

R23. Administrative Services, Facilities Construction and Management.**R23-2. Procurement of Architect-Engineer Services.****R23-2-1. Purpose and Authority.**

(1) In accordance with Subsection 63-56-208(2), this rule establishes procedures for the procurement of architect-engineer services by the Division.

(2) The statutory provisions governing the procurement of architect-engineer services by the Division are contained in Title 63, Chapter 56 and Title 63A, Chapter 5.

R23-2-2. Definitions.

(1) Except as otherwise stated in this rule, terms used in this rule are defined in Section 63-56-105.

(2) The following additional terms are defined for this rule.

(a) "Board" means the State Building Board established pursuant to Section 63A-5-101.

(b) "Director" means the Director of the Division, including, unless otherwise stated, his duly authorized designee.

(c) "Division" means the Division of Facilities Construction and Management established pursuant to Section 63A-5-201.

(d) "Public Notice" means the notice that is publicized pursuant to this rule to notify architects or engineers of Solicitations.

(e) "Record" shall have the meaning defined in Section 63-2-103 of the Government Records Access and Management Act (GRAMA).

(f) "Solicitations" means all documents, whether attached or incorporated by reference, used for soliciting information from architects or engineers seeking to provide architect-engineer services to the Division.

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

(h) "Using Agency" means any state agency or any political subdivision of the state which utilizes the services procured under this rule.

R23-2-3. Register of Architectural or Engineering Firms.

(1) Architects or engineers interested in being considered for architect-engineer services procured by the Division under Section R23-2-19 may submit an annual statement of qualifications and performance data.

(2) The Division shall maintain a file of information submitted under Subsection (1).

(3) Except for services procured under Sections R23-2-17 and R23-2-19, an updated or project specific statement of qualifications shall generally be required in order to be considered in procurements of services for a specific project as provided in the solicitation.

R23-2-4. Public Notice of Solicitations.

The Division shall publicize its needs for architect-engineer services in the manner provided in Subsection R23-1-5(2). The public notice shall include:

(1) the closing time and date by which the first submittal of information is required;

(2) directions for obtaining the solicitation;

(3) a brief description of the project; and

(4) notice of any mandatory pre-submittal meetings.

R23-2-5. Submittal Preparation Time.

Submittal preparation time is the period of time between the date of first publication of the public notice, and the date and time set for the receipt of submittals by the Division. In each case, the submittal preparation time shall be set to provide architects or engineers a reasonable time to prepare their submittals. The time between the first publication of the public notice and the earlier of the first required submittal of information or any mandatory meeting shall be not less than ten

calendar days, unless a shorter time is deemed necessary for a particular procurement as determined, in writing, by the Director.

R23-2-6. Form of Submittal.

The solicitation may provide for or limit the form of submittals, including any forms for that purpose.

R23-2-7. Addenda to Solicitations.

Addenda to the solicitation may be made in the same manner provided for addenda to the bidding documents in connection with Invitations for Bids set forth in Subsection R23-1-5(6), except that addenda may be issued until the selection of an architect or engineer is completed.

R23-2-8. Modification or Withdrawal of Submittals.

(1) Submittals may be modified prior to the due dates established in the solicitation.

(2) Architects or engineers may withdraw from consideration until a contract is executed.

R23-2-9. Late Proposals and Late Modifications.

Except for modifications allowed pursuant to negotiation, any proposal or modification received at the location designated for receipt of submittals after the due dates established in the Solicitation shall be deemed to be late and shall not be considered unless no other submittals are received.

R23-2-10. Receipt and Registration of Submittals.

After the date established for the first submittal of information, a register of submitting architects or engineers shall be prepared and open to public inspection. Prior to award, submittals and modifications shall be shown only to procurement officials and other persons involved with the review and selection process, who shall adhere to the requirements of GRAMA and this rule.

R23-2-11. Disclosure of Submittals, Performance Evaluations, and References.

(1) Except as provided in this rule, submittals shall be open to public inspection after notice of the selection results.

(2) The classification of records as protected and the treatment of such records shall be as provided in Section R23-1-35.

(3) The Board finds that it is necessary to maintain the confidentiality of performance evaluations and reference information in order to avoid competitive injury and to encourage those persons providing the information to respond in an open and honest manner without fear of retribution. Accordingly, records containing performance evaluations and reference information are classified as protected records under the provisions of Subsection 63-2-304(6) and shall be disclosed only to those persons involved with the performance evaluation, the architect or engineer that the information addresses and persons involved with the review and selection of submittals. The Division may, however, provide reference information to other governmental entities for use in their procurement activities and to other parties when requested by the architect or engineer that is the subject of the information. Any other disclosure of such performance evaluations and reference information shall only be as required by applicable law.

R23-2-12. Selection Committee.

(1) The Board delegates to the director the authority to appoint a selection committee, which may include representatives of the Board, the Division, the using agency, and architects or engineers and the general public.

(2) Each member of the selection committee shall certify as to his lack of conflicts of interest.

R23-2-13. Evaluation and Ranking.

(1) The selection committee shall evaluate the relative competence and qualifications of architects or engineers who submit the required information.

(2) The evaluation shall be based on evaluation factors set forth in the solicitation and may include:

- (a) past performance and references;
- (b) qualifications and experience of the firm and key individuals;
- (c) plans for managing and avoiding project risks;
- (d) interviews; and
- (e) other factors that indicate the relevant competence and qualifications of the architect or engineer and the architect or engineer's ability to satisfactorily provide the desired services.

(3) The evaluation may be conducted in two phases with the first phase identifying no less than the top three ranked firms to be evaluated further in the second phase unless less than three firms are competing for the contract.

(4) Numerical rating systems may be used but are not required.

(5) The evaluation committee shall rank at least the top three firms.

R23-2-14. Publicizing Selections.

(1) Notice. After the selection of the successful firm, notice of the selection shall be available in the principal office of the Division in Salt Lake City, Utah and may be available on the Internet.

(2) Information Disclosed. The following shall be disclosed with the notice of selection:

- (a) the ranking of the firms;
- (b) the names of the selection committee members;
- (c) the final scores used by the selection committee to make the selection, except that the names of the individual scorers shall not be associated with their individual scores; and
- (d) the written justification statement supporting the selection.

(3) Information Classified as Protected. After due consideration and public input, the following has been determined by the Board to impair governmental procurement proceedings or give an unfair advantage to any person proposing to enter into a contract with the Division and shall be classified as protected records:

- (a) the names of individual selection committee scorers in relation to their individual scores or rankings; and
- (b) non-public financial statements.

R23-2-15. Negotiation and Appointment.

The Director shall conduct negotiations as provided for in Section 63-56-704 until an agreement is reached.

R23-2-16. Role of the Board.

(1) The Board has the responsibility to establish and monitor the selection process. It must verify the acceptability of the procedure and make changes in procedure as determined necessary by the Board.

(2) At each regular meeting of the Board, the Division shall submit a list of all architect-engineer services contracts entered into since its previous report and the method of selection used. This shall be for the information of the Board.

R23-2-17. Performance Evaluation.

(1) The Division shall evaluate the performance of the architectural or engineering firm and shall provide an opportunity for the using agency to comment on the Division's evaluation.

(2) This evaluation shall become a part of the record of that architectural or engineering firm within the Division. The architectural or engineering firm shall be provided a copy of its

evaluation at the end of the project and may enter its response in the file.

(3) Confidentiality of the evaluation information shall be addressed as provided in Subsection R23-2-11(3).

R23-2-18. Emergency Conditions.

The Director, in consultation with the chairman of the Board, shall determine if emergency conditions exist and document his decision in writing. The Director may use any reasonable method of awarding contracts for architect-engineer services in emergency conditions.

R23-2-19. Direct Awards.

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

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

(b) The architectural or engineering firm performed satisfactorily on the related project; and

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

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

R23-2-20. Small Purchases.

(1) If the Director determines that architect-engineer services can be procured for less than \$100,000, or if the estimated construction cost of the project is less than \$1,500,000, the procedures contained in Subsection (2) may be used.

(2) The Director shall select a qualified firm and attempt to negotiate a contract for the required services at a fair and reasonable price. The qualified firm may be, but is not required to be, selected from the register of architectural or engineering firms provided for in Section R23-2-3. If, after negotiations on price, the parties cannot agree upon a price that, in the Director's judgment, is fair and reasonable, negotiations shall be terminated with that firm and negotiations begun with another qualified firm. This process shall continue until a contract is negotiated at a fair and reasonable price.

R23-2-21. Alternative Procedures.

(1) The Division may enhance the process whenever the Director determines that it would be in the best interest of the state. This may include the use of a design competition.

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

(3) Regardless of the process used, the using agency shall be involved jointly with the Division in the selection process.

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R33. Administrative Services, Purchasing and General Services.

R33-3. Source Selection and Contract Formation.

R33-3-1. Competitive Sealed Bidding; Multi-Step Sealed Bidding.

3-101 Content of the Invitation For Bids.

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

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

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

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

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

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

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

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

3-103 Bidder Submissions.

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

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

(3) Bid Samples and Descriptive Literature.

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

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

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

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

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

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

award.

3-104 Public Notice.

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

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

(a) in a newspaper of general circulation;

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

(c) in industry media; or

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

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

3-105 Bidder List; Prequalification.

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

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

3-106 Pre-Bid Conferences.

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

3-107 Amendments to Invitation for Bids.

(1) Application. Amendments should be used to:

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

(b) correct defects or ambiguities; or

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

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

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

Bids.

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

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

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

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

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

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

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

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

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

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

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

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

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

3-111 Mistakes in Bids.

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

fair treatment of other bidders.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

3-112 Bid Evaluation and Award.

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

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

(2) Responsibility and Responsiveness. Responsibility of prospective contractors is covered by subpart 3-7 of these rules. Responsiveness of bids is covered by Subsection 63G-6-103(24) and responsive bidder is defined in Subsection 63G-6-103(25).

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

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

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

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

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

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

(b) treat all bids equitably.

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

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

(a) new bids or offers may be solicited;

(b) the proposed procurement may be canceled; or

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

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

3-113 Tie Bids.

(1) Definition. Tie bids are low responsive bids from

responsible bidders that are identical in price.

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

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

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

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

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

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

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

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

(a) the Invitation for Bids;

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

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

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

3-114 Multi-Step Sealed Bidding.

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

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

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

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

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

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

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

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

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

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

- (a) that unpriced technical offers are requested;
- (b) whether price bids are to be submitted at the same time as unpriced technical offers; if they are, the price bids shall be submitted in a separate sealed envelope;
- (c) that it is a multi-step sealed bid procurement, and priced bids will be considered only in the second phase and only from those bidders whose unpriced technical offers are found acceptable in the first phase;
- (d) the criteria to be used in the evaluation of the unpriced technical offers;
- (e) that the purchasing agency, to the extent the procurement officer finds necessary, may conduct oral or written discussions of the unpriced technical offers;
- (f) that bidders may designate those portions of the unpriced technical offers which contain trade secrets or other proprietary data which are to remain confidential; and
- (g) that the item being procured shall be furnished generally in accordance with the bidder's technical offer as found to be finally acceptable and shall meet the requirements of the Invitation for Bids.

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

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

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

- (a) acceptable;
- (b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- (c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

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

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

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

3-117 Mistakes During Multi-Step Sealed Bidding.

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

- (a) before unpriced technical offers are considered;
- (b) after any discussions have commenced under section 3-116(5) (procedure for Phase One of Multi-Step Sealed Bidding, Discussion of Unpriced Technical Offers); or
- (c) when responding to any amendment of the Invitation for Bids. Otherwise mistakes may be corrected or withdrawal permitted in accordance with section 3-111.

3-118 Carrying Out Phase Two.

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

- (a) open price bids submitted in phase one from bidders whose unpriced technical offers were found to be acceptable; provided, however, that the offers have remained unchanged, and the Invitation for Bids has not been amended; or
 - (b) invite each acceptable bidder to submit a price bid.
- (2) Conduct. Phase two is to be conducted as any other competitive sealed bid procurement except:
- (a) as specifically set forth in section 3-114 through section 3-120 of these rules; and
 - (b) no public notice need be given of this invitation to submit.

3-119 Procuring Governmental Produced Supplies or Services.

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

3-120 Purchase of Items Separately from Construction Contract.

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

3-121 Exceptions to Competitive Sealed Bid Process.

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

- (a) Used vehicles
- (b) Livestock

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

- (a) Hotel conference facilities and services
- (b) Speaker honorariums
- (3) Documentation of the alternative procurement method utilized shall be part of the contract file.

3-130 Reverse Auctions.

(1) Definition. In accordance with Utah Code Annotated Section 63G-6-402 a "reverse auction" means a process where:

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

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

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

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

3-131 Pre-Bid Conferences in Reverse Auctions.

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

3-132 Procedure for Phase One of Reverse Auctions.

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

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

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

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

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

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

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

(3) Receipt and Handling of Unpriced Technical Offers. Unpriced technical offers shall be opened publicly identifying only the names of the bidders. Technical offers and modifications shall be time stamped upon receipt and held in a secure place until the established due date. After the date

established for receipt of bids, a register of bids shall be open to public inspection and shall include the name of each bidder, and a description sufficient to identify the supply, service, or construction offered. Prior to the selection of the lowest bid of a responsive and responsible bidder following phase two, technical offers shall remain confidential and shall be available only to purchasing agency personnel and those involved in the selection process having a legitimate interest in them.

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

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

- (a) acceptable;
- (b) potentially acceptable, that is, reasonably susceptible of being made acceptable; or
- (c) unacceptable. The procurement officer shall record in writing the basis for finding an offer unacceptable and make it part of the procurement file.

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

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

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

3-133 Carrying Out Phase Two of Reverse Auctions.

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

(2) The invitation for bids shall:

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

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

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

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

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

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

3-134 Mistakes During Reverse Auctions.

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

(a) before unpriced technical offers are considered;

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

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

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

R33-3-2. Competitive Sealed Proposals.

3-201 Use of Competitive Sealed Proposals.

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

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

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

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

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

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

(2) Determinations.

(a) Except as provided in Section 63G-6-408 of the Utah Procurement Code, before a solicitation may be issued for competitive sealed proposals, the procurement officer shall determine in writing that competitive sealed proposals is a more appropriate method for contracting than competitive sealed bidding.

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

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

3-202 Content of the Request for Proposals.

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

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

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

3-203 Proposal Preparation Time.

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

3-204 Form of Proposal.

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

3-204.1 Protected Records.

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

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

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

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

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

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

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

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

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

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

3-205 Public Notice.

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

3-206 Pre-Proposal Conferences.

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

3-207 Amendments to Request for Proposals.

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

3-208 Modification or Withdrawal of Proposals.

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

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

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

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

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

3-210 Receipt and Registration of Proposals.

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

3-211 Evaluation of Proposals.

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

(2) Evaluation. The evaluation shall be based on the evaluation factors set forth in the Request for Proposals.

Numerical rating systems may be used but are not required. Factors not specified in the Request for Proposals shall not be considered in determining award of contract.

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

(a) acceptable;

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

(c) unacceptable.

3-212 Proposal Discussion with Individual Offerors.

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

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

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

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

3-213 Mistakes in Proposals.

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

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

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

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

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

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

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

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

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

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

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

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

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

3-214 Award.

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

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

3-215 Publicizing Awards.

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

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

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

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

(c) the rankings of the proposals;

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

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

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

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

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

(b) non-public financial statements; and

(c) past performance and reference information, which is

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

3-216 Exceptions to Competitive Sealed Proposal Process.

(1) As authorized by Section 63G-6-408(1) the Chief Procurement Officer or designee may determine that for a given request it is either not practicable or not advantageous for the state to procure a commodity or service referenced in section 3-201 above by soliciting competitive sealed proposals. When making this determination, the Chief Procurement Officer may take into consideration whether the potential cost of preparing, soliciting and evaluating competitive sealed proposals is expected to exceed the benefits normally associated with such solicitations. In the event of that it is so determined, the Chief Procurement Officer, head of a purchasing agency or designee may elect to utilize an alternative, more cost effective procurement method, which may include direct negotiations with a qualified vendor or contractor.

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

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

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

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

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

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

R33-3-3. Small Purchases.

3-301 Authority to Make Small Purchases.

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

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

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

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

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

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

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

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

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

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

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

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

R33-3-4. Sole Source Procurement.

3-401 Conditions For Use of Sole Source Procurement.

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

Examples of circumstances which could necessitate sole source procurement are:

- (1) where the compatibility of equipment, accessories, replacement parts, or service is the paramount consideration;
- (2) where a sole supplier's item is needed for trial use or testing;
- (3) procurement of items for resale;
- (4) procurement of public utility services.

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

3-401.5 Notice of Proposed Sole Source Procurement.

Public notice for sole source procurements exceeding \$50,000 shall be given by the Procurement Officer as provided in R33-3-104 (2). The notice shall be published at least 5 working days in advance of when responses must be received in order that firms have an adequate opportunity to respond to the notice. The notice shall contain a brief statement of the proposed procurement, the proposed sole source supplier and the sole source justification. The notice shall invite comments regarding the proposed sole source and provide for a closing date for comments. The Procurement Officer shall consider the comments received before proceeding with the Sole Source procurement.

3-402 Negotiation in Sole Source Procurement.

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

3-403 Unsolicited Offers.

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

(2) Processing of Unsolicited Offers. If a purchasing

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

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

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

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

R33-3-5. Emergency Procurements.

3-501 Definition of Emergency Conditions.

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

3-502 Scope of Emergency Procurements.

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

3-503 Authority to Make Emergency Procurements.

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

3-504 Source Selection Methods.

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

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

3-505 Determination of Emergency Procurement.

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

R33-3-6. Responsibility.

3-601 Standards of Responsibility.

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

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

(b) a satisfactory record of integrity;

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

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

Nothing shall prevent the procurement officer from establishing additional responsibility standards for a particular

procurement, provided that these additional standards are set forth in the solicitation.

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

3-602 Ability to Meet Standards.

The prospective contractor may demonstrate the availability of necessary financing, equipment, facilities, expertise, and personnel by submitting upon request:

- (1) evidence that the contractor possesses the necessary items;
- (2) acceptable plans to subcontract for the necessary items;
- or
- (3) a documented commitment from, or explicit arrangement with, a satisfactory source to provide the necessary items.

3-603 Written Determination of Nonresponsibility Required.

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

R33-3-7. Types of Contracts.

3-701 Policy Regarding Selection of Contract Types.

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

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

- (a) the type and complexity of the supply, service, or construction item being procured;
- (b) the difficulty of estimating performance costs such as the inability of the purchasing agency to develop definitive specifications, to identify the risks to the contractor inherent in the nature of the work to be performed, or otherwise to establish clearly the requirements of the contract;
- (c) the administrative costs to both parties;
- (d) the degree to which the purchasing agency must provide technical coordination during the performance of the contract;
- (e) the effect of the choice of the type of contract on the amount of competition to be expected;
- (f) the stability of material or commodity market prices or wage levels;
- (g) the urgency of the requirement;
- (h) the length of contract performance; and
- (i) federal requirements.

