess of the taxable wage base are reportable but not taxable. The taxable wage base applies to wages paid to each worker in any calendar year and is established pursuant to Subsection 35A-4-208(2). The employer must report all wages subject to the Act and pay contributions on the taxable wages as specified in the contribution payment due date Section R994-302-102.

R994-208-102. Wages Include.

Wages include the following:

(1) Payments for Personal Services.

All payments by the hour, by the job, piece rate, salary, or commission are wages.

(2) Meals, Lodging and Other Payments in Kind.

Meals, lodging and payments in kind that are furnished to promote good will, to attract prospective workers, or as part of payment for services are wages except as noted in Section R994-208-103. The value of these payments in kind shall be determined as follows:

(a) If a cash value for payments in kind is agreed upon in any contract, the amount agreed upon shall be deemed to be the value of such payments in kind provided such value equals or exceeds the cash value prevailing under similar conditions in the locality.

(b) If a cash value for payments in kind is not agreed upon, the Department will determine the value on the basis of the cash value prevailing under similar conditions in the locality.

(3) Tips and Gratuities.

(a) Tips or gratuities accounted for by the worker to the employer are wages whether paid directly to the worker by the customer or by the employer.

(b) If a worker's only payment for services is tips or tips are used to supplement the worker's regular wages in order to meet the applicable federal or state minimum wage laws, the Department will determine the worker's wages. However, such wages will not be less than the applicable federal or state minimum wage.

(c) Wages also include any allocated tips calculated by the employer.

(4) Payment for Services of Worker with Equipment.

When a worker is hired with equipment, the fair value of the payment for the worker's services, as distinguished from an allowance for use of equipment, if specified in the contract of hire, will be considered "wages". The Department will determine the worker's wages based on the prevailing wages for similar work under comparable conditions if the contract of hire does not specify the worker's wages, or the value of wages agreed upon in the contract of hire is not a fair value.

(5) Vacation Pay

Vacation payments made by the employer during the employment relationship or upon termination of employment are wages.

(6) Sick Pay.

(a) Sick payments made by the employer during the employment relationship or upon termination of employment are wages.

(b) Sick pay is not wages if paid after the end of six calendar months following the calendar month the employee last worked for the employer.

(c) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of the sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party is liable for the unemployment contributions due on these payments. These provisions regarding sick pay are established to comply with the Federal Unemployment Tax Act (FUTA) provisions. For reference, see Internal Revenue Code Section 3306(b).

(7) Bonuses and Gifts.

(a) Bonuses and gifts to employees are wages unless the value is so small that it would be unreasonable for the employer to account for it. The value of benefits such as store discounts, discounts at company cafeterias, and company picnics are not wages.

(b) The value of gifts such as a turkey, ham, or other item of nominal value at Christmas or other holidays are not wages. However, gifts of cash, gift certificates, or similar items that can easily be exchanged for cash, are wages.

(8) Stock Payments.

Payments of stock for services performed are wages. The value of the stock is its cash value at the time of transfer to the employee.

(9) Stock options included as wages.

There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options. There are wage implications only with respect to non-qualified stock options.

(a) Non-qualified stock options are defined by the Internal Revenue Service as those that do not meet all of the requirements of the Internal Revenue Code to qualify as incentive stock options or employee stock purchase plan options.

(b) A worker may receive an option as payment for services. The granting of the option is not wages.

(c) A worker exercises an option when the worker takes an action to buy the stock.

(d) The difference between the exercise price, the value of stock at the time the option is issued, and the fair market value of the stock at the time of exercise is called the spread. The amount of a positive spread at the time the option is exercised is wages.

(10) Contributions to Deferred Compensation Plans.

Contributions by either the employer or the worker to deferred compensation plans including 401(k) plans are wages. For reference, see Section 3306(r) of the Internal Revenue Code.

(11) Residual Payments.

Performers in the television, radio and motion picture industry may receive additional payments, termed "residuals" by the industry as a result of the re-use of a recording or the re-showing of a film or taped television production. Residuals are deferred compensation and are wages if the performer, at the time of the original performance, was an employee.

(a) Residual payments are reportable by the employer in the quarter they are paid.

(b) Residual payments are reportable by the claimant only for the weeks in which the service was originally performed.

(c) Since residual payments are reportable as wages by the employer and the claimant, they can be used for the purpose of establishing a monetary base for future unemployment benefits. These wages can be used to purge a disqualification made under the Utah Employment Security Act only if the original work was performed subsequent to the disqualification.

R994-208-103. Wages Do Not Include.

Wages do not include any of the following:

(1) Meals and Lodging Furnished for Employer's Convenience.

Meals and Lodging provided by an employer to a worker shall not be considered wages if excluded from the definition of wages by the Internal Revenue Service under the following conditions:

(a) they are provided at the employer's place of business; and

(b) in the case of lodging, the worker must accept the lodging as a condition of employment; and

(c) they are provided for the employer's convenience. Meals and lodging will be considered to be for the convenience of the employer if there is a good business reason for providing them including:

(i) To have workers available at all times or for emergency calls.

(ii) Workers have a short meal period.

(iii) Adequate eating and lodging facilities are not otherwise available.

(2) Expense Reimbursement.