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

(2) Use of Unlisted Contract Types. The provisions of this subpart list and define the principal contract types. In addition, any other type of contract, except cost-plus-a-percentage-of-cost, may be used provided the procurement officer determines

in writing that this use is in the purchasing agency's best interest.

3-702 Fixed-Price Contracts.

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

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

(3) Fixed-Price Contract with Price Adjustment.

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

- (i) changes in the contractor's labor contract rates;
- (ii) changes due to rapid and substantial price fluctuations, which can be related to an accepted index; and
- (iii) when a general price change alters the base price.

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

3-703 Cost-Reimbursement Contracts.

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

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

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

- (a) a contract is likely to be less costly to the purchasing agency than any other type or that it is impracticable to obtain

otherwise, the supplies, services, or construction;

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

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

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

(4) Cost-Plus-Fixed-Fee Contract. This is a cost-reimbursement type contract which provides for payment to the contractor of an agreed fixed fee in addition to reimbursement of allowable, incurred costs. The fee is established at the time of contract award and does not vary whether the actual cost of contract performance is greater or less than the initial estimated cost established for the work. Thus, the fee is fixed but not the contract amount because the final contract amount will depend on the allowable costs reimbursed. The fee is subject to adjustment only if the contract is modified to provide for an increase or decrease in the work specified in the contract.

3-704 Cost Incentive Contracts.

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

(2) Fixed-Price Cost Incentive Contract.

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

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

(3) Cost-Plus Contract with Cost Incentive Fee. In a cost-plus contract with cost incentive fee, the parties establish at the outset a target cost; a target fee; a cost-sharing formula for increase or decrease of fee depending on whether actual cost of performance is less than or exceeds the target cost, with maximum and minimum fee limitations; and a cost ceiling which represents the maximum amount which the purchasing agency is obligated to reimburse the contractor. The contractor continues performance until the work is complete or costs reach the ceiling specified in the contract, whichever first occurs. After performance is complete or costs reach the ceiling, the

total incurred, allowable costs reimbursed in accordance with part 7 of these rules and as provided in the contract are applied in the cost-sharing formula to establish the incentive fee payable to the contractor. This type contract gives the contractor a stronger incentive to efficiently manage the contract than a cost-plus-fixed-fee contract provides.

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

3-705 Performance Incentive Contracts.

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

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

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

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

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

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

3-707 Definite Quantity and Indefinite Quantity Contracts.

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

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

(3) Requirements Contracts. A requirements contract is an indefinite quantity contract for supplies or services that obligates the purchasing agency to order all the actual, normal requirements of designated using agencies during a specified period of time; and for the protection of the purchasing agency and the contractor. Invitations for Bids and resulting requirements contracts shall include a provision. However, the purchasing agency may reserve in the solicitation and in the resulting contract the right to take bids separately if a particular quantity requirement arises which exceeds an amount specified in the contract. Requirements contracts shall contain an

exemption from ordering under the contract when the procurement officer approves a finding that the supply or service available under the contract will not meet a nonrecurring, special need of the purchasing agency.

3-708 Progressive and Multiple Awards.

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

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

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

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

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

3-709 Leases.

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

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

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

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

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

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

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

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

3-710 Multi-Year Contracts; Installment Payments.

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

(2) Termination. A multi-year contract may be terminated without cost to the purchasing agency by reason of

unavailability of funds for the purpose or for lack of performance by the contractor. Termination for other reason shall be as provided by the contract.

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

3-711 Contract Option.

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

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

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

3-801 Scope.

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

3-802 Requirements for Cost or Pricing Data.

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

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

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

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

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

(a) where the contract price is based on:

(i) adequate price competition;

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

(iii) prices set by law or rule; or

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

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

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

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

3-804 Certificate of Current Cost or Pricing Data.

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

"CERTIFICATE OF CURRENT COST OR PRICING DATA

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

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

Firm
Name
Title

Date of Execution . . . (This date should be as close as practical to the date when the price negotiations were concluded

and the contract price was agreed to.)"

(End of Certificate)

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

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

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

3-805 Defective Cost or Pricing Data.

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

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

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

3-806 Price Analysis Techniques.

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

- (1) price submissions of other prospective bidders or offerors;
- (2) prior price quotations and contract prices charged by any bidder, offeror, or contractor;
- (3) prices published in catalogs or price lists; and
- (4) prices available on the open market.

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

3-807 Cost Analysis Techniques.

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

- (a) specific elements of costs;
- (b) the necessity for certain costs;
- (c) the reasonableness of amounts estimated for the necessary costs;
- (d) the reasonableness of allowances for contingencies;
- (e) the basis used for allocation of indirect costs;
- (f) the appropriateness of allocations of particular indirect costs to the proposed contract; and
- (g) the reasonableness of the total cost or price.

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

3-808 Audit.

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

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

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

- (a) for cost and pricing data audits:
 - (i) a description of the original proposal and all submissions of cost or pricing data;
 - (ii) an explanation of the basis and the method used in preparing the proposal;
 - (iii) a statement identifying any cost or pricing data not submitted but examined by the auditor which has a significant affect on the proposed cost or price;
 - (iv) a description of any deficiency in the cost or pricing data submitted and an explanation of its affect on the proposal;
 - (v) a statement summarizing those major points where there is a disagreement as to the cost or pricing data submitted; and
 - (vi) a statement identifying any information obtained from other sources;
 - (b) the number of invoices or reimbursement vouchers submitted by the contractor or subcontractor for payment;
 - (c) the use of federal assistance funds; or
 - (d) the fluctuation of market prices affecting the contract.
- The scope of the audit may be limited by the procurement officer.

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

3-809 Retention of Books and Records.

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

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

- (a) by a contractor, for three years from the date of final payment under the contract; and
- (b) by a subcontractor, for three years from the date of final payment under the subcontract.

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

Services.

3-901 Inspection of Plant or Site.

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

- (1) whether the standards set forth in section 3-601 have been met or are capable of being met; and
- (2) if the contract is being performed in accordance with its terms.

3-902 Access to Plant or Place of Business.

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

- (1) inspect supplies or services for acceptance by the purchasing agency pursuant to the terms of a contract;
- (2) audit cost or pricing data or audit the books and records of any contractor or subcontractor pursuant to Section 63-56-415 subsection (5) of the Utah Procurement Code; and
- (3) investigate in connection with an action to debar or suspend a person from consideration for award of contracts pursuant to Section 63-56-804 of the Utah Procurement Code.

3-903 Inspection of Supplies and Services.

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

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

3-904 Conduct of Inspections.

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

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

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

3-905 Inspection of Construction Projects.

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

KEY: government purchasing

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Notice of Continuation November 23, 2007

63G-6

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

As required by Sections 63G-6-501, 63G-6-504(2), 63G-6-506 and 63G-6-601, this rule contains provisions applicable to:

- (1) selecting the appropriate method of management for construction contracts, that is, the contracting method and configuration that will most likely result in timely, economical, and otherwise successful completion of the construction project.
- (2) establishing appropriate bid, performance, and payment bond requirements including criteria allowing for waiver of these requirements.
- (3) governing appropriate contract provisions.

R33-5-102. Application.

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

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

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

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

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

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

- (a) when the project must be ready to be occupied;
- (b) the type of project, for example, housing, offices, labs, heavy or specialized construction;
- (c) the extent to which the requirements of the procuring agencies and the ways in which they are to be met are known;
- (d) the location of the project;
- (e) the size, scope, complexity, and economics of the project;
- (f) the amount and type of financing available for the project, including whether the budget is fixed or what the source of funding is, for example, general or special appropriation, federal assistance moneys, general obligation bonds or revenue bonds, lapsing/nonlapsing status and legislative intent language;
- (g) the availability, qualification, and experience of State personnel to be assigned to the project and how much time the State personnel can devote to the project;
- (h) the availability, experience and qualifications of the project outside consultants and contractors to complete the project

under the various methods being considered.

(5) General Descriptions.

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

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

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

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

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

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

(g) Phased Design and Construction. Phased design and construction denotes a method in which construction is begun when appropriate portions have been designed but before design of the entire structure has been completed. This method is also

known as fast track construction.

R33-5-220. Selection Documentation.

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

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

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

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

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

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

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

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

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

(2) Multiple prime contractors may be used with phased design and construction only when the architect-engineer's work

is closely coordinated with the specialty contractors' work. Under this method, the specialty contractors shall contract directly with the State or with its construction manager.

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

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

(1) state the scope of each contractor's responsibility.
(2) identify when the portions of its work are to be complete.

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

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

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

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

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

The contract documents shall:

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

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

R33-5-260. Construction Manager: Use.

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

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

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

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

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

When the state selects the sequential design and construction method, it shall gather a team to design the project and provide a complete set of drawings and specifications to use

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

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

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

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

Contracts shall clearly establish:

- (1) architect-engineer's obligation to design the project in a manner that allows for phased construction to allow phasing of project design.
- (2) specialty contractors scope of work and duties to other contractors and the State.
- (3) the management rights of the State and its construction manager when used.

R33-5-311. Bid Security: General.

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

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

Acceptable bid security shall be limited to:

- (a) a bid bond in a form satisfactory to the State underwritten by a company licensed to issue bid bonds in this State;
- (b) a cashier's, certified, or official check drawn by a federally insured financial institution; or
- (c) cash.

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

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

- (a) only one bid is received, and there is not sufficient time to rebid the contract;
- (b) the amount of the bid security submitted, though less than the amount required by the Invitation for Bids, is equal to or greater than the difference in the price stated in the next higher acceptable bid; or
- (c) the bid guarantee becomes inadequate as a result of the correction of a mistake in the bid or bid modification in accordance with Section R33-3-111 (Mistakes in Bids), if the bidder increases the amount of guarantee to required limits within 48 hours after the bid opening.

R33-5-321. Performance Bonds: General.

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

R33-5-331. Payment Bonds: General.

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

R33-5-341. Bond Forms.

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

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

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

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

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

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

The Chief Procurement Officer, or designated procurement official, may elect not to require a Performance or Payment Bond as required under Section 63G-6-504 Utah Code Annotated, 1953 as amended, if the estimated total procurement does not exceed \$50,000. Prior to waiver of the bonding requirement, the head of the requesting agency or designee shall agree in writing to the waiver. The agency will also be advised that the State cannot waive the liability associated with a judgment against the State, in the event of non-payment to a subcontractor or supplier. In the event of a judgment, the requesting agency would be required to make payment to the injured party.

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

The contract clauses presented in this rule are promulgated for use in construction contracts in accordance with Section 63G-6-601(Contract Clauses) of the Utah Procurement Code. Alternative clauses are provided in one instance to permit accommodation of differing contract situations.

R33-5-402. Mandatory Construction Contract Clauses.

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

R33-5-403. Optional Construction Contract Clauses.

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

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

The clauses set forth in this rule may be varied for use in a particular contract when, pursuant to the provisions of Section 63G-6-601 (Contract Clauses) of the Utah Procurement Code, the Chief Procurement Officer or the head of a Purchasing Agency makes a written determination describing the circumstances justifying the variation or variations.

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

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

R33-5-420. Construction Contract Clauses: Changes Clause.**"CHANGES**

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

- (a) changes in the work within the scope of the contract; and
- (b) changes in the time for performance of the contract that do not alter the scope of the contract.

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

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

(3) Written Certification. The contractor shall not perform any change order which increases the contract amount unless it bears, or the contractor has separately received, a written certification, signed by the fiscal officer of the entity responsible for funding the project or the contract or other official responsible for monitoring and reporting upon the status of the

costs of the total project or contract budget that funds are available therefor; and, if acting in good faith, the contractor may rely upon the validity of such certification.

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

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

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

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

The following clause shall be inserted only in those construction contracts which contain estimated quantity items: "VARIATIONS IN ESTIMATED QUANTITIES

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

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

R33-5-440. Construction Contract Clauses: Suspension of Work Clause.**"SUSPENSION OF WORK**

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

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

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

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

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

(a) for any costs incurred more than 20 days before the

contractor shall have notified the Procurement Officer in writing of the act or failure to act involved (but this requirement shall not apply as to a claim resulting from a suspension order); and

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

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

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

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

(ALTERNATIVE A)

"DIFFERING SITE CONDITIONS: PRICE ADJUSTMENTS

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

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

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

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

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

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

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

(END OF ALTERNATIVE A)

(ALTERNATIVE B)

"SITE CONDITIONS CONTRACTOR'S RESPONSIBILITY

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

(END OF ALTERNATIVE B)

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

"PRICE ADJUSTMENT

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

(a) by agreement on a fixed price adjustment before

commencement of the pertinent performance or as soon thereafter as practicable;

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

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

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

(e) in the absence of agreement between the parties, by a unilateral determination by the Procurement Officer of costs attributable to the event or situation covered by the clause, plus appropriate profit or fee, all as computed by the Procurement Officer in accordance with generally accepted accounting principles and applicable sections of the rules promulgated under Section 63G-6-415(Cost Principles) and subject to the provisions of Part H (Legal and Contractual Remedies) of the Utah Procurement Code.

(2) Submission of Cost or Pricing Data. The contractor shall submit cost or pricing data for any price adjustments subject to the provisions of Section 63G-6-415 (Cost Principles) of the Utah Procurement Code."

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

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

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

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

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

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

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

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

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

(c) the contractor maintains and, upon request, makes available to the Procurement Officer within a reasonable time, detailed records to the extent practicable, of the claimed additional costs or basis for an extension of time in connection with such changes.

(2) Limitation of Clause. Nothing herein contained, however, shall excuse the contractor from compliance with any rules of law precluding any State officers and any contractors

from acting in collusion or bad faith in issuing or performing change orders which are clearly not within the scope of the contract.

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

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

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

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

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

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

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

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

(b) the contractor, within ten days from the beginning of any such delay (unless the Procurement Officer grants a further period of time before the date of final payment under the contract), notifies the Procurement Officer in writing of the causes of delay. The Procurement Officer shall ascertain the

facts and the extent of the delay and extend the time for completing the work when, in the judgment of the Procurement Officer, the findings of fact justify such an extension.

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

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

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

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

"LIQUIDATED DAMAGES

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

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

"TERMINATION FOR CONVENIENCE

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

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

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

(a) any completed construction; and

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

The contractor shall protect and preserve property in the

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

(4) Compensation.

(a) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data, submitted to the extent required by Section 63G-6-415 (Cost or Pricing Data) of the Utah Procurement Code, bearing on such claim. If the contractor fails to file a termination claim within one year from the effective date of termination, the Procurement officer may pay the contractor, if at all, an amount set in accordance with Subparagraph (c) of this Paragraph.

(b) The Procurement Officer and the contractor may agree to a settlement provided the contractor has filed a termination claim supported by cost or pricing data submitted as required by Section 63G-6-601(Cost or Pricing Data) of the Utah Procurement Code and that the settlement does not exceed the total contract price plus settlement costs reduced by payments previously made by the State, the proceeds of any sales of construction, supplies, and construction materials under Paragraph (3) of this clause, and the contract price of the work not terminated.

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

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

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

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

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

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

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

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

"REMEDIES

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

R33-5-510. Application.

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

R33-5-520. Policy.

It is the policy of this State to:

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

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

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

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

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

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

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

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

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

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

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

R33-5-527. Billing Rate Survey.

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

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

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

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

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

appropriate.

The Chief Procurement Officer, or designee, shall designate one member of the committee as chair and to act as the Procurement Officer to coordinate the negotiations of a contract with the most qualified firm in accordance with Section 63G-6-704 of the Utah Procurement Code.

R33-5-550. Public Notice.

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

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

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

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

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

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

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

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

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

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

The selection committee shall evaluate:

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

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

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

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

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

The selection committee shall select for discussions no fewer than three firms evaluated as being professionally and technically qualified unless fewer than three firms responded to the request for SOI. The Procurement Officer shall notify each

firm in writing of the date, time, and place of discussions, and, if necessary, shall provide each firm with additional information on the project and the services required. This discussion phase may be waived if the evaluation of the statements of interest, qualifications and performance data indicate that one firm is clearly most qualified and if the scope and nature of the services are clearly defined.

R33-5-600. Discussions.

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

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

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

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

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

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

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

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

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

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

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

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

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

R33-5-640. Notice of Award.

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

R33-5-650. Failure to Negotiate Contract with Firms Initially Selected as Most Qualified.

Should the Procurement Officer be unable to negotiate a contract with any of the firms initially selected as the most highly qualified firms, additional firms shall be selected in preferential order based on their respective qualifications, and

negotiations shall continue in accordance with section R33-5-630 until an agreement is reached and the contract awarded.

KEY: government purchasing
August 1, 2008 **63G-6-101 et seq.**
Notice of Continuation November 23, 2007

R68. Agriculture and Food, Plant Industry.**R68-3. Utah Fertilizer Act Governing Fertilizers and Soil Amendments.****R68-3-1. Authority.**

Promulgated under authority of Section 4-2-2 and 4-13-4.

R68-3-2. Registration of Products.

A. All fertilizer or soil amendment products distributed in Utah shall be officially registered with the Utah Department of Agriculture and Food.

1. Application for registration shall be made to the Department upon forms prescribed and provided by the Department and shall include the following information for each product:

- a. The net weight,
- b. The brand and grade,
- c. The guaranteed analysis,
- d. The name and address and phone number of the registrant.

e. The label for each product registered.

f. Any waste-derived fertilizer distributed as a single ingredient product or blended with other fertilizer ingredients must be identified as "waste-derived fertilizer" by the registrant in the application for registration. "Waste-derived fertilizer" shall include any commercial fertilizer that is derived from an industrial byproduct, coproduct or other material that would otherwise be disposed of if a market for reuse were not an option, but does not include fertilizers derived from biosolids or biosolids products regulated under Environmental Protection Agency Code of Federal Regulation, Section 503.

g. The registrant of a waste-derived fertilizer shall state in the application for registration the levels of non-nutritive metals (including but not limited to arsenic, cadmium, mercury, lead and selenium). The registrant will provide a laboratory report or other documentation verifying the levels of the non-nutritive metals in the waste-derived fertilizer.

2. The Commissioner may require submission of the complete formula of any fertilizer or soil amendment if it shall be deemed necessary for administration of the Utah Fertilizer Act. If it appears to the Commissioner that the composition of the product is such as to warrant the proposed claims for it, and if the product and its labeling and any other information which may be required to be submitted comply with the requirements of the act, the products shall be registered.

a. Before registering any soil amendment the Commissioner shall require evidence to substantiate the claims made for the soil amendment and proof of the value and usefulness of the soil amendment. Such supportive data shall accompany the application for registration and shall be obtained from one or more State Experiment Stations. Cost for such research shall be the responsibility of the applicant. Final decision concerning registration of a soil amendment shall be made by the Commissioner following evaluation of all evidence presented.

3. The registrant is responsible for the accuracy and completeness of all information submitted concerning application for registration of a fertilizer or soil amendment product.

4. Once a fertilizer or soil amendment is registered under the act, no further registration is required, as long as the label does not differ in any respect.

5. Whenever the name of fertilizer or soil amendment product is changed or there are changes in the product ingredients or guaranteed analysis, a new registration shall be required. Other labeling changes shall not require re-registration, but the registrant shall submit copies of all changes to the Department as soon as they are effective. A reasonable time may be permitted to dispose of properly labeled stocks of the old product.

6. A registration fee determined by the department pursuant to Subsection 4-2-2(2), per product shall be paid by the applicant annually.

7. Each registration is renewable for a period of one year upon payment of the annual renewal fee determined by the department pursuant to Subsection 4-2-2(2), per product which shall be paid on or before December 31 of each year. If the renewal of a fertilizer or soil amendment registration is not filed prior to January 1 of any year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed per product and added to the original registration fee and shall be paid by the applicant before the registration renewal for that fertilizer or soil amendment shall be issued.

8. A distributor is not required to register each grade of commercial fertilizer or soil amendment formulated by a consumer before mixing, but is required to register the name under which the business of blending or mixing is conducted and to pay an annual blender's license fee determined by the department pursuant to Subsection 4-2-2(2). A blender's license shall expire at midnight on December 31 of the year in which it is issued. A blender's license is renewable for a period of one year upon the payment of an annual license renewal fee. For Each renewal of a fertilizer or soil amendment blender's license not filed prior to January 1 of any one year, an additional fee determined by the department pursuant to Subsection 4-2-2(2), shall be assessed and added to the original license fee and shall be paid by the applicant before the license shall be issued.

9. Beginning January 1, 1991 and on a semi-annual basis, fertilizer and soil amendment products sold in the State of Utah will be assessed a fee determined by the department pursuant to Subsection 4-2-2(2). This assessment shall be paid by the manufacturer or distributor on or before February 1st each year for the sales period July 1 through December 31 and again on or before August 1st each year for the sales period January 1 through June 30. The amount of assessment will be determined by records of the previous six month's sales.

R68-3-3. Product Labeling.

A. Each container of packaged fertilizer distributed in Utah shall bear a label showing the following information:

1. net weight,
2. brand and grade,
3. guaranteed analysis,
4. name and address of the registrant,
5. lot number.

B. Each container of packaged soil amendment distributed in Utah shall bear a label showing the following:

1. net weight,
2. brand name,
3. name and percentages of the soil amending ingredients,
4. purpose of product,
5. directions for application of product,
6. name and address of the registrant,
7. lot number.

C. When any reference is made upon the label, labeling, or graphic material of a commercial fertilizer or soil amendment to "trace elements," "minor elements," "secondary elements," "plant foods" or similar generalized terms, each individual plant food to which such term refers must be listed upon the label.

D. No guarantee for a plant food element may be shown upon a label which is not listed upon the application for registration of the fertilizer or soil amendment material.

E. If guarantees for secondary plant foods and trace elements are listed upon the label of a fertilizer or soil amendment, they must be represented in terms of the element, and the minimum amount of each which may be guaranteed in the labeling of any fertilizer or soil amendment product is as follows:

TABLE

Calcium (Ca)	1.00%	Copper (Cu)	0.05%
Magnesium (Mg)	0.50%	Iron (Fe)	0.10%
Sulfur (S)	1.00%	Manganese (Mn)	0.05%
Boron (B)	0.02%	Molybdenum (Mo)	0.0005%
Cobalt (Co)	0.0005%	Sodium (Na)	0.10%
Chlorine (Cl)	0.10%	Zinc (Zn)	0.05%

F. No specialty fertilizer label shall bear a statement that connotes or infers the presence of a slowly available plant nutrient unless the nutrient or nutrients are identified. When a fertilizer label infers or connotes that the nitrogen is slowly available through use of "organic," "organic nitrogen," "ureaform," "long lasting," or similar terms, the guaranteed analysis must indicate the percentage of water insoluble nitrogen in the material. When the water insoluble nitrogen is less than 15% of the total nitrogen, the label shall bear no reference to "long lasting," "organic," or similar terms.

G. Pesticides may be added to registered fertilizers or soil amendments provided:

1. The fertilizers and soil amendments and the pesticides are officially registered.
2. Each container or package containing a fertilizer or soil amendment pesticide mixture shall have attached a label showing the information stated in Subsection R68-3-2(2)(a) of these rules and in Section 4-14-4.

R68-3-4. Deficiencies of Ingredients.

A commercial fertilizer shall be deemed deficient if the analysis of nutrients is below the guarantee by an amount exceeding the values in the following schedule or if the overall index value of the fertilizer is below 98%.

TABLE
ALLOWABLE DEFICIENCIES

Guarantee Percent	Nitrogen Percent	Available Phosphoric Acid	Potash Percent
04 or less	0.49	0.67	0.41
05	0.51	0.67	0.43
06	0.52	0.67	0.47
07	0.54	0.68	0.53
08	0.55	0.68	0.60
09	0.57	0.68	0.65
10	0.58	0.69	0.70
12	0.61	0.69	0.79
14	0.63	0.70	0.87
16	0.67	0.70	0.94
18	0.70	0.71	1.01
20	0.73	0.72	1.08
22	0.75	0.72	1.15
24	0.78	0.73	1.21
26	0.81	0.73	1.27
28	0.83	0.74	1.33
30	0.86	0.75	1.39
32 or more	0.88	0.76	1.44

R68-3-5. Values of Ingredients.

The Department shall annually publish the monetary values per unit of nitrogen, available phosphoric acid, and soluble potash in commercial fertilizer in this state, which may be used as a basis for assessing monetary penalties for ingredient deficiencies as provided under section 4-13-6.

R68-3-6. Unlawful Acts.

A. Any person who has committed any acts included but not limited to those listed below is in violation of the Utah Fertilizer Act or rules promulgated thereunder and is subject to penalties provided for in Section 4-2-14:

1. Made false or fraudulent claims through any media misrepresenting the effect of fertilizers or soil amendments offered for sale in Utah;
2. Neglected or, after notice, refused to comply with the provisions of the act, these rules, or any lawful order of the

Commissioner;

3. Made false or fraudulent records, invoices, or reports;
4. Used fraud or misrepresentations in making application for, or renewal of a registration or license;
5. Distributed commercial fertilizer or soil amendments which contain seeds or other viable plant parts or noxious weeds.
6. Distributed any waste-derived fertilizer that has not been identified in the registration application.

KEY: fertilizers

July 25, 2008

Notice of Continuation January 7, 2005

4-2-2

R68. Agriculture and Food, Plant Industry.

R68-8. Utah Seed Law.

R68-8-1. Authority.

Promulgated under authority of Sections 4-2-2, 4-16-3 and 4-17-3.

R68-8-2. Noxious Weed Seeds and Weed Seed Restrictions.

It shall be unlawful for any person, firm, or corporation to sell, offer, or expose for sale or distribute in the State of Utah any agricultural, vegetable, flower, tree and shrub seeds, or seeds for sprouting for seeding purposes which:

A. Contain, either in part or in whole, any prohibited noxious weed seeds.

1. "Prohibited" noxious weed seeds are the seeds of any plant determined by Utah Commissioner of Agriculture and Food to be injurious to public health, crops, livestock, land, or other property and which is especially troublesome and difficult to control.

2. Utah prohibited noxious weed seeds are as follows:

TABLE	
Bermudagrass (Except in Washington County)	<i>Cynodon dactylon</i> (L.) Pers.
Bindweed (Wild Morning-glory)	<i>Convolvulus</i> spp.
Black henbane	<i>Hyoscyamus niger</i> (L.)
Broad-leaved Peppergrass (Tall Whitetop)	<i>Lepidium latifolium</i> L.
Canada Thistle	<i>Cirsium arvense</i> (L.) Scop.
Dalmation Toadflax	<i>Linaria dalmatica</i> (L.) Miller
Diffuse Knapweed	<i>Centaurea diffusa</i> (Lam.)
Hoary cress	<i>Cardaria</i> spp.
Houndstongue	<i>Cynoglossum officinale</i> (L.)
Dyers Woad	<i>Isatis Tinctoria</i> L.
Oxeye daisy	<i>Chrysanthemum leucanthemum</i> (L.) including but not limited to Johnson Grass (<i>Sorghum halepense</i> (L.) Pers.) and <i>Sorghum Alnum</i> (<i>Sorghum alnum</i> , Parodi).
Perennial Sorghum spp.	<i>Conium maculatum</i> (L.)
Poison Hemlock	<i>Euphorbia esula</i> L.
Leafy Spurge	<i>Taeniatherum caput-medusae</i> (L.) Nevski)
Medusahead	<i>Carduus nutans</i> L.
Musk Thistle	<i>Lythrum salicaria</i> L.
Purple Loosestrife	<i>Agropyron repens</i> (L.) Beauv.
Quackgrass	<i>Centaurea repens</i> L.
Russian Knapweed	<i>Tamarix ramosissima</i> Ledeb.
SaltCedar (Tamarix)	<i>Onopordum acanthium</i> L.
Scotch Thistle (Cotton Thistle)	<i>Centaurea maculosa</i> Lam.
Spotted Knapweed	<i>Centaurea virgata</i> Lam. Ssp. <i>squarrosa</i> Gugle.
Squarrose Knapweed	<i>Hypericum perforatum</i> (L.)
St. Johnswort, common	<i>potentilla recta</i> L.
Sulfur cinquefoil	<i>Centaurea solstitialis</i> L.
Yellow Starthistle	<i>Linaria vulgaris</i> (Mill.)
Yellow toadflax	

B. Contain any restricted weed seeds in excess of allowable amounts:

1. The following weed seeds shall be allowed in all crop seed, but shall be restricted not to exceed a maximum of 27 such seeds per pound, either as a single species or in combination:

TABLE	
Dodder	<i>Cuscuta</i> spp.
Halogeton	<i>Halogeton glomeratus</i> (M. Bieb.)
Jointed goatgrass	<i>Aegilops cylindrica</i> (Host.)

Poverty Weed
Wild Oats

Iva axillaris Pursh.
Avena fatua L.

2. The following maximum percentage of weed seeds by weight shall be allowed:

a. Two percent (2.0%) of Cheat (*Bromus secalinus*), Chess (*Bromus brizaformis*), (*B. commutatus*), (*B. mollis*), Japanese Brome (*Bromus japonicus*) and Downy Brome (*Bromus tectorum*) either as a single species or in combination in grass seeds.

b. One percent (1.0%) of any weed seeds not listed in 2.a. above in grass, flower, tree and shrub seeds.

c. One half of one percent (0.50%) in all other kinds or types of seeds.

R68-8-3. Special Labeling Provisions.

A. Prepackaged containers must be labeled in accordance with requirements applying to the specific kind(s) of seed in said prepackaged container as provided by Section 4-16-4.

B. Seed weighed from bulk containers, including jars, cans, bins, etc., in the presence of the customer and sold in quantities of five pounds or less will be exempt from the full labeling provisions; provided, that the container from which the seed is taken is fully and properly labeled in accordance with the provisions of the law and regulations thereunder. Labels on such seed containers must be attached thereto and must be kept in a conspicuous place. The name and address of the supplier or vendor must be plainly printed on all lots of seed sold from bulk containers along with the required labeling and name of substance used in treatment, if any. If the seed was treated, the appropriate treatment labeling must be on both the master container from which the seed is weighed and on each receiving container. The vendor must also mark on any receiving container, when requested by the purchaser, any additional labeling information required by the laws and regulations thereunder.

C. If responsibility is accepted therefore, it shall be permissible under the law for the local merchant or distributor of seed in this State to adopt and use the analysis furnished by the original seller to remain attached to the proper container of such seed for a period not to exceed nine calendar months for vegetable, flower, tree, and shrub seeds and eighteen calendar months for agricultural seeds or in the case of hermetically sealed seed, thirty-six calendar months, after which time said local dealer or distributor must retest or have retested any remaining seed in his possession, remove the original analysis label and attach a new analysis label or place an appropriately printed permanently adhering sticker on the original label bearing the lot number, percent of germination and date of test.

D. Any vegetable or flower seeds in packets or containers of one pound or less and preplanted containers offered, exposed for sale, or distributed in the State of Utah, must be labeled with the date of test or the current calendar year for which the seed is packed.

R68-8-4. Treated Seed - Use of Highly Toxic, Moderately Toxic, and Low Toxicity Substances and Labeling of Containers.

Any agricultural, vegetable, flower, or tree and shrub seed or mixture thereof that has been treated, shall be labeled in type no smaller than eight point to indicate that such seed has been treated and to show the name of any substance or a description of any process (other than application of a substance) used to treat such seed. The label shall contain the required information in any form that is clearly legible and complies with Section 4-16-5, Federal Laws which apply, and the following paragraphs of this regulation which are subsequently applicable. The information may be on the seed analysis tag, on a separate tag, or printed on each container in a conspicuous manner.

A. Names of Substances.

1. The required name of the substance used in treatment shall be the commonly accepted coined, chemical (generic), or abbreviated chemical name. Commonly accepted coined names are not private trademarks and are available for use by the public and are commonly recognized as names of particular substances.

2. Examples of commonly accepted chemical (generic) names are: blue-stone, calcium carbonate, cuprous oxide, zinc hydroxide, hexachlorobenzene and ethyl mercury acetate. The terms "mercury" or "mercurial" may be used to represent all types of mercurial compounds. Examples of commonly accepted abbreviated chemical names are BHC (1,2,3,4,5,6, Hexachloroclohexane) and DDT (Dichloro diphenyl trichloroethane).

B. Treatment Coloring.

Any substance which is toxic in nature used in the treatment of seed shall be distinctly colored so as to be readily discernible.

C. Labeling.

Containers of treated seed shall, in addition to the name of the treatment substance used be labeled in accordance with Subsection R68-8-4(C), and shall bear appropriate signal words and warning statements required according to the relative toxicity of the chemical(s) applied. In addition, all seed treated with a chemical seed treatment shall bear the statement, "Keep out of Reach of Children."

1. Labeling Seed Treated with Highly Toxic Substances.

a. Seed treated with a chemical substance, designated by the Environmental Protection Agency or the Commissioner as a highly toxic substance, shall be labeled to conspicuously show the words, "TREATED SEED," together with the name of the substance. Example: "THIS SEED TREATED WITH (name of substance)," or "(name of substance) TREATED". The labeling shall also bear in red coloring the signal words, "DANGER-POISON," and a representation of a skull and crossbones at least twice the size of the type used for the name of the substance. The label shall also include in red letters additional precautionary statements stating hazards to humans and other vertebrate animals, special steps or procedures which should be taken to avoid poisoning, and wording to inform physicians of proper treatment for poisoning.

b. All bags, sacks, or other containers of seed which have been or are being used to contain seeds treated with "highly toxic" substances, shall be identified with the words "DANGER POISON," and a representation of a skull and crossbones. The printing shall be directly printed or impregnated on or into the containers, or applied by other means approved by the department, as to be permanent. Any such container in which seed treated with highly toxic substances has been contained, except for future similar use for seed, shall not again be used to contain any food, feed, or agricultural products, without the prior written approval of the department.

2. Labeling Seed Treated with Moderately Toxic Substances.

Seed treated with a chemical substance designated as moderately toxic, shall be labeled with the words, "TREATED SEED," together with the name of the substance. Examples: "THIS SEED TREATED WITH (name of substance)" or "(name of substance) TREATED." The label shall also bear the signal word, "WARNING". Additional precautionary statements describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

3. Labeling Seed Treated with Low Toxicity Substances.

Seed treated with a chemical designated as low toxicity, or comparatively free from danger shall be labeled with the words, "TREATED SEED" together with the name of the substance. Example: "THIS SEED IS TREATED (name of substance)", or "(name of substance) TREATED." The label shall also bear the signal word, "CAUTION". Additional precautionary statements

describing hazards to humans and other vertebrate animals, and special handling procedures to avoid poisoning shall also appear in the labeling.

4. Effective Warning.

Any words or terms used on the label which tend to reduce the effectiveness of the warning statements required by section 4-16-5 and this regulation are construed to be misleading.

5. Bulk Seed.

In the case of seed in bulk, the information required on the labels of packaged seed shall appear on the invoice or other records accompanying and pertaining to such seed.

D. Treatment by Custom Applicators.

The provisions of this regulation shall apply to seed which has been treated by custom applicators, or in a custom manner, even though the transfer of ownership is not intended on said seed.

E. Changes in Federal Law.

The kinds of chemicals declared highly toxic, moderately toxic, or low toxicity and their approved uses on seed must of necessity be in conformity with applicable federal laws and regulations. If at any time the federal government prohibits the use of such substances on seed or makes other changes affecting seed then the provisions of this regulation are considered to be modified to the extent necessary to conform to such federal laws and regulations.

R68-8-5. Inoculated Seed.

The term "inoculant" means a commercial preparation containing nitrogen-fixing bacteria applied to seed. Seed claimed to be inoculated shall be labeled to show the month and year beyond which the inoculant on the seed is no longer claimed to be effective.

R68-8-6. Weight or Seed Count Requirements.

Net weight on all containers is required except that preplanted containers, mats, tapes, or other planting devices shall state the minimum number of seeds in the container. All weight labeling shall be consistent with the requirements of the Weights and Measures Law and rules. Under appropriate circumstances when a seed tag is used, the weight information may appear on the seed tag rather than on the seed bag. The term "weight" shall be understood and construed to mean the net weight of the commodity.

R68-8-7. Labeling of Agricultural Seed Varieties.

A. The following kinds of agricultural seeds shall be labeled to show the variety name or the words, "Variety Not Stated."

Alfalfa
Bahia grass
Beans, field
Beets, field
Brome, smooth
Broomcorn
Clover, crimson
Clover, red
Clover, white
Corn, field
Corn, pop
Cotton
Cowpea
Crambe
Fescue, tall
Flax
Lespedeza, striate
Millet, foxtail
Millet, pearl
Oat
Pea, field

Peanut
 Rice
 Rye
 Safflower
 Sorghum
 Sorghum-Sudangrass
 Sudangrass hybrid
 Soybean
 Sudangrass
 Sunflower
 Tobacco
 Trefoil, birdsfoot
 B. The following kinds of agriculture seeds shall be labeled to show the variety name:
 Barley
 Triticale
 Wheat, Common
 Wheat, durum
 C. When two or more varieties are present in excess of five percent and are named on the label, the name of each variety shall be accompanied by the percentage of each.