Expense reimbursements are excluded from the definition of wages based upon the existence of an accountable plan as defined in Section 62 of the Internal Revenue Code.

(a) An accountable plan is any reimbursement or other expense allowance arrangement, including per diem allowances providing for ordinary and necessary expenses of traveling away from home, that meets all of the following requirements:

(i) There is a business connection. The expenses are paid or incurred by the worker in connection with the performance of services as an employee of the employer;

(ii) Information sufficient to substantiate the amount, time, and business purpose of the expenses must be submitted to the employer; and

(iii) Excess reimbursement amounts, as a result of advances, are returned to the employer.

(b) A nonaccountable plan is any plan that fails to meet any one or more of the requirements of an accountable plan. Reimbursements in a nonaccountable plan are wages.

(3) Insurance Premiums Paid by the Employer.

Insurance premiums for health or life insurance paid by the employer for workers generally or a class of workers are not wages under Subsection 35A-4-208(5)(a).

(4) Sick Pay Excluded as Wages.

The following provisions regarding sick pay are established to comply with the FUTA provisions contained in Section 3306(b)of the Internal Revenue Code.

(a) Sick pay is not wages if paid after the end of six months following the calendar month the worker last worked for the employer.

(b) Sick pay, if paid by a third party such as an insurance company, is not wages reportable by the employer unless the third party notifies the employer of such sick pay payments. If the third party does not notify the employer of the sick pay payments, the third party will be liable for the unemployment contributions due on these payments.

(c) Payments made to a worker that are received under a workers' compensation law are not wages.

(5) The Employer's Share of the Social Security Tax and Medicare Tax.

(6) Retirement Plan Payments Made by the Employer.

Payments made by the employer to retirement plans described in Section 3306(b)(5) of the Internal Revenue Code are not wages.

(7) Training Allowances.

Employment-related training allowances such as payments for expenses necessary for school including tuition, fees, books and travel expenses are not wages. However, payments for services performed as part of the training, such as on-the-job training, are wages.

(8) Corporate Payments Not Considered Wages.

(a) The following payments are not considered wages:

(i) Directors fees paid to directors of a corporation for attending Board of Directors' meetings, reviewing and studying reports, and establishing general company policies. Director services do not include managerial services or other services that are part of the routine activities of a corporation;

(ii) Distributions made to shareholders based on stock ownership;

(iii) Reimbursement for expenses that are reasonable and documented;

(iv) Loans supported by notes and reasonable repayment schedules. Non-interest bearing notes that are payable upon demand with no payment schedule are considered wages if the officer is performing services for the corporation; and

(v) Documented returns of investment where the officer has loaned or invested money in the corporation.

(b) If the amount of compensation, if any, paid to a corporate officer is inadequate given the nature, duration, frequency or significance of the service performed by that officer, other payments made to the officer may be reclassified as wages if there is a lack of documentation or insufficient document to support those other payments. This applies to all corporations regardless of income tax reporting status.

(9) Finder or Referral Fees.

A fee paid to an individual for the referral of a potential customer, provided that the transaction is in the nature of a single or infrequent occurrence and does not involve a continuing relationship with the person paying the fee, is not wages.

(10) Payments to Sole Proprietors.

Payments to sole proprietors, whether draws or payment for services, are not wages. The sole proprietor is the employing unit rather than an employee.

(11) Payments to Partners.

Payments to partners, including draws and payment for services, are not wages. The partners are the employing unit rather than employees. However, payments to limited partners are wages because they do not have the same rights and responsibilities as general partners.

(l2) Supplemental Unemployment Benefits (SUB).

Supplemental Unemployment Benefits are not wages if they meet the requirements specified in Revenue Rulings 56-249, 58-128 and 60-330. Because of the complexity of the factors involved, employers should request a declaratory ruling from the Department on their specific SUB plan. The factors required are as follows:

(a) the benefits are paid only to unemployed former employees of the employer who is providing the SUB Plan;

(b) eligibility for benefits depends on the meeting of prescribed conditions subsequent to the termination of the employment relationship with the employer;

(c) eligibility for benefits is contingent upon the former employee's maintaining eligibility for state unemployment insurance benefits;

(d) the benefits ultimately paid are not attributable to the performance of any service by the recipient for the employer during the period of unemployment;

(e) no employee has any vested right, title, or interest in or to the funds from which the SUB benefits will be paid; and

(f) the funds for the payment of SUB benefits is either established as an independent trust fund administered by trustees, or as a separate account on the employer's general accounting records.

(13) Stock Options Excluded From Wages.

(a) There are three kinds of stock options: incentive stock options, employee stock purchase plan options, and non-statutory, also known as non-qualified stock options.

(b) Incentive Stock Options and Employee Stock Purchase Plan Options are defined by the Internal Revenue Code.

(c) Payments resulting from the exercise of an incentive stock option or an employee stock purchase plan option, or from any disposition of stock acquired by exercising such an option are not wages.

(14) Stipends.

Stipend payments are not wages. Stipends are payments in lieu of actual expense reimbursements that help cover the costs of expenses such as transportation, meals, and supplies associated with training, schooling, meetings, and volunteer activities.

KEY: unemployment compensation, wages
July 1, 2007 35A-4-208
Notice of Continuation May 20, 2008