R68-8-8. Labeling of Lawn Seed Mixtures.

A. Format. When labeling lawn and turf seed mixtures as provided by Section 4-16-4, the following format shall be used:

TABLE	
PURE SEED	GERMINATION
Grass Seed Mixture Lot 77-7	
42.20% Kentucky Bluegrass	80%
28.37% Annual Ryegrass	85%
11.90% Creeping Red Fescue	85%
5.43% White Dutch Clover	75%
HARD SEED	10%
.50% Weed Seed Tested: July 1979	
1.60% Other crop seed	
10.00% Inert matter	
Noxious weed seed-none	
John Doe Seed Company, Inc.	
1977 Bell Street, Salt Lake City, Utah 84000	
Net Weight: 5 pounds	

B. Agricultural seed other than seed required to be named on the label shall be designated as "other crop seed" or "crop seed." If a mixture contains no crop seed, the statement "contains no other crop seed," may be used.

C. The headings "pure seed" and "germination" or "germ," shall be used in the proper place.

D. The word "mixed" or "mixture" shall be stated with the name of the mixture.

R68-8-9. Vegetable Seeds and Minimum Germination Standards.

A. Vegetable seeds are the seeds of the following, and the minimum germination standards are as indicated:

KIND	MINIMUM PERCENT GERMINATION STANDARD
Artichoke--Cynara scolymus	60
Asparagus--Asparagus officinalis	70*
Bean, garden--Phaseolus vulgaris	70*
Bean, asparagus--Vigna sequipedalis	75*
Bean, lima--Phaseolus lunatus var. macrocarpus	70*
Bean, runner--Phaseolus coccineus	75
Beet--Beta vulgaris	65
Broadbean--Vicia fava	75
Broccoli--Brassica oleracea var. botrytis	75

Brussels sprouts--Brassica oleracea var. gemmifera	70
Burdock, great--Arctium lappa	60
Cabbage--Brassica oleracea var. capitata	75
Cabbage, Chinese--Brassica Pekinensis	75
Cabbage, tronchuda--Brassica oleracea var. tronchuda	75
Cantalope (see Muskmelon)	
Cardoon--Cynara cardunculus	60
Carrot--Daucus carota	55
Cauliflower--Brassica oleracea var. botrytis	75
Celery and celeriac--Apium graveolens var. dulce and repaceum	55
Chard, Swiss--Beta vulgaris var. cicla	65
Chicory--Cichorium intybus	65
Chives--Allium schoenoprasum	50
Citron--Citrus lanatus var. citroides	65
Collards--Brassica oleracea var. acephala	80
Corn, Sweet--Zea mays	75
Cornsalad (Fetticus--Valerianella locusta)	70
Cowpea--Vigna sinensis	75
Cress, garden--Lepidium sativum	75
Cress, Upland--Barbarea verna	60
Cress, Water--Rorippa nasturtium-acquaticum	40
Cucumber--Cucumis sativus	80
Dandelion--Taraxacum officinalis	60
Eggplant--Solanum melongena	60
Endive--Cichorium endivia	70
Herbs--(all kinds and varieties not listed)	50
Kale--Brassica spp.	75
Kohlrabi--Brassica oleracea var. gongylodes	75
Leek--Allium porrum	60
Lettuce--Lactuca sativa	80
Muskmelon (Cantalope)--Cucumis melo	75
Mustard, India--Brassica juncea	75
Mustard, spinach--Brassica perviridis	75
Okra--Hibiscus esculentus	50
Onion--Allium cepa	70
Onion, Welsh--Allium fistulosum	70
Pak-choi--Brassica chinensis	75
Parsley--Petroselinum crispum	60
Parsnip--Pastinaca sativa	60
Pea, garden--Pisum sativum	80*
Pepper--Capsicum spp.	55
Pumpkin--Cacurbita pepo	75
Radish--Raphanus sativus	75
Rhubard--Rheum rhaponticum	60
Rutabaga--Brassica napus var. napobrassica	75
Salsify--Tragapogon porrifolius	75
Sorrel--Rumex spp	65
Soybean--Glycine max. L.	75
Spinach--Spinacia oleracea	60
Spinach, New Zealand--Tetragonia expansa	40
Squash--Cucurbita pepo	75
Tomato--Lycopersicon esculentum	75
Tomato, husk--Physalis spp	50
Turnip--Brassica rapa	80
Watermelon--Citrullus vulgaris	70

*Including hard seeds

R68-8-10. Flower Seeds and Minimum Germination Standards.

The kinds of flower seeds listed below are those for which standard testing procedures have been prescribed and which are therefore required to be labeled in accordance with the germination labeling provisions of Section 4-16-4. The percentage listed opposite each kind is the germination standard for that kind. For the kinds marked with an asterisk, this percentage is the total percentage of germination and percentage of hard seed.

KIND	MINIMUM GERMINATION STANDARDS
Archillea (The Pearl)--Achillea ptarmica	50
African daisy--Dimorphotheca aurantiaca	55
African Violet--Saintpaulia spp	30
Ageratum--Ageratum mexicanum	60
Agrostemma (rose campion)--Agrostemma coronaria	65
Alyssum--Alyssum compactum, A.	60

maritimum, A. procumbens, A. saxatile		Sweet Wivelsfield--Dianthus allwoodi	60
Amaranthus--Amaranthus spp.	65	Didiscus (blue lace flower)--Didiscus	65
Anagalis (pimpernel)--Anagalis	60	coerulea	
arvensis, Anagalis coerulea, Anagalis		Doronicum (leopard's bane)--Doronicum	60
grandiflora		caucasicum	
Anemone--Anemone coronaria, A. pulsatilla	55	Dracena--Cracena indivisa	55
Angel's trumpet--Datura arborea	60	Dragon Tree--Dracaena Draco	40
Arabis--Arabis alpina	60	English daisy--Bellis perennis	55
Arctotis (African lilac daisy)--		Flax, Golden--Linum flavum, Flowering	60
Arctotis grandis	45	flax L. grandiflorum, perennial flax	
Armeria--Armeria formosa	55	L. perenne	
Asparagus, fern--Asparagus plumosus	50	Flowering Maple--Abutilon spp.	35
Asparagus, sprenger--Asparagus sprengeri	55	Foxglove--Digitalis spp	60
Aster, China--Callistephus chinensis,	55	Gaillardia, annual--Gaillardia	45
except Pompom, Powderpuff and		pulchella, G. picta; perennial G.	
Princess types		grandiflora	
Aster, China--Callistephus chinensis,	50	Gerbera (transvaal daisy)--Gerbera	60
Pompom, Powderpuff and Princess types.		jamesoni	
Aubrietia--Aubrietia deltoides	45	Geum--Geum spp	65
Baby Smilax--Asparagus asparagoides	25	Gilia--Gilia spp	65
Balsam--Impatiens balsamina	70	Gloriosa daisy (rudbeckia) Echinacea	60
Begonia--(Begonia fibrous rooted)	60	purpurea and Rudbeckia hirta	
Begonia--(Begonia tuberous rooted)	50	Gloxinia--Sinningia speciosa	40
Bells of Ireland--Moluccella laevis	60	Godetia--Godetia amonea, G. grandiflora	65
Brachycome (swan river daisy)--		Gourds: Yellow flowered--Cucurbita	70
Brachycome iberidifolia	60	pepo; White flowered Lagenaria	
Browallia--Browallia elata and B	65	sisseraria; Dishcloth-Luffa cylindrica	
speciosa		Gypsophila, annual Baby's breath--	70
Bupththalmum (willowleaf oxeye)--		Gypsophila elegans; perennial Baby's	
Bupththalmum salicifolium	60	breath-G. paniculata, G. pacifica,	
Calceolaria--Calceolaria spp	60	G. repens	
Calendula--Calendula officinalis	65	Helenium--Helenium autumnale	40
California Poppy--Eschscholtzia	60	Helichrysum--Helichrysum monstrosum	60
californica		Heliopsis--Heliopsis scabra	55
Calliopsis--Coreopsis bicolor, C.	65	Heliotrope--Heliotropium spp	35
drummondii, C. elegans		Helipeterum (Acroclinum)--Helipeterum	60
Campanula:	60	roseum	
Cantebury bells--Campanula medium	60	Hesperis (sweet rocket)--Hesperis	65
Cup and Saucer bellflower--Campanula	60	matronalis	
calycanthema		Hollyhock--Althea rosea	65*
Carpathian bellflower--Campanula	50	Hunnemannia (Mexican tulip poppy)--	60
carpatica		Hunnemannia fumariaefolia	
Peach bellflower--Campanula persicifolia	50	Hyacinth bean--Dolichos loblax	70*
Candytuft, annual--Iberis amara, I.	65	Impatiens--Impatiens holstii, I. sultani	55
umbellata		Ipomea: Cypress vine--Ipomea	75*
Candytuft, perennial--Iberis	55	quamoclit; Moonflower--I. noctiflora;	
gibraltarica I. sempervirens		Morning glories, Cardinal climber,	
Caster bean--Ricinus communis	60	Hearts and Honey vine--Ipomea spp	
Cathedral bells--Cobaea scandens	65	Jerusalem cross (Maltese cross)--	70
Celosis--Celosia argentea	65	Lychnis chalconica	
Centaurea: Basketflower--Centaurea	60	Job's tears--Ciox lacryma-jobi	70
americana, Cornflower--C. cyanus,		Kochia (Mexican fire bush)--Kochia	55
Dusty Miller--C. candidissima, Royal		childsii	
centaurea C. imperialis, Sweet		Larkspur, annual--Delphinium ajacia	60
Sultan--C. moschata, Velvet centaurea		Lantana--Lantana camara, L. hybrida	35
C. gymnocarpa		Lilium (regal lily)--Lilium regale	50
Cerastium (snow in summer)--Cerastium	65	Linaria--Linaria spp	65
biebersteini and C. tomentosum		Lobelia--Lobelia erinus	65
Chinese forget-me-not--Cynoglossum	55	Lunaria, honesty--Lunaria annua	65
amabile		Lupine--Lupinus spp	65*
Chrysanthemum, annual--Chrysanthemum	40	Marigold--Tagetes spp	65
carinatum, C. coronarium, C. segetum		Marvel of Peru (Four-O'clock)--	60
Cineraria--Senecio cruentus	60	Mirabilis jalapa	
Clarkia--Clarkia elegans	65	Matricaria (feverfew)--Matricaria spp	60
Cleome--Cleome gigantea	65	Migonette--Reseda odorata	55
Coleus--Coleus blumei	65	Myosotis--Myosotis alpestris,	50
Columbine--Aquilegia spp	50	M. oblongata, M. pulastris	
Coral Bells--Heuchera sanquinea	55	Nasturtium--Tropeolum spp	60
Coreopsis, perennial--Coreopsis	40	Nemesia--Nemesia spp	65
lanceolata		Nemophila--Nemophila insignis	70
Corn, Ornamental--Zea Mays	75	Nemophila, spotted--Nemophila maculata	60
Cosmos: Sensation, Mammoth and	65	Nicotiana--Nicotiana affinis, N.	65
Crested type--Cosmos bipinnatus;		sanderana, N. sylvestris	
Klondyke type--C. sulphureus		Nierembergia--Nierembergia spp	55
Crossandra--Crossandra infundibuliformis	50	Nigella--Nigella damascena	55
Dahlia--Dahlia spp	55	Pansy--Viola tricolor	60
Daylily--Hemerocallis spp.	45	Penstemon--Penstemon barbatus, P.	60
Delphinium, perennial; Belladonna	55	grandiflorus, P. laevigatus, P.	
and Bellamosum types: Cardinal		pupescens	
larkspur--Delphinium cardinale;		Petunia--Petunia spp	45
Chinesis types; Pacific Giant, Gold		Phacelia--Phacelia campanularia, P.	65
Medal and other hybrids of D. elatum		minor, P. tanacetifolia	
Dianthus:		Phlox, annual--Phlox drummondii all	55
Carnation--Dianthus caryophyllus	60	types and varieties	
China pinks--Dianthus chinensis,	70	Physalis--Physalis spp	60
Heddewigi, Heddensis		Plantycodon (balloon flower)--	60
Grass pinks--Dianthus plumarius	60	Platycodon grandiflorum	
Maiden pinks--Dianthus deltoides	60	Plumbago, cape--Plumbago capensis	50
Sweet William--Dianthus barbatus	70	Ponytail--Beaucarnea recurvata	40

Poppy: Shirley poppy-- <i>Papaver rhoeas</i> , Iceland poppy <i>P. nudicaule</i> , Oriental poppy- <i>P. orientale</i> , Tulip poppy <i>P. glaucum</i>	60
Portulaca-- <i>Portulaca grandiflora</i>	65
Primula (primrose)-- <i>Primula</i> spp	50
Pyrethrum (painted daisy)-- <i>Pyrethrum coccineum</i>	60
Salpiglossis-- <i>Salpiglossis gloxinaeflora</i> , <i>S. sinuata</i>	60
Salvia--Scarlet Sage-- <i>Salvia splendens</i> , Mealycup Sage (blue bedder)-- <i>Salvia farinacea</i>	50
Saponaria-- <i>Saponaria ocymoides</i> , <i>S. vaccaria</i>	60
Scabiosa, annual-- <i>Scabiosa atropurpurea</i>	50
Scabiosa, perennial-- <i>Scabiosa caucasica</i>	40
Scizanthus-- <i>Schizanthus</i> spp	60
Sensitive plant (mimosa)-- <i>Mimosa pudica</i>	65*
Shasta Daisy-- <i>Chrysanthemum maximum</i> , <i>C. leucanthemum</i>	65
Silk Oak-- <i>Grevillea Robusta</i>	25
Snapdragon-- <i>Antirrhinum</i> spp	55
Solanum-- <i>Solanum</i> spp	60
Statice-- <i>Statice sinuata</i> <i>S. suworowii</i> (flower heads)	50
Stocks: Common-- <i>Matthiola incana</i> , Evening Scented-- <i>Matthiola bicornis</i>	65
Sunflower-- <i>Helianthus</i> spp	65
Sunrose-- <i>Helianthemum</i> spp	30
Sweet pea, annual and perennial other than dwarf bush-- <i>Lathyrus odoratus</i> , <i>L. latifolius</i>	75*
Sweet pea, dwarf bush-- <i>Lathyrus odoratus</i>	65*
Tahoka daisy-- <i>Machacantha tanacetifolia</i>	60
Thunbergia-- <i>Thunbergia alata</i>	60
Torch flower-- <i>Tithonia speciosa</i>	70
Torenia (wishbone flower)-- <i>Torenia fourieri</i>	70
Tritoma-- <i>Kniphofia</i> spp	65
Verbena, annual-- <i>Verbena hybrida</i>	35
Vinca (periwinkle)-- <i>Vinca rosea</i>	60
Viola-- <i>Viola carnuta</i>	55
Virginian stocks-- <i>Malcolmia maritima</i>	65
Wallflower-- <i>Cheiranthus allioni</i> , <i>C. cheiri</i>	65
Yucca (Adamsneedle)-- <i>Yucca filamentosa</i>	50
Zinnia (except linearis and creeping)-- <i>Zinnia augustifolia</i> , <i>Z. elegans</i> , <i>Z. grandiflora</i> , <i>Z. gracillima</i> , <i>Z. haageana</i> , <i>Z. multiflora</i> , <i>Z. pumila</i>	65
Zinnia, linearis and creeping-- <i>Zinnia linearis</i> , <i>Sanvitalia procumbens</i>	50
All other kinds	50

* Including hard seeds

R68-8-11. Labeling of Flower Seeds.

Flower seeds shall be labeled with the name of the kind and variety or a statement of type and performance characteristics as prescribed by Section 4-16-4.

A. Seeds of Plants Grown Primarily for Their Blooms.

1. Single Name. Seeds of a single name variety shall be labeled to show the kind and variety name. For example: "Marigold, Butterball."

2. Single Type and Color. Seeds of a single type and color for which there is no special variety name shall be labeled to show either the type of plant or the type of color of bloom. For example: "Scabiosa, Tall, Large Flowered, Double, Pink."

3. Assortment of Colors. Seeds consisting of an assortment of mixture of colors or varieties of a single kind shall be labeled to show the kind name, the type of plant, and the types of bloom. In addition, it shall be clearly indicated that the seed is mixed or assorted. An example of labeling such a mixture or assortment is-"Marigold, Dwarf, Double French, Mixed colors."

4. Assortment of Kinds. Seeds consisting of an assortment of mixture of kinds shall be labeled to clearly indicate that the seed is assorted or mixed and the specific use of the assortment of mixture shall be indicated. For example: "Cut Flower Mixture," or "Rock Garden Mixture." Such statements as "Wild Flower Mixture," "General Purpose Mixture," "Wonder

Mixture," or any other statement which fails to indicate the specific use of the seed shall not meet the requirements of this provision unless the specific use of the mixture is also stated.

B. Seeds of Plants Grown for Ornamental Purposes Other Than Their Blooms. Seeds of plants grown for ornamental purposes other than their blooms shall be labeled to show the kind and variety, or the kind together with a descriptive statement concerning the ornamental part of the plant. For example: "Ornamental Gourds, Small Fruited, Mixed."

R68-8-12. Application of Germination Standards to Mixtures of Kinds of Flower Seeds.

A mixture of kinds of flower seeds will be considered to be below standard if the germination of any kind or combination of kinds constituting 25 % or more of the mixture by number is below standard for the kind or kinds.

R68-8-13. Tree and Shrub Seed Labeling.

The information in the following example shall be used for all tree and shrub seeds for which standard testing procedures are prescribed.

TABLE

Common Name:	Lot#:
Genus:	Species:
Origin: State: County:	Elevation:
Date Collected or Tested: Month: Year:	
Pure Seed: % Weed Seed: %	Inert Matter:
Other crop seed: % Germination: %	Hard Seed:
Net Weight:	
Name:	
Address:	

If the kind of seed to be labeled is not one for which standard testing procedures are prescribed, the information on germination and hard seeds may be omitted from the example shown above.

R68-8-14. Hermetically Sealed Seed Containers.

The 36-month provision on the date of test in Section 4-16-5 will apply to hermetically sealed agricultural and vegetable seed when the following conditions have been met:

A. The seed was packaged within nine months after harvest.

B. The container used does not allow water vapor penetration through any wall, including the seals, greater than 0.05 grams of water per 24 hours per 100 square inches of surface at 100 degrees F. with a relative humidity on one side of 90 percent and on the other side 0 percent. Water vapor penetration (WVP) is measured by the standards adopted by the U. S. Bureau of Standards as: $WVP = \frac{gm\ H_2O}{24\ hr./100\ sq.\ in./100\ degrees\ F./90\% RHV. 0\%RH}$

C. The seed in the container does not exceed the percentage of moisture, on a wet weight basis, as listed below:

TABLE

1. AGRICULTURAL SEEDS	PERCENT
Beet, field	7.5
Beet, sugar	7.5
Bluegrass, Kentucky	6.0
Clover, Crimson	8.0
Fescue, Red	8.0
Ryegrass perennial	8.0
All other agricultural seed	6.0
Mixtures of above	8.0
2. VEGETABLE SEEDS	PERCENT
Bean, garden	7.0
Bean, lima	7.0
Beet	7.5
Broccoli	5.0
Brussel sprouts	5.0
Cabbage	5.0

Carrots	7.0
Cauliflower	5.0
Celeriac	7.0
Celery	7.0
Chard, Swiss	7.5
Chinese cabbage	5.0
Chives	6.5
Collards	5.0
Corn, sweet	8.0
Cucumber	6.0
Eggplant	6.0
Kale	5.0
Kohlrabi	5.0
Leek	6.5
Lettuce	5.5
Muskmelon	6.0
Mustard, India	5.0
Onion	6.5
Onion, Welsh	6.5
Parsley	6.0
Parsnip	6.0
Pea	7.0
Pepper	4.5
Pumpkin	6.0
Radish	5.0
Rutabaga	5.0
Spinach	8.0
Squash	6.0
Tomato	5.5
Turnip	5.0
Watermelon	6.5
All other vegetable seed	6.0

D. The container is conspicuously labeled in not less than eight point type to indicate:

1. That the container is hermetically sealed.
2. That the seed has been preconditioned as to moisture content, and
3. The calendar month and year in which the germination test was completed.

E. The percentage of germination of the vegetable seed at the time of packaging was equal to or above the standards specified in Section R68-8-9.

R68-8-15. Rules for Seed Testing.

Rules for testing seeds shall be the same as those found in the current "Rules For Testing Seeds" recommended by the Association of Official Seed Analysts. For seeds not listed in the "Rules for Testing Seed," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. For seed not listed in the "Rules for Testing Seeds," procedures for testing shall be determined by the State Seed Analyst based upon the most authoritative seed testing information available. Utah Department of Agriculture and Food has a copy of the "Rules for Testing Seeds", on file in the Seed Laboratory.

R68-8-16. Labeling of Chemical Tests for Viability (Tetrazolium).

The results of tetrazolium tests performed in accordance with the current "Rules For Testing Seeds" of the Association of Official Seed Analysts shall be recognized for labeling purposes.

R68-8-17. Labeling of Seed Distributed to Wholesalers.

A wholesaler, whose predominant business is to supply seed to other distributors rather than to consumers, shall label seed as follows:

A. Containers. If the seed is in containers, the information required in Section 4-16-4 need not be shown on each container provided, that:

1. The lot designation is shown on an attached label or by stenciling or printing on container.
2. The required information for labeling accompanies such shipment.

B. Bulk. In the case of seed in bulk, the information required in Section 4-16-4 shall appear in the invoice or other records accompanying and pertaining to such seed.

R68-8-18. Inspector's Duties.

It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which contain weed seeds in violation of current regulations of the Department of Agriculture and Food. Such seed may be recleaned under the supervision of any official representative of the Utah State Department of Agriculture and Food, and if found to meet the requirements of the current regulations of the Department of Agriculture and Food with respect to weed seed content, the same may be released for distribution, otherwise, such seed will be destroyed. It shall be the duty of the District Agricultural Inspectors, either in person or by deputy, to quarantine any lots of seed which do not comply with the labeling provisions of Section 4-16-4, and Section R68-8. Such seeds shall remain quarantined and shall not be offered for sale until they are properly labeled to meet the above requirements.

R68-8-19. Sampling.

A. General Procedure

1. In order to secure a representative sample, equal portions shall be taken from evenly distributed parts of the quantity of seed or screenings to be sampled. Access shall be had to all parts of that quantity.

2. For free-flowing seed in bags or bulk, a probe or trier shall be used. For small free-flowing seed in bags, a probe or trier long enough to sample all portions of the bag shall be used.

3. Non-free-flowing seed, such as certain grass seed, uncleaned seed, or screenings which are difficult to sample with a probe or trier, shall be sampled by thrusting the hand into the bulk and withdrawing representative portions.

4. The portions shall be combined into a composite sample or samples.

5. As the seed or screening is sampled, each portion shall be examined and whenever there appears to be lack of uniformity, additional samples shall be taken to show such lack of uniformity as may exist.

B. Bulk. Bulk seeds or screenings shall be sampled by inserting a probe or thrusting the hand into the bulk, as circumstances require, to obtain a composite sample of at least as many cores or handfuls of seed or screenings as if the same quantity were in bags of an ordinary size. The cores or handfuls of seed which comprise the composite sample shall be taken from well distributed points throughout the bulk.

C. Bags.

1. In quantities of six bags or less, each bag shall be sampled.

2. In quantities of more than six bags, five bags plus at least 10% of the number of bags in the lot shall be sampled, rounding numbers with decimals to the nearest whole number. Regardless of the lot size, it is not necessary to sample more than thirty bags. Example:

TABLE

No. Bags in Lot	7	10	23	50	100	200	300	400
No. Bags to Sample	6	6	7	10	15	25	30	30

3. Samples shall be drawn from unopened bags except under circumstances where the identity of the seed has been preserved.

D. Small Containers. Seed in small containers shall be sampled by taking the entire unopened containers in sufficient number to supply a minimum size sample as required in Subsection R68-8-19(E). The contents of a single container or the combined contents of multiple containers of the same lot shall be considered representative of the entire lot of seed sampled.

E. Size of Samples. The following are minimum weights of samples of seed to be submitted for analysis, test, or examination:

1. Grass seed not otherwise mentioned, white or alsike clover, or seeds not larger than these - two ounces (approximately 55 grams).

2. Alfalfa, bromegrasses, crimson or red clover, flax, lespedezas, millet, rape, ryegrass or seeds of similar size - five ounces (approximately 150 grams).

3. Proso, sudangrass, or seeds of similar size - one pound. (Approximately 500 grams).

4. Cereals, sorghums, vetches or seeds of similar or larger size - two pounds (approximately 1000 grams).

5. Vegetable and flower seed - at least 400 seeds per sample.

6. Tree and shrub seed - at least 600 seeds per sample for germination purposes. If a purity or noxious-weed seed examination is required, the amount of sample shall be at least the size of that required for seeds of similar size in Subsections R68-8-19(E)(1), (2), (3), and (4).

7. Screenings - two quarts.

R68-8-20. Records.

The term "Complete Records," as it pertains to Section 4-16-11, shall be construed to mean information which relates to origin, germination, purity, variety, and treatment of each lot of seed transported or delivered for transportation within this State. Such information shall include seed samples and records of declaration, labels, purchases, sales, cleaning, bulking, handling, storage, analysis, tests, and examinations. The complete record kept by each person for each lot of seed consists of the information pertaining to his own transactions and the information received from others pertaining to their transactions with respect to each lot of seed.

R68-8-21. Advertising.

The name of a kind or kind and variety of seed and any descriptive terms pertaining thereto shall be correctly represented in any advertisement of seed.

A. Name of Kind or Kind and Variety. The representation of the name of a kind or kind and variety of seed in any advertisement subject to the act shall be confirmed to the name of the kind or kind and variety determined in accordance with Section 4-16-2 associated with words or terms that create a misleading impression as to the history or characteristics of the kind or kind and variety. Descriptive terms and firm names may be used in kind and variety names; provided, that the descriptive terms or firm names are a part of the kind or variety of seed; for example, Stringless Green Pod, Detroit Dark Red, Black Seed Simpson, and Henderson Bush Lima. Seed shall not be designated as hybrid seed in any advertisement subject to the act unless it comes within the definition of "Hybrid" in Section 4-16-2.

B. Characteristics of Kind or Variety. Terms descriptive as to color, shape, size, habit of growth, disease resistance, or other characteristics of the kind or variety, may be associated with the name of the kind or variety; provided, that it is done in a manner which clearly indicates the descriptive term is not part of the name of the kind or variety; for example, Oshkosh pepper (yellow) Copenhagen Market (round head) cabbage, and Kentucky Wonder pole bean.

C. Description of Quality and Origin. Terms descriptive of quality or origin and terms descriptive of the basis for representations made may be associated with the name of the kind or variety of seed; provided, that the terms are clearly identified as being other than part of the name of the kind or variety; for example: Blue Tag Gem Barley, Idaho Origin Alfalfa, and Grower's Affidavit of Variety Atlas Sorghum.

D. Description of Manner of Production or Processing. Terms descriptive of the manner or method of production or processing the seed may be associated with the name of the kind or variety of seed, providing such terms are not misleading.

E. Separation of Brand Names from Kind and Variety Names. Brand names and terms taken from trademarks may be associated with the name of the kind and variety or mixtures of kinds or blends of varieties of seed as an indication of source; provided, that the terms are clearly indicated as being other than part of the name of the kind and variety, mixture or blend. For example: Valley Brand Blend 15 Alfalfa, or River Brand Golden Cross Corn.

R68-8-22. Seed Screenings.

It shall be unlawful for any person, company, or corporation to sell, offer for sale, barter, give away, or otherwise dispose of any screenings containing more than 6 whole prohibited noxious weed seeds per pound and/or more than 27 whole restricted weed seeds per pound; except that screenings containing such seeds may be moved or sold to a mill or plant for processing in such a manner which will reduce the number of whole weed seeds to within the above stated tolerances. Each container or shipment of screenings shall be labeled with the words "Screenings for Processing - Not For Seeding or Feeding" and with the name and address of the consignor and consignee.

R68-8-23. Fees For Testing Services.

Charges for testing samples, representing seed sold or offered for sale in Utah, or other services performed by the state seed laboratory, shall be determined by the department pursuant to Subsection 4-2-2(2). A current listing of approved fees may be obtained upon request from Utah State Department of Agriculture and Food.

KEY: inspections

July 2, 2008

Notice of Continuation January 9, 2006

4-2-2

4-16-3

4-17-3

R68. Agriculture and Food, Plant Industry.

R68-9. Utah Noxious Weed Act.

R68-9-1. Authority.

Promulgated under authority of 4-2-2 and 4-17-3.

R68-9-2. Designation and Publication of State Noxious Weeds.

A. The following weeds are hereby officially designated and published as noxious for the State of Utah, as per the authority vested in the Commissioner of Agriculture and Food under Section 4-17-3:

There are hereby designated three classes of noxious weeds in the state: Class A (EDRR) Class B (Control) and Class C (Containment).

TABLE

Class A: Early Detection Rapid Response (EDRR) Declared noxious weeds not native to the state of Utah that pose a serious threat to the state and should be considered as a very high priority.

Blackhenbane	Hyoseyamus niger (L.)
Diffuse Knapweed	Centaurea diffusa (Lam.)
Leafy Spurge	Euphorbia esula L.
Medusahead	Taeniatherum caput-medusae
Oxeye daisy	Chrysanthemum leucanthemum L.
Perennial Sorghum spp.	including but not limited to Johnson Grass (Sorghum halepense (L.) Pers. and Sorghum almum (Sorghum almum, Parodi).
Purple Loosestrife	Lythrum salicaria L.
Spotted Knapweed	Centaurea maculosa Lam.
Squarrose Knapweed	Centaurea squarrosa Guggle.
St. Johnsworts	Hypericum perforatum L.
Sulfur cinquefoil	Potentilla recta L.
Yellow Starthistle	Centaurea solstitialis L.
Yellow Toadflax	Linaria vulgaris Mill.

Class B: (Control) Declared noxious weeds not native to the state of Utah, that pose a threat to the state and should be considered a high priority for control.

Bermudagrass*	Cynodon dactylon (L.) Pers.
Broad-leaved Peppergrass (Tall Whitetop)	Lepidium latifolium L.
Dalmation Toadflax	Linaria dalmatica (L.) Mill
Dyers Woad	Isatis tinctoria L.
Hoary cress	Cardaria spp.
Musk Thistle	Carduus nutans L.
Poison Hemlock	Conium maculatum L.
Russian Knapweed	Centaurea repens L.
Scotch Thistle (Cotton Thistle)	Onopordium acanthium L.
Squarrose Knapweed	Centaurea virgata Lam. spp

Class C: (Containment) Declared noxious weeds not native to the state of Utah that are widely spread but pose a threat to the agricultural industry and agricultural products with a focus on stopping expansion.

Field Bindweed (Wild Morning-glory)	Convolvulus spp.
Canada Thistle	Cirsium arvense (L.) Scop.
Houndstoungue	Cynoglossum officianale L.
Saltcedar	Tamarix ramosissima Ledeb.
Quackgrass	Agropyron repens (L.) Beauv.

* Bermudagrass (Cynodon dactylon) shall not be a noxious weed in Washington County and shall not be subject to provisions of the Utah Noxious Weed Law within the boundaries of that county. It shall be a noxious weed throughout all other areas of the State of Utah and shall be subject to the laws therein.

R68-9-3. Designations and Publication of Articles Capable of Disseminating Noxious Weeds.

A. As provided in Section 4-17-3, the following articles are designated and published by the Commissioner as capable of disseminating noxious weeds:

1. Machinery and equipment, particularly combines and hay balers.
2. Farm trucks and common carriers.
3. Seed.
4. Screenings sold for livestock feed.
5. Livestock feed material.
6. Hay, straw, or other material of similar nature.
7. Manure.
8. Soil, sod and nursery stock.
9. Noxious weeds distributed or sold for any purpose.
10. Livestock.

R68-9-4. Prescribed Treatment for Articles.

A. As provided in Section 4-17-3, the Commissioner has determined that the following treatments shall be considered minimum to prevent dissemination of noxious weed seeds or such parts of noxious weed plants that could cause new growth by contaminated articles:

1. Machinery and Equipment.
 - a. It shall be unlawful for any person, company or corporation
 - (1) bring any harvesting or threshing machinery, portable feed grinders, portable seed cleaners or other farm vehicles or machinery into the state without first cleaning such equipment free from all noxious weed seed and plant parts; or
 - (2) move any harvesting or threshing machinery, portable feed grinders or portable seed cleaners from any farm infested with any noxious weed without first cleaning such equipment free from all noxious weed seed and plant parts.
 - (3) Immediately after completing the threshing of grain or seed which is contaminated with noxious weeds, such machine is to be cleaned by:
 - (1) removing all loose material from the top and side of the machine by sweeping with a blower
 - (2) opening the lower end of elevator, return and measuring device and removing infested material from shakers, sieves, and other places of lodgement;
 - (3) running the machine empty for not less than five minutes, alternately increasing and retarding the speed; and
 - (4) following the manufacturer's detailed suggestions for cleaning the machine.

2. Farm Trucks and Common Carriers.
It shall be unlawful for any person, company or corporation to transport seed, screenings or feed of any kind containing noxious weed seed over or along any highway in this State or on any railroad operating in this State unless the same is carried or transported in such vehicles or containers which will prevent the leaking or scattering thereof. All common carriers shall thoroughly clean and destroy any noxious weed seeds or plant parts in cars, trucks, vehicles or other receptacles used by them after each load shall have been delivered to consignee before again placing such car, truck, vehicle or receptacle into service.

3. Seed.
 - a. It shall be unlawful for any person, firm or corporation to sell, offer or expose for sale or distribute in Utah any agricultural, vegetable, flower or tree and shrub seeds for seeding purposes which contain any seeds of those weeds declared noxious by the Commissioner of Agriculture and Food.
 - b. It shall be the duty of the State Agricultural Inspector to remove from sale any lots of seeds offered for sale which are found to contain noxious weed seeds. Such seed may be reclaimed under the supervision of the inspector and, if found to be free from noxious weed seeds, the same may be released for sale or distribution; otherwise, such seed shall be returned to point of origin, shipped to another state where such weed shall be returned to point of origin, shipped to another state where such weed seed is not noxious, or destroyed or processed in such a manner as to destroy viability of the weed seeds.

4. Screenings Sold for Livestock Feed.

a. All screenings or by-products of cleaning grains or other seeds containing noxious weed seeds, when used in commercial feed or sold as such to the ultimate consumer, shall be ground fine enough or otherwise treated to destroy such weed seeds so that the finished product contains not more than six whole noxious weed seeds per pound.

b. All mills and plants cleaning or processing any grains or other seeds shall be required to grind or otherwise treat all screenings containing noxious weed seeds so as to destroy such weed seeds to the extent that the above stated tolerance is not exceeded before allowing the same to be removed from the mill or plant. Such screenings may be moved to another plant for grinding and treatment; provided that: each container or shipment is labeled with the words "screenings for processing - not for seeding or feeding" and with the name and address of the consignor and the consignee.

5. Livestock Feed Material.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away to the ultimate consumer any livestock feed material, including whole grains, which contain more than six whole noxious weed seeds per pound. Whole feed grain which exceeds this tolerance of noxious weed seeds may be sold to commercial processors or commercial feed mixers where the manner of processing will reduce the number of whole noxious weed seed to no more than six per pound.

6. Hay, Straw or Other Material of Similar Nature.

a. It shall be unlawful for any person, company or corporation to sell or offer for sale, barter or give away any hay, straw, or other material of similar nature, which is contaminated with mature noxious weed seeds or such parts of noxious weed plants which could cause new growth, or to alter, change or falsify in anyway information contained on a phytosanitary certificate.

7. Manure.

a. Manure produced from grain, hay, or other forage infested with noxious weeds shall not be applied or dumped elsewhere than upon the premises of the owner thereof.

8. Soil, Sod and Nursery Stock.

a. No soil, sod or nursery stock which contains or is contaminated with noxious weed seeds, or such parts of the plant that could cause new growth, shall be removed from the premises upon which it is located until cleaned of such weed seed or plant parts, except that such contaminated soil may be used for restrictive non-planting purposes upon permission and under direction of the county weed supervisor or a representative of the Utah Department of Agriculture and Food.

9. Noxious Weeds Distributed or Sold for Any Purpose.

a. It shall be unlawful for any person, company or corporation to sell, barter or give away any noxious weed plants or seeds for any purpose.

10. Livestock.

a. No livestock to which grain, hay, or other forage containing noxious weed seeds has been fed shall be permitted to range or graze upon fields other than those upon which they have been so fed for a period of 72 hours following such feeding. During such period, they shall be fed materials which are not contaminated with noxious weed seeds.

R68-9-5. Reports From Counties.

A. The Board of County Commissioners of each county, with the aid of their county Weed Board and their County Weed Supervisor, shall submit an "Annual Progress Report of County Noxious Weed Control Program" to the Commissioner of Agriculture and Food by January 15 of each year, covering the activities of the previous calendar year. A prescribed form for this report shall be supplied by the Commissioner.

R68-9-6. Notices.

A. General and individual notices pertaining to the control and prevention of noxious weeds shall be substantially of the types prescribed herein; namely, General Notice to Control Noxious Weeds, Individual Notice to Control Noxious Weeds, and Notification of Noxious Weed Lien Assessment.

1. General Notice To Control Noxious Weeds.

A general public notice shall be posted by the County Weed Board in at least three public places within the county and be published in one or more newspapers of general circulation throughout the county, on or before May 1 of each year and at any other times the County Weed Board determines. Such public notice shall state that it is the duty of every property owner to control and prevent the spread of noxious weeds on any land in his possession, or under his control, and shall serve as a warning that if he fails to comply with this notice, enforced weed control measures may be imposed at the direction of county authorities. Such general notice shall also include a list of weeds declared noxious for the State of Utah and for said county, if any.

2. Individual Notice to Control Noxious Weeds.

Following publication of a general notice, if a County Weed Board determines that definite weed control measures are required to control noxious weeds on a particular property, the Board shall cause an individual notice to be served upon the owner or the person in possession of said property, giving specific instructions concerning when and how the noxious weeds are to be controlled within a specified period of time. The individual notice shall also inform the property owner or operator of legal action which may be taken against him if he fails to comply with said notice.

3. Notification of Noxious Weed Lien Assessment.

If it is deemed advisable, the Board of County Commissioners may cause noxious weeds to be controlled on a particular property and any expenses incurred by the county shall be paid by the owner of record or the person in possession of the property. A notice shall be provided such person, showing an itemized cost statement of the labor and materials necessarily used in the work of said control measures. This notice shall also state that the expense constitutes a lien against the property and shall be added to the general taxes unless payment is made to the County Treasurer within 90 days.

KEY: weed control

July 2, 2008

Notice of Continuation June 9, 2008

4-2-2

4-17-3

R68. Agriculture and Food, Plant Industry.**R68-16. Quarantine Pertaining to Pine Shoot Beetle, *Tomicus piniperda*.****R68-16-1. Authority.**

A. Promulgated under authority of Subsection 4-2-2(1)(k), and Section 4-35-9.

B. Refer to the Notice of Quarantine, Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus), Effective December 28, 1992, issued by Utah Department of Agriculture and Food.

R68-16-2. Pest.

Pine Shoot Beetle, *Tomicus Piniperda* (Linnaeus), a beetle, family Scolytidae, is a serious pest of pine trees, and also known to damage fir, larch, and spruce trees by attacking the trunks and stems.

R68-16-3. Areas Under Quarantine.

All areas of the United States and Canada that are declared high risk by the United States Department of Agriculture, Animal and Plant Health Inspection Service, plant protection and quarantine or Utah Commissioner of Agriculture and Food.

R68-16-4. Articles and Commodities Under Quarantine.

The following are hereby declared to be regulated articles, hosts, and possible carriers of the Pine Shoot Beetle:

A. The Pine Shoot Beetle, *Tomicus piniperda* (Linnaeus), in any living stage of development.

B. Plants of the genus *Pinus* spp. whether balled and burlapped or cut live for use as Christmas trees.

C. Timber pine bark products or whole log forms of the genus *Pinus* spp., *Abies* spp., *Larix* spp., and *Picea* spp. with any bark intact.

D. Ornamental foliage from the genus *Pinus* spp. including pine wreaths and garlands, raw materials for wreaths and garlands, bark nuggets and bark chips.

E. Any other plant, plant part, article, or means of conveyance when it is determined by the Commissioner of the Department of Agriculture and Food or the Commissioner's duly authorized agent to present a hazard of spreading live Pine Shoot Beetle due to infestation or exposure to infestation by Pine Shoot Beetle.

R68-16-5. Restrictions.

A. All articles and commodities under quarantine are prohibited entry into Utah from an area under quarantine with the following exceptions:

1. From uninfested areas of the states listed in R68-16-3 when accompanied by a certificate of origin stating the origin of the material and that the plant material originated from an area not known to be infested with the Pine Shoot Beetle.

2. Regulated articles as listed in 7 CFR Chapter III 301.51-2.

R68-16-6. Treatment and Management Methods.

All treatment shall follow procedures as described in 7 CFR Chapter III 301.50-10.

R68-16-7. Disposition of Violations.

Any or all shipments or lots of quarantined articles or commodities listed in R68-16-4, arriving in Utah in violation of this quarantine shall immediately be sent out of the state, destroyed, or treated by a method and in a manner as directed by the Commissioner of the Utah Department of Agriculture and Food or his agent. Treatment shall be performed at the expense of the owner, or owners, or their duly authorized agent.

KEY: quarantine**July 2, 2008****Notice of Continuation June 9, 2008****4-2-2(1)(k)****4-35-9**

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

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

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

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

R70-560-2. Definitions.

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

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

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

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

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

R70-560-3. Approval of Food.

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

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

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

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

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

R70-560-4. Production Requirements.

(1) A cottage food production operation shall:

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

(b) Use finished and cleanable surfaces;

(c) Maintain acceptable sanitary standards and practices;

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

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

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

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

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

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

(c) Have a separate kitchen; or

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

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

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

(b) Allowing pets in the kitchen;

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

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

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

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

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

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

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

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

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

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

(a) Applies for the registration;

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

(c) Pays the fee required by the department; and

(d) Meets the requirements of this section.

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

R70-560-6. Cottage Food Labeling.

(1) A cottage food production operation shall:

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

(2) Label information shall include:

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

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

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

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

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

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

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

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

R70-560-7. Food Distribution and Storage.

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

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

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

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

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

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

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

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

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

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

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

R70-560-8. Regulatory Jurisdiction.

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

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

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

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

R70-560-9. Enforcement and Penalties.

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

KEY: food safety, cottage foods, food establishment registration, inspections
July 25, 2008

4-5-9.5

R81. Alcoholic Beverage Control, Administration.**R81-4C. Limited Restaurant Licenses.****R81-4C-1. Licensing.**

Limited restaurant licenses are issued to persons as defined in Section 32A-1-105(38). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-303(4), 32A-4-304, and 32A-4-307(28).

R81-4C-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a limited restaurant license when the requirements of Sections 32A-4-303, -304, and -306 have been met, a completed application has been received by the department, and the limited restaurant premises have been inspected by the department.

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-306, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-303(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

The following procedures shall be followed when a limited restaurant licensee orders wine or heavy beer from or returns wine or heavy beer to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section 32A-4-307(9)(a). However, the licensee may open the wine and heavy beer storage area during

hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the limited restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32A-4-307(29), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32A-4-307(26).

(a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately suspended by the commission. Any suspension shall remain in effect until the licensee is able to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within three months of the date the license was suspended, shall result in the revocation of the license.

(3) Wine dispensing shall be in accordance with Section 32A-4-307; and Section R81-1-10 (Wine Dispensing), and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-8. Alcoholic Product Flavoring.

(1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No limited restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4C-9. Table Service.

A wine service may be performed by the server at the patron's table for wine either purchased at the limited restaurant or carried in by a patron, provided the wine has an official state label affixed. The wine may be opened and poured by the server.

R81-4C-10. Consumption at Patron's Table.

(1) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department, but may not be located at the site where alcoholic beverages are dispensed to the server or stored.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

(3) All wine and heavy beer consumed in a limited restaurant must come from a container or package having an official state label affixed.

R81-4C-11. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4C-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

KEY: alcoholic beverages

August 1, 2003

Notice of Continuation July 31, 2008

32A-1-107

R81. Alcoholic Beverage Control, Administration.**R81-4D. On-Premise Banquet License.****R81-4D-1. Licensing.**

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and

(iii) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host

of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105(36). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(26).

R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32A-4-402, -403, and -405 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

(2)(a) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(b) Pursuant to 32A-4-402(2) and 32A-4-406(4) an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32A-4-406.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-405, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-402(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee's order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier's check.

(3) The licensee or the licensee's designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

- (i) the bottle has not been opened;
- (ii) the seal remains intact;
- (iii) the label remains intact; and
- (iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds \$1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32A-4-406(7). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

Liquor dispensing shall be in accordance with Section 32A-4-406; and Sections R81-1-9 (Liquor Dispensing Systems), and R81-1-10 (Wine Dispensing) of these rules.

R81-4D-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the on-premise banquet license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-10. State Label.

All liquor consumed on the premises of an on-premise banquet license must come from a container or package having an official state label affixed.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(3) Any host of a contracted banquet shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters, except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department's purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32A-4-406(24).

(2) Purpose. This rule implements the requirement of 32A-4-406(24) that requires the commission to provide by rule procedures for on-premise banquet licensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee shall file with the department at the beginning of each quarter a report containing advance notice of events or functions that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63-2-304 and -308;

(ii) any report filed shall be classified by the department as protected pursuant to 63-2-304; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32A-1-119, 32A-4-406, and R81-1-6 and -7.

KEY: alcoholic beverages

July 30, 2008

Notice of Continuation July 31, 2008

32A-1-107

R81. Alcoholic Beverage Control, Administration.**R81-10B. Temporary Special Event Beer Permits.****R81-10B-1. Application Guidelines.**

(1) A temporary special event beer permit application shall be included in the agenda of the monthly commission meeting for consideration for issuance of the permit, when the requirements of 32A-10-302, -303, and -305 have been met, and a completed application has been received by the department.

(2) The sale of beer under a series of permits issued to the same person may not exceed a total of 90 days in any one calendar year. "Calendar year" means January 1 through December 31.

(3)(a) The temporary special event permit bond, as required by Section 32A-10-305, shall not be released back to the permittee sooner than 30 days following the event.

(b) If an organization or individual other than the one applying for the permit posts the bond, an affidavit must be submitted attesting that the bond is for the permittee's compliance with the provisions of the Act and the commission rules, and that if a violation occurs at the event, the bond may be forfeited.

(4) The commission may authorize multiple sales outlets on different properties under one temporary special event beer permit, provided that each site conforms to location requirements of Section 32A-10-301. The commission may authorize simultaneous sale and consumption hours at multiple sales outlets.

R81-10B-2. Guidelines for Issuing Permits for Outdoor or Large -Scale Public Events.

(1) Purpose. The sale of alcohol at outdoor public events such as street festivals, fairs, concerts, and rodeos poses special control issues for event organizers and law enforcement officials. Furthermore, the sale of beer at public events attended by large numbers of people, many of whom may be under the age of 21, also poses special control issues. In deciding whether to issue a temporary special event beer permit for such events, the commission must be satisfied that sufficient controls will be in place to minimize the possibility of minors being sold or furnished beer or adults being over-served beer at the event. This rule identifies control measures that must be in place before the commission will issue a temporary special event beer permit for an outdoor or a large-scale public event. However, this rule gives the commission discretion not to require specific control measures under certain circumstances after considering the facts and circumstances of a particular event.

(2) Definitions.

(a) For purposes of this rule, "large-scale public event" includes any event that is open to the general public and the estimated attendance at the event is in excess of 1000 people.

(3) Authority. This rule is enacted under the authority of Sections 63-46A-3, 32A-1-107 and 32A-10-301 and -304.

(4) Policy.

(a) Before a temporary special event beer permit will be issued by the commission to allow the sale of beer at an outdoor or a large-scale public event, the following control measures must be present at the event:

(i) There must be at least one location at the event where those wanting to purchase beer must show proof of age and either have their hand stamped or be issued a non-transferable wristband.

(A) The proof of age location(s) shall be separate from the beer sales and dispensing location(s).

(B) Proof of age may be established by:

(I) a current valid driver's license that includes date of birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(II) a current valid identification card that includes date of

birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(III) a current valid military identification that includes date of birth and has a picture affixed; or

(IV) a current valid passport.

(C) Any person assigned to check proof of age shall have completed the alcohol server-training seminar outlined in 63A-15-401.

(D) The use of hand stamps or issuance of wristbands does not relieve those selling and dispensing beer from asking for proof of age if they suspect a person attempting to purchase beer is under the age of 21 years.

(ii) Beer sales and dispensing location(s) shall be separate from food and non-alcoholic beverage concession locations. However, if the consumption of beer at the event is limited to a confined, restricted area such as a "beer garden", then beer, food and non-alcoholic beverages may be sold at the same sales locations within the confined, restricted area.

(iii) Beer shall be served in readily identifiable cups or containers distinct from those used for non-alcoholic beverages.

(iv) No more than two beers shall be sold to a customer at a time.

(v) At least one person who has completed the alcohol server training seminar outlined in 62A-15-401 shall be at each location where beer is sold and dispensed to supervise the sale and dispensing of beer.

(vi) If minors may attend the event, all dispensing and consumption of beer shall be in a designated, confined, and restricted area where minors are not allowed without being accompanied by a parent or guardian, and where beer consumption may be closely monitored.

(b) Notwithstanding Subsection (a), the commission, after reviewing the facts and circumstances of a particular outdoor or large-scale public event, may in its discretion relax any of the control measures outlined in Subsection (a) above.

(c) After reviewing the facts and circumstances of the outdoor or large-scale public event, the commission may in its discretion require additional control measures as a condition of issuing a temporary special event beer permit. These can include but are not limited to the following:

(i) Requiring that beer products be distinguishable in appearance from non-alcoholic beverages.

(ii) Requiring a certain minimum number of law enforcement and/or security personnel at the event.

(5) Procedure. The following procedure shall govern applications for temporary special event beer permits for outdoor or large-scale public events:

(a) In addition to providing a description of the times, dates, location, nature and purpose of the event, the applicant shall include in the permit application a summary of all control measures that will be taken at the event to reduce the possibility of minors being furnished beer and adults being over-served beer at the event.

(b) Department staff shall provide this information to the commissioners prior to the commission's consideration of the permit application.

(c) The commission shall review the application to determine if all statutory requirements are in place, to determine if all controls listed in Subsections (4)(a)(i) through (vi) are in place, to consider any request to waive any of the controls listed in Subsections (4)(a)(i) through (vi), and to assess whether any additional control measures such as those listed in Subsection (4)(c) should be required prior to issuing the permit.

R81-10B-3. Price Lists.

(1) A temporary special event beer event permittee shall have a printed price list or menu available for inspection

containing beer prices.

(2) The permittee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the event premises.

KEY: alcoholic beverages

August 1, 2003

Notice of Continuation July 31, 2008

32A-1-107

32A-10

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", 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(5), "Disclosure and Agreement", is to 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 8, 2008

Notice of Continuation February 15, 2007

63G-2-204

63G-2-201(5)(b)

63G-2-201(10)(a)

63G-2-202(8)

63G-2-308

63G-2-401

63G-2-603

R156. Commerce, Occupational and Professional Licensing.
R156-28. Veterinary Practice Act Rule.
R156-28-101. Title.

This rule is known as the "Veterinary Practice Act Rule".

R156-28-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 28, as used in Title 58, Chapters 1 and 28 or this rule:

(1) "In association with licensed veterinarians", as used in Subsection 58-28-307(6), means the out of state licensed veterinarian is performing veterinarian services in this state as the result of a request for assistance or consultation initiated by a Utah licensed veterinarian regarding a specific client or patient and the services provided by the out of state licensed veterinarian are limited to that specific request.

(2) "NBEC" means the National Board Examination Committee of the American Veterinary Medical Association.

(3) "Patient" means any animal receiving veterinarian services.

(4) "Practice of veterinary medicine, surgery, and dentistry" as defined in Subsection 58-28-102(11) does not include the implantation of any electronic device for the purpose of establishing or maintaining positive identification of animals.

(5) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 28, is further defined in accordance with Subsection 58-1-203(1)(e) in Section R156-28-502.

R156-28-103. 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 28.

R156-28-104. 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.

R156-28-302a. Qualifications for Licensure - Education Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the education requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall comply with one of the following:

(a) an official transcript demonstrating that the applicant has graduated from a veterinary college which held current accreditation by the Council on Education of the American Veterinary Medical Association (AVMA) at the time of the applicant's graduation; or

(b) if the applicant received a veterinary degree in a foreign country, demonstrate that the applicant's foreign education is equivalent to the requirements of Subsection R156-28-302a(1)(a) by submitting a Certificate of Competence issued by the AVMA Educational Commission for Foreign Veterinary Graduates (ECFVG) or the American Association of Veterinary State Boards (AAVSB) Program for Assessment of Veterinary Education Equivalence (PAVE).

(2) Each applicant for licensure as a veterinarian intern shall demonstrate that the applicant has met the education provided in Subsection R156-28-302a(1); however, if the applicant has graduated, but the educational institution has not yet posted the degree on the official transcript, the applicant may submit the official transcript together with a notarized letter from the dean or registrar of the educational institution, which certifies that the applicant has obtained the degree but it is not yet posted to the official transcript.

R156-28-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3),

the experience requirements for licensure in Subsection 58-28-302 are defined, clarified, or established as follows.

(1) Each applicant for licensure as a veterinarian shall:

(a) complete 1000 hours of experience while licensed as a veterinarian intern under the supervision of a licensed veterinarian in accordance with the following.

(i) Experience shall be earned in not less than six months and completed within two years of the date of the application.

(ii) Experience in the following settings is not acceptable to fulfill this experience requirement:

(A) temporary employment experiences of less than eight weeks in duration; or

(B) part time experience of less than 20 hours per week.

(iii) Experience completed while employed as unlicensed assistive personnel is not acceptable to fulfill this experience requirement.

(iv) If the experience is completed in a jurisdiction outside of Utah which does not issue licensure as a veterinarian or as a veterinarian intern or comparable licenses or was completed in a setting which does not require licensure, the applicant shall demonstrate that the experience was:

(A) lawfully obtained;

(B) obtained after the applicant met the education requirement specified in Section R156-28-302a;

(C) supervised by a competent supervisor who was licensed as a veterinarian or exempted from licensure, except if the supervisor was exempted from licensure, the applicant must demonstrate the qualifications and competence of the supervisor; and

(D) comparable to experience that would be obtained in a standard veterinarian practice setting in Utah.

(v) Supervision of the intern by the licensed veterinarian may be obtained by "indirect supervision" as defined in Section 58-28-102 provided that the supervisor supplements the indirect supervision with routine face to face contact as the licensed veterinarian deems appropriate using professional judgment.

(vi) Each applicant shall demonstrate completion of the experience required by submitting a verification of experience signed by the applicant and the applicant's supervising veterinarian on forms approved by the Division.

(vii) 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.

(b) In accordance with Subsections 58-37-6(1)(a), 58-37-6(5)(b)(i) and R156-37-305(1), a veterinarian intern is not eligible to obtain a controlled substance license during the internship.

R156-28-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-1-203(1) and 58-1-301(3), the examination requirements for licensure in Subsection 58-28-302(1)(b) are defined, clarified, or established as follows:

(1) Applicants who passed the examinations listed in this subsection prior to May 1, 2000 shall submit documentation showing they passed:

(a) the National Board Examination (NBE) of the National Board Examination Committee (NBEC) of the American Veterinary Medical Association (AVMA) with a minimum passing score as determined by the NBEC; and

(b) the Clinical Competency Test (CCT) of the NBEC with a minimum passing score as determined by the NBEC.

(2) Applicants who did not pass the examinations listed in

Subsection (1) prior to May 1, 2000 shall submit documentation showing they passed the North American Veterinarian Licensing Examination (NAVLE) with a score as determined by the NBEC.

(3) To be eligible to sit for the NAVLE examination, an applicant shall submit the following:

(a) an application for approval to sit for the NAVLE examination;

(b) the application fee; and

(c) documentation showing the applicant has met the education requirement specified in Section R156-28-302a or will complete the education requirement at the end of the semester or quarter in which the applicant is currently enrolled. If the applicant is enrolled in the final semester or quarter before obtaining the degree, documentation of the applicant's student status shall be provided by a letter from the dean or registrar of the educational institution confirming the applicant is a student in good standing and will graduate with the next graduating class.

R156-28-303. 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 28 is established by rule in Section R156-1-308a.

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

(3) Applicants for renewal shall meet the continuing education requirements specified in Section R156-28-304.

R156-28-304. Continuing Professional Education.

In accordance with Section 58-28-306, there is created a continuing professional education requirement as a condition for renewal or reinstatement of licenses issued under Title 58, Chapter 28. The continuing professional education requirement shall comply with the following criteria.

(1) During each two year period commencing on September 30 of each even numbered year, a licensee shall be required to complete not less than 24 hours of qualified continuing professional education directly related to the licensee's professional practice.

(2) The required number of hours of continuing professional education for an individual who first becomes licensed during the two year period shall be decreased by a pro-rata amount equal to the 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 veterinarian;

(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 continuing professional education shall be recognized in accordance with the following:

(a) Unlimited hours shall be recognized for continuing professional education as a student or presenter, completed in blocks of time of not less than one hour in formally established classroom courses, seminars, lectures, wet labs, or specific veterinary conferences approved or sponsored by one or more of the following:

(i) the American Veterinary Medical Association;

(ii) the Utah Veterinary Medical Association;

(iii) the American Animal Hospital Association;

(iv) the American Association of Equine Practitioners;

(v) the American Association of Bovine Practitioners;

(vi) certifying boards recognized by the AVMA;

(vii) the Western Veterinary Conference; or

(viii) other state veterinary medical associations or state licensing boards; or

(ix) the Registry of Continuing Education (RACE) of the AASVB.

(b) No more than five continuing professional education hours may be counted for being the primary author of an article published in a peer reviewed scientific journal, and no more than two continuing professional education hours may be counted for being a secondary author.

(c) No more than six continuing professional education hours may be in practice management courses.

(d) Any continuing professional education where there is no instructor or where the instructor is not physically present, shall assure the licensee's participation and acquisition of the knowledge and skills intended by means of an examination. These types of continuing professional education courses include internet, audio/visual recordings, broadcast seminars, mail and other correspondence courses.

(5) A licensee shall be responsible for maintaining competent 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 such information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) A licensee who is unable to complete the continuing professional education requirement for reasons such as a medical or related condition, humanitarian or ecclesiastical services, or extended presence in a geographical area where continuing education is not available, may be excused from the requirement for a period of up to three years as provided in Section R156-1-308d.

R156-28-502. Unprofessional Conduct.

Unprofessional conduct includes:

(1) deviating from the minimum standards of veterinary practice set forth in Section R156-28-503;

(2) permitting unlicensed assistive personnel to perform duties that the individual is not competent by education, training or experience to perform; and

(3) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Principles of Veterinary Medical Ethics of the American Veterinarian Medical Association (AVMA), as approved by the AVMA Executive Board, July 1999, revised November 2003, which are hereby incorporated by reference, except that if a licensee fails to establish the veterinarian-client-patient relationship as required in Section III A. of those principles, such failure does not excuse the veterinarian from complying with all other duties that would be a part of the duties that would be imposed on a veterinarian if the veterinarian had properly established the veterinarian-client-patient relationship.

R156-28-503. Minimum Standards of Practice.

In accordance with Subsection 58-28-102(14) and Section 58-28-603, a veterinarian shall comply with the following minimum standards of practice in addition to the generally recognized standards and ethics of the profession:

(1) A veterinarian shall compile and maintain records on each patient to minimally include:

(a) client's name, address and phone number, if telephone

is available;

(b) patient's identification, such as name, number, tag, species, age and gender, except for herds, flocks or other large groups of animals which may be more generally defined;

(c) veterinarian's diagnosis or evaluation of the patient;

(d) treatments rendered including drugs used and dosages;
and

(e) date of service.

(2) A veterinarian shall maintain a sanitary environment to avoid sources and transmission of infection to include the proper routine disposal of waste materials and proper sterilization or sanitation of all equipment used in diagnosis and treatment.

KEY: veterinary medicine, licensing

July 10, 2008

58-1-106(1)(a)

Notice of Continuation February 1, 2007

58-1-202(1)(a)

58-28-101

R156. Commerce, Occupational and Professional Licensing.
R156-41. Speech-Language Pathology and Audiology Licensing Act Rule.

R156-41-101. Title.

This rule is known as the "Speech-Language Pathology and Audiology Licensing Act Rule".

R156-41-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 41, or this rule, as used in Title 58, Chapters 1 and 41, or this rule:

(1) "Audio electronic equipment" as used in Subsection 58-41-2(3) means equipment proven in use, accepted and standard to the profession, of known quality and function, well maintained, in current calibration and presenting no hazard to the operator or client.

(2) "Direct supervision" as used in Subsections 58-41-2(5)(c), 58-41-2(20)(c), and this rule, means supervision as defined in Subsection R156-1-102a(4)(a).

(3) "Evoked potentials evaluation", as used in Subsection 58-41-2(4), includes neurophysiological intraoperative monitoring.

(4) "Professional training" as set forth in Subsection 58-41-12(2) means continuing professional education that meets the standards set forth in Section R156-41-304.

(5) "Substitute supervisor", as used in this rule, means a licensee who is designated by the supervisor to provide limited supervision to an aide. The substitute supervisor shall be licensed in the same discipline in which the aide is functioning.

(6) "Supervision", as used in this rule, means a supervisor-supervisee relationship requiring the supervisor to be responsible for the professional performance by the supervisee. This includes a substitute supervisor-supervisee relationship.

(7) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 41, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-41-502.

R156-41-103. 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 41.

R156-41-104. 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.

R156-41-302. Qualifications for Licensure.

In accordance with Section 58-41-5, ASHA certification as a speech-language pathologist or audiologist is one acceptable method to document that an individual has completed the requirements of Subsections 58-41-5(3) through (7).

R156-41-303. 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 41, is established by rule in Section R156-1-308a.

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

R156-41-304. Continuing Professional Education.

In accordance with Subsection 58-41-12(2), continuing professional education requirements are established as follows:

(1) During each two year period an individual licensed as a speech-language pathologist, speech-language pathologist/audiologist or audiologist shall be required to complete not less than 20 hours of continuing professional education directly related the licensee's professional practice.

(2) The required number of hours of continuing 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) 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 speech-language pathology, audiology or both;

(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 continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for continuing professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences.

(5) A licensee shall be responsible for maintaining competent records of completed 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 continuing professional education to demonstrate it meets the requirements under this section.

(6) A licensee who documents he is 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.

R156-41-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) using an educational title conferred by an organization or institution that is not a regionally accredited college or university;

(2) engaging in sexual intercourse or other sexual contact with a client or patient;

(3) exercising undue influence in a manner as to exploit the client, patient, or supervisee for financial or other personal advantage to the practitioner or a third party;

(4) inappropriate use of or training of speech-language pathology/audiology aides as defined by the board and the division; and

(5) failure to comply with the American Speech-Language Hearing Association's (ASHA) Code of Ethics, January 1, 2003 edition, which is hereby incorporated by reference.

R156-41-601. Speech-Language Pathology and Audiology Aides.

(1) In accordance with Subsections 58-41-2(5) and (20), an individual licensed to engage in practice as a speech-language pathologist or audiologist may employ as an aide an individual who has graduated from an accredited high school or obtained a certificate of equivalency approved by the division.

(2) A licensee supervising an aide shall be responsible for the direct supervision of an aide.

(3) A licensee supervising an aide must have a current written utilization plan outlining the specific manner in which the aide will be employed and the manner in which the aide will be supervised.

(4) A licensee shall be permitted to supervise not more than three aides at any one time.

(5) An aide shall not engage in the following:

(a) preparing diagnostic statements or clinical management plans, strategies or procedures;

(b) communicating obtained observations or results to anyone other than the aide's supervising speech-language pathologist or audiologist;

(c) determining case selection;

(d) independently composing or signing clinical reports; except an aide may enter progress notes into the patient's file reflecting the results of the aide's assigned duties;

(e) independently diagnosing, treating, discharging of patient, or advising of patient disposition; and

(f) referral of a patient to other professionals or agencies.

(6) Upon the request of the division, a licensee who employs an aide must provide documentation that the aide has met the qualifications as listed in Subsection (1), and that the aide is functioning under a utilization plan.

KEY: licensing, speech-language pathology, audiology

July 14, 2008 58-1-106(1)(a)

Notice of Continuation February 1, 2007 58-1-202(1)(a)

58-41-1

R156. Commerce, Occupational and Professional Licensing.**R156-71. Naturopathic Physician Practice Act Rule.****R156-71-101. Title.**

This rule is known as the "Naturopathic Physician Practice Act Rule."

R156-71-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 71, as used in Title 58, Chapters 1 and 71, or this rule:

(1) "Approved clinical experience program" or "residency program" as used in Subsections 58-71-302(1)(e) and 58-71-304.2(1)(b), means a minimum 12 month program associated with a naturopathic medical school or college accredited by the Council of Naturopathic Medical Education.

(2) "Direct supervision" as used in Subsection 58-71-304.2(1)(b), means the supervising naturopathic physician, physician and surgeon, or osteopathic physician is responsible for the naturopathic activities and services performed by the naturopathic physician intern and is normally present in the facility and when not present in the facility is available by voice communication to direct and control the naturopathic activities and services performed by the naturopathic physician intern.

(3) "Direct and immediate supervision" of a medical naturopathic assistant ("assistant") as used in Subsections 58-71-102(6) and 58-71-305(7), means that the licensed naturopathic physician is responsible for the activities and services performed by the assistant and will be in the facility and immediately available for advice, direction and consultation.

(4) "Distance learning" means the acquisition of knowledge and skills through information and instruction encompassing all technologies and other forms of learning at a distance, including internet, audio/visual recordings, mail or other correspondence.

(5) "Naturopathic physician intern" or "intern" means an individual who qualifies for a temporary license under Section 58-71-304.2 to engage in a naturopathic physician residency program recognized by the division under the direct supervision of an approved naturopathic physician, physician and surgeon, or osteopathic physician.

(6) "NPLEX" means the Naturopathic Physicians Licensing Examinations.

(7) "Primary health care", as referenced in Subsection 58-71-102(12), means basic or general health care provided at the patient's first contact with the naturopathic physician.

(8) "Qualified continuing education," as used in this rule, means continuing education that meets the standards set forth in Subsection R156-71-304.

(9) "Unprofessional conduct," as defined in Title 58, Chapters 1 and 71, is further defined, in accordance with Subsection 58-1-203(5), in Section R156-71-502.

R156-71-103. 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 71.

R156-71-104. 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.

R156-71-202. Naturopathic Physician Formulary.

(1) In accordance with Subsections 58-71-102(8), 58-71-102(12)(a) and 58-71-202, the naturopathic physician formulary which consists of noncontrolled substance legend medications deemed appropriate for the primary health care of patients within the scope of practice of naturopathic physicians, the prescription of which is approved by the Division in collaboration with the Naturopathic Formulary Advisory Peer Committee, consists of the following legend drugs, listed by

category, with reference numbers identified in the American Hospital Formulary Service (AHFS), published by the American Society of Health System Pharmacists, 2006 edition:

4:00 Antihistamines
8:08 Anthelmintics
8:12 Antibacterials, oral forms only
8:14 Antifungals, oral and topical forms
8:18 Antivirals limited to oral and topical dosage forms, excluding:

8:18:08 Antiretrovirals
8:18:20 Interferons
8:18:24 Monoclonal Antibodies
8:18:32 Nucleosides and Nucleotides
8:30:04 Amebicides
8:30:92 Miscellaneous Antiprotozoals excluding those whose primary indication is the treatment of infection in immunosuppressed patients (i.e. Pentamidine and Trimetrexate)

8:36 Urinary anti-infectives
12:12:08:12 Selective Beta 2 Adrenergic Agonists
12:12:12 Alpha and Beta Adrenergic Agonists
12:16 Sympatholytic (Adrenergic Blocking) Agents, limited to ergot derivatives

12:20 Skeletal Muscle Relaxants, excluding scheduled medications

20:24 Hemorrhologic Agents
24:04:08 Cardiotonic agents - limited to Digoxin
24:06 Antilipemic Agents
24:08 Hypotensive Agents - limited to oral dosage forms
24:20 Alpha Adrenergic Blocking Agents
24:24 Beta Adrenergic Blocking Agents - limited to oral dosage forms

24:28 Calcium Channel Blocking Agents - limited to oral dosage forms
24:32 Renin-Angiotensive-Aldosterone System Inhibitors - limited to oral dosage forms

28:08 Analgesics and Antipyretics, excluding scheduled medications

28:16.04.20 Selective-Serotonin Reuptake Inhibitors
28:16.04.24 Serotonin Modulators
28:16.04.28 Tricyclics and Other Norepinephrine-Reuptake Inhibitors

40:00 Electrolytic, caloric, and water balance
40:28 Diuretics
44:00 Enzymes, limited to digestive and proteolytic

52:08 Corticosteroids (oral, topical, and injectable), Anti-Inflammatory Agents except Ophthalmologic Preparations, and DMARDS

52:16 Local Anesthetics
56:22 Antiemetics
56:28 H₂ Blockers, Anti-ulcer agents and Acid Suppressants

68:12 Contraceptives, except implants and injections
68:16.04 Estrogen

68:20.02 Alpha-Glucosidase Inhibitors
68:20.08 Insulins and Biguanides
68:20.20 Sulfonyleureas
68:24 Parathyroid

68:32 Progesterin
68:36.04 Thyroid agents, including thyroid of glandular extract

88:28 Multivitamin preparations
92:00 Antigoit, and Bone-Resorption Inhibitors, limited to Raloxifene, and botulinum toxin type A, limited to superficial injections

(2) In addition, amino acids, minerals, oxygen and silver nitrate, although not listed in Subsection (1), are approved for primary health care.

(3) New categories or classes of drugs will need to be approved as part of the formulary prior to

prescribing/administering.

(4) The licensed naturopathic physician has the responsibility to be knowledgeable about the medication being prescribed or administered.

R156-71-302. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-71-302(1)(f) and 58-71-302(2)(c), the licensing examination sequence required for licensure is as follows:

- (1) NPLEX Basic Science Series, the State of Washington Basic Science Series or the State of Oregon Basic Science Series;
- (2) NPLEX Clinical Series; and
- (3) NPLEX Minor Surgery.

R156-71-302a. Qualifications for Licensure - Education Requirements for Graduates of Naturopathic Physician Programs or Schools Located Outside the United States.

The satisfactory documentation of compliance with the licensure requirement set forth in Subsection 58-71-302(2)(b) shall be a report submitted to the Division by the International Credentialing Associates, Inc. (ICA) confirming that the applicant's naturopathic physician program or school has met the accreditation standards.

R156-71-303. 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 71 is established by rule in Section R156-1-308.

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

R156-71-304. Qualified Continuing Education.

(1) To be qualified continuing education, a continuing education course shall meet the following standards:

(a) the course shall consist of clinically oriented seminars, lectures, conferences, workshops, mediated instruction, or programmed learning provided by one of the following:

(i) a professional health care licensing agency, hospital, or institution accredited by the Accreditation Council of Continuing Medical Education (ACCME);

(ii) a program sponsored by the American Council of Pharmaceutical Education (ACPE);

(iii) an accredited college or university;

(iv) a professional association or organization representing a licensed profession whose program objectives are related to naturopathic training; or

(v) any other provider providing a program related to naturopathic education, if the provider has submitted an application to and received approval from the Utah Naturopathic Physicians Licensing Board;

(b) the learning objectives of the course shall be reasonably and clearly stated;

(c) the teaching methods shall be clearly stated and appropriate;

(d) the faculty shall be qualified both in experience and in teaching expertise;

(e) there shall be a written post course or program evaluation;

(f) the documentation of attendance shall be provided; and

(g) the content of the course shall be relevant to naturopathic practice and consistent with the laws and rules of this state.

(2) In accordance with Section 58-71-304, qualified continuing education shall consist of 48 hours of qualified continuing professional education in each preceding two year period of licensure, 20 hours of which shall be specific to

pharmacy or pharmacology as it pertains to the Naturopathic Physician Formulary, Section R156-71-202. No more than 20 hours of continuing education in each two-year period of licensure may be through distance learning.

(3) If a licensee allows his license to expire and the application for reinstatement is received by the division within two years after the expiration date the applicant shall:

(a) submit documentation of having completed 48 hours of qualified continuing professional education required for the previous renewal period. The required hours shall meet the criteria set forth in Subsection (2); and

(b) submit documentation of having completed a pro rata amount of qualified continuing professional education based upon one hour of qualified continuing professional education for each month the license was expired for the current renewal period.

(4) If the application for reinstatement is received by the division more than two years after the date the license expired, the applicant shall complete a minimum of 48 hours of qualified continuing professional education and additional hours as determined by the board to clearly demonstrate the applicant is currently competent to engage in naturopathic medicine. The required hours shall meet the criteria set forth in Subsection (2).

(5) Audits of a licensee's continuing education hours may be done on a random basis by the division in collaboration with the board.

(6) A licensee shall be responsible for maintaining competent records of completed qualified professional education for a period of two years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain this information with respect to qualified professional education to demonstrate it meets the requirements under this section.

(7) The division in collaboration with the board may grant a waiver of continuing education requirements to a waiver applicant who documents he is engaged in full time activities or is subjected to circumstances which prevent the licensee from meeting the continuing professional education requirements established under this section. A waiver may be granted for a period of up to four years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

R156-71-502. Unprofessional Conduct.

"Unprofessional conduct" includes failure to comply with the approved formulary.

KEY: licensing, naturopaths, naturopathic physician

July 8, 2008

Notice of Continuation January 8, 2007

58-71-101

58-1-106(1)(a)

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.**R156-74. Certified Court Reporters Licensing Act Rule.****R156-74-101. Title.**

This rule shall be known as the "Certified Court Reporters Licensing Act Rule."

R156-74-102. Definitions.

(1) "Unprofessional conduct", as defined in Title 58, Chapters 1 and 74, is further defined, in accordance with Subsections 58-1-203(1)(e), in Section R156-74-502.

R156-74-103. Authority.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 74.

R156-74-104. Organization - Relationship to Rule R156-1.

The organization of this rule and its relationship to Rule R156-1 is as described in Section R156-1-307.

R156-74-303. 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 74 is established by rule in Section 58-1-308.

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

R156-74-304. Continuing Education.

(1) In accordance with Subsection 58-74-303(2), the standards for the continuing education requirement for renewal of a certified court reporter shorthand reporter license shall be the standards established by the National Court Reporters Association, Council of the Academy of Professional Reporters Continuing Education Program, revised October 1, 1998, which is hereby adopted and incorporated by reference.

(2) In accordance with Subsection 58-74-303(2), the requirements and standards for the continuing education requirement for renewal of a certified court reporter voice reporter license shall be the standards established by the National Verbatim Reporters Association, Council of the Academy of Professional Reporters Continuing Education Program, effective January 1, 2006, which is hereby adopted and incorporated by reference.

R156-74-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing, as a certified shorthand reporter to conform to the generally accepted and recognized standards and ethics of the profession including those established by the National Court Reporters Association, Council of the Academy of Professional Reporters, July 1997 edition, which is hereby incorporated by reference; and

(2) failing as a certified voice reporter to conform to the generally accepted and recognized standards and ethics of the profession including those established by the National Verbatim Reporters Association, Council of the Academy of Professional Reporters, April 2005 edition, which is hereby incorporated by reference.

KEY: court reporting, licensing, shorthand reporter, certified court reporter**July 22, 2008****58-74-101****Notice of Continuation February 2, 2004****58-74-303(2)****58-1-106(1)****58-1-202(1)**

R162. Commerce, Real Estate.**R162-3. License Status Change.****R162-3-1. Status Changes.**

3.1. A licensee must notify the Division within ten working days of any status change. Status changes are effective on the date the properly executed forms and appropriate non-refundable fees are received by the Division. Notice must be on the forms required by the Division.

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

3.1.2. Change of business, home address or mailing address requires written notification. A post office box without a street address is unacceptable as a business or home address. The licensee may designate any address to be used as a mailing address.

3.1.3. Change of name of a brokerage must be accompanied by evidence that the new name has been approved by the Division of Corporations, Department of Commerce.

3.1.4. Change of Principal Broker of a real estate brokerage which is a sole proprietorship, requires closure of the registered entity. The new principal broker shall activate the Registered Company and provide proof from the Division of Corporations of the authorization to use the DBA. Change cards will be required for the terminating Principal Broker, new Principal Broker and all licensees affiliated with the brokerage.

3.1.5. Change of a Principal Broker within an entity which is not a sole proprietorship requires written notice from the entity signed by both the terminating Principal Broker and the new Principal Broker.

R162-3-2. Unavailability of Licensee.

3.2. If a licensee is not available to properly execute the form required for a status change, the status change may still be made provided a letter advising of the change is mailed by certified mail to the last known address of the unavailable licensee. A verified copy of the letter and proof of mailing by certified mail must be attached to the form when it is submitted to the Division.

R162-3-3. Transfers.

3.3. Prior to transferring from one principal broker to another principal broker, the licensee must mail or deliver to the Division written notice of the change on the form required by the Division.

R162-3-4. Inactivation.

3.4. To voluntarily inactivate a license, the licensee must deliver or mail to the Division a written request for the change signed by both the licensee and principal broker.

3.4.1. Prior to placing a principal broker license on an inactive status, a principal broker must provide written notice to each licensee affiliated with the principal broker of that licensing status change. Evidence of that written notice must be provided to the Division in order to process the status change. The inactivation of the license of a principal broker will also cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2. The non-renewal, suspension, or revocation of the license of a principal broker will cause the licenses of all affiliated licensees to be immediately inactivated if they do not transfer their licenses in accordance with R162-3.3 prior to the effective date of the principal broker's status change.

3.4.2.1. When a principal broker is notified that the principal broker's license will be suspended or revoked, the principal broker must, prior to the effective date of the suspension or revocation, provide written notice to each licensee

affiliated with the principal broker of that status change. In addition, the Division shall send written notice to each sales agent, associate broker, or branch broker of the effective date of inactivation and the process for transfer.

3.4.3. The principal broker may involuntarily inactivate the license of the sales agent or associate broker by complying with R162-3.2.

R162-3-5. Activation.

3.5. All licensees changing to active status must submit to the Division the applicable non-refundable activation fee, a request for activation in the form required by the Division, and, if the license was on inactive status at the time of last license renewal, proof of completion of the examination within six months prior to applying to activate or proof of completion of the 12 hours of continuing education that the licensee would have been required to complete in order to renew on active status. If a licensee last renewed on inactive status and applies to activate the license at the time of license renewal, the licensee shall be required to complete the 12 hours of continuing education required to renew but shall not be required to complete additional continuing education in order to activate the license.

3.5.1 Continuing Education for Activation. The 12 hours of continuing education required to activate a license shall be made up of at least 6 hours of "core" courses in subjects specified in Subsection R162-9.2.1. The balance of the 12 hours of continuing education may be "elective" courses in the subjects listed in Subsection R162-9.2.2.

3.5.1.1 To qualify as continuing education for activation, all courses submitted must have been completed within one year before activation.

3.5.1.2 Continuing education that was submitted to activate a license may not be used again toward the continuing education required on the licensee's next renewal.

R162-3-6. Renewal and Reinstatement.

3.6.1 Licenses are valid for a period of two years. A license may be renewed by submitting all forms and fees required by the Division prior to the expiration date of the current license. Licenses not properly renewed shall expire on the expiration date.

3.6.1.1 A license may be reinstated within thirty days after expiration by complying with all requirements for a timely renewal and paying a non-refundable late fee.

3.6.1.2 A license may be reinstated after thirty days and within six months after expiration by complying with all requirements for a timely renewal, paying a non-refundable reinstatement fee and submitting proof of having completed 12 hours of continuing education in addition to the 12 hours of continuing education required to renew a license on active status.

3.6.1.3 A license that has been expired for more than six months may not be reinstated and an applicant must apply for a new license following the same procedure as an original license.

3.6.2 Renewal Requirements.

3.6.2.1 Continuing Education. To renew a license on active status an applicant must submit to the division proof of having completed, during the previous license period and by the 15th day of the month of expiration, 12 hours of continuing education from courses certified by the division.

3.6.2.1.1 During the first license period, a licensee must take the 12-hour "New Sales Agent Course" certified by the division.

3.6.2.1.2 During subsequent license periods, a licensee must take at least 6 hours of continuing education from courses certified by the division as "core" as defined in Rule R162.9.2.1. A licensee must take any remaining hours of continuing education from courses certified by the division as "elective" as

defined in Rules R162.9.2.2 - 9.2.2.10.

3.6.2.1.2.1 The division may grant continuing education credit for non-certified courses submitted by a renewal applicant in the form required by the division, if the course was not required by these rules to be certified and the division determines that the course meets the continuing education objectives listed in Rule R162.9.2.

3.6.2.1.3 Licensees must retain original course completion certificates for three years following renewal and produce those certificates when audited by the division.

3.6.2.2 Principal Broker. To renew a principal broker license on active status an applicant must certify that the business name under which the licensee is operating is current and in good standing with the Division of Corporations and that all real estate trust accounts are current and in compliance with Rule R162-4.2.

3.6.2.3 Any misrepresentation in an application for renewal will be considered a separate violation of these rules and separate grounds for disciplinary action against the licensee.

KEY: real estate business

July 30, 2008

Notice of Continuation April 18, 2007

61-2-5.5

R162. Commerce, Real Estate.**R162-207. License Renewal.****R162-207-1. License Renewal.**

207.1 Renewal period. Licenses issued under the Utah Residential Mortgage Practices Act are valid for a period of two years.

R162-207-2. Renewal Process.

207.2.1 Renewal Notice. A license renewal notice shall be sent by the Division to the licensee at the mailing address shown on Division records. The renewal notice shall specify the requirements for renewal and shall require that the licensee document or certify that the requirements have been met. The licensee must apply to renew and pay all applicable fees on or before the expiration date shown on the notice.

207.2.2 Application for Renewal. All applications for renewal must be made in the form required by the division and shall include the following:

(a) A licensure statement in the form required by the division;

(b) The renewal fee and the Residential Mortgage Loan Education, Research, and Recovery Fund fee;

(c) If the applicant is an individual, proof through means approved by the division of having completed during the two years prior to application the continuing education required by the commission under Section 61-2c-104;

(d) The current home street address and home telephone number of any individual applicant and the current physical street address of any entity applicant;

(e) A current mailing address for the applicant;

(f) Answers to a "Licensing Questionnaire" supplying information about events that occurred in the preceding two years related to mortgage licensure in other jurisdictions, license sanctions or surrenders, pending disciplinary actions, pending investigations, criminal convictions or pleas, and/or civil judgments or findings based on fraud, misrepresentation, or deceit;

(g) If, at the time of application for renewal, an individual applicant, or the principal lending manager, director, executive officer, manager, or a managing partner of an entity applicant, or anyone who occupies a position or performs functions similar to a director, executive officer, manager or managing partner of an entity that has applied for a license, is charged with, or since the last renewal has been convicted of or entered a plea to, any felony or misdemeanor, the following information must be provided on each conviction, plea, or charge: the charging document, the case docket, and the judgment and sentencing document, if applicable; and

(h) If, in the two years preceding application for renewal, an individual or entity applicant or principal lending manager of an entity applicant has had a license or registration suspended, revoked, surrendered, canceled or denied based on misconduct in a professional capacity that relates to good moral character or the competency to transact the business of residential mortgage loans, the applicant must provide the documents stating the sanction taken against the license or registration and the reasons therefore.

207.2.3 Continuing Education Requirement. All active licensees are required to have completed their continuing education requirement prior to applying to renew and by the 15th day of the month of expiration.

207.2.3.1 Documentation of Continuing Education. Any licensee who renews online and certifies that the required continuing education has been completed shall maintain the original course completion certificates supporting that certification for two years following renewal. The licensee shall produce those certificates for audit upon request by the Division.

207.2.3.2 Out of State Courses. Continuing education

credit will be given for a course taken in another state provided the course has been certified for continuing education purposes by the licensing agency in the other state and the subject matter of the course relates to protection of the public, but not to state-specific licensing laws. Evidence must be retained by the licensee, and provided to the Division upon request, that the course was certified by the other state at the time the course was taken.

207.2.3.3 Continuing Education Requirement upon activation of license. As a condition for the activation of an inactive license that was on inactive status at the time of the licensee's most recent renewal, the licensee shall supply the Division with proof of successful completion of the number of hours of continuing education that would have been required to renew had the license been on active status at the time of the licensee's most recent renewal. To qualify as continuing education for activation, all continuing education hours submitted must have been completed within twenty-four months prior to applying to activate.

207.2.4 Late Renewal. If all required renewal forms, fees, and documentation have not been received or postmarked by the expiration date of the license, the license shall expire. When an active license expires, an individual licensee's affiliation with a licensed entity automatically terminates.

207.2.4.1 A licensee may apply to renew an expired license within thirty days after the expiration date of the license by completing all of the renewal requirements, including the continuing education requirement, and paying a non-refundable late fee.

207.2.4.2 After the thirty day period, and until six months after the expiration date of the license, a licensee may apply to reinstate a license by completing all of the renewal requirements, including the continuing education requirement, paying a non-refundable late fee, and providing proof of successful completion of 12 hours of continuing education in addition to that required for a timely renewal on active status.

R162-207-3. Current Entity Name Registration.

207.3 An entity submitting an application for renewal must at the time of application have a name registration with the Utah Division of Corporations that is current and in good standing. The division will not process an application for renewal unless it can verify that the applicant's name registration is current and in good standing.

R162-207-4. Incomplete Application.

207.4 If an applicant makes a good faith attempt to submit a completed application for renewal prior to the expiration date of the applicant's current registration or license, but the application is incomplete, the Division may grant an extension for a period not to exceed 30 days to enable the applicant to provide the missing documents or information necessary to complete the application.

R162-207-5. Nonrefundable Fees.

207.5 All fees required in conjunction with an application for renewal are nonrefundable if the applicant fails to complete an application or if a completed application is denied for failure to meet the renewal criteria.

R162-207-6. Determining Fitness for Renewal.

207.6 Qualifications for Renewal. In order to qualify for renewal, all mortgage officer and principal lending manager applicants, and all directors, executive officers, and managing partners of any entity applicant, and anyone who occupies a position or performs functions similar to a director, executive officer, manager, or managing partner of any entity applicant, shall meet the following qualifications. None of these persons may have:

(a) been convicted of, or entered a plea in abeyance to, a felony; or during the term of the last license or during the period between license expiration and application to reinstate an expired license;

(b) a finding of fraud, misrepresentation or deceit entered against the applicant, related to activities requiring a mortgage license, by any court of competent jurisdiction or any government agency, unless the finding was explicitly considered by the Division in approving the applicant's initial license or previous license renewals.

207.6.1 Determining fitness for renewal. In determining whether an applicant who has not been disqualified by Subsection 207.6 meets the requirements of good moral character, honesty, integrity, and truthfulness, the commission and the division shall determine fitness for renewal in accordance with Section 202.5.2 above.

R162-207-7. Applications Filed by Mail.

207.7 The Division will consider a properly completed application for renewal that has been postmarked on or before the expiration date shown on the renewal notice to have been timely filed.

R162-207-8. Misrepresentation on an Application.

207.8 Any misrepresentation in an application for renewal, regardless of whether the application is filed with the Division by mail or made online, will be considered a separate violation of these rules and grounds for disciplinary action against the licensee.

R162-207-9. Exemption from Continuing Education Requirement.

207.9 A licensee may obtain an exemption from the continuing education requirement of R162-208.1 for a period not to exceed four years upon a finding by the Division that there is reasonable cause to grant the exemption.

207.9.1 Exemptions from the continuing education requirement may be granted for reasons including military service, prolonged absence from Utah for religious or secular service, and extended or serious illness.

207.9.2 A licensee seeking an exemption from the continuing education requirement shall apply to the Division for an exemption. An application for an exemption from the continuing education requirement shall set forth with specificity the reasons why the licensee is unable to complete the continuing education and the reasons why the licensee believes that an exemption would be reasonable.

207.9.3 A licensee may not seek a retroactive exemption by applying for the exemption after the time period for renewal and reinstatement of a license has already passed.

207.9.4 All applications for an exemption shall be considered in an informal proceeding before the Division Director or the Director's designee and shall be based on the information submitted with the application. No hearing will be permitted.

207.9.5 Upon a finding of reasonable cause, the Division shall grant the exemption from the continuing education requirement for a specified period of time, not to exceed four years.

KEY: residential mortgage loan origination

July 30, 2008

**61-2c-103(3)
61-2c-202(4)(a)(ii)**

R230. Community and Culture, Indian Affairs.**R230-1. Native American Grave Protection and Repatriation.****R230-1-1. General Policy Statement Regarding Native American Burials.**

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "sacred ground".

2. Native American burial sites discovered on state lands or non-federal lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R230-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands or non-federal lands, shall be in keeping with that sacred nature.

R230-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.
2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land or state repository, including museums, where Native American remains are found.
3. "Committee" means the Native American Remains Review Committee.
4. "Director" means the Director of the Division of Indian Affairs.
5. "Division" means the Division of Indian Affairs.
6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.
7. "Lineal descendant" means the genealogical descendant established by oral or written record or other evidence.
8. "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group.
9. "State land" as defined by 9-9-402.
10. "Nonfederal land" as defined by 9-9-402.

R230-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands or non-federal lands.

R230-1-6. Ascertaining Lineal Descendants and Cultural Affiliation.

1. Each agency, in consultation with Antiquities Section, Utah Division of State History, shall compile an inventory of acquired ancient human remains and report updates of the inventory to the Committee biannually until such time as the remains have been determined to be unclaimed, unaffiliated, or placed in the burial vault.

a. The inventory shall identify the lineal descent, cultural affiliation, and geographic location of the remains to the extent possible, and upon completion, the inventory shall be sent to the Director to disseminate to the Committee, Indian tribes, and all

interested parties.

b. The inventory of lineal descent and cultural affiliation shall be completed in consultation with appropriate tribes and tribal government representatives, which consultation shall be coordinated and facilitated by the Division.

2. The agency shall have one year from date of discovery to complete research for an assessment of lineal descent or cultural affiliation.

a. The documentation for the inventory can consist of existing agency records, relevant studies, other pertinent data for determining lineal descent, the cultural affiliation, geographical origin, and basic facts surrounding the acquisition of ancient human remains.

b. Evidence of a lineal descendant or cultural affiliation to ancient human remains shall be established by using the following types of evidence: kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, geographical, or other relevant information or expert opinion.

3. Lineal descent and cultural affiliation assessments shall be established by a preponderance of the evidence. Agencies do not have to establish lineal descent or cultural affiliation with scientific certainty.

4. If an agency has made a good faith effort to consult and identify the remains, but has been unable to complete the process within the one year time frame, the agency may appeal to the Committee for an extension. The Committee may grant an extension upon findings of good faith effort.

R230-1-7. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains and a lineal descendant ascertained by the Agency, the Director shall notify any known or possible lineal descendants, Indian tribes in Utah, and all other interested parties within 30 days.

2. If no lineal descendants can be ascertained, and if the cultural affiliation of the remains has been determined by the Agency, the Director shall notify within 30 days all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person.

3. If no lineal descendant or cultural affiliation to any tribe can be ascertained, or the geographic location of discovery of the remains is unknown, the Director shall notify all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, of known information regarding the remains.

4. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing an intent to claim by posting the notice in a public place and/or by including it in tribal news media.

5. Any interested party may request notification of the discovery and repatriation process of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R230-1-8. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their intent to claim within forty-five days from the date that notification is sent out by the Division. Lineal descendants or Indian tribes will have sixty days from the Division's receipt of the Intent to Claim notice to provide substantiating documentation.

R230-1-9. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership with an intent to claim notice regarding a claim of lineal descent or cultural affiliation, the Director shall request a

written petition from the claimant, substantiating the claim. The claimant will have 60 days from the Divisions receipt of the intent to claim notice, to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the claimant makes a substantial showing of lineal descent or cultural affiliation the Agency will make a determination of lineal descent or cultural affiliation and grant ownership of the remains to that claimant.

2. When two or more claimants have asserted claims of ownership with intent to claim notices for lineal descent or cultural affiliation, the Director shall request a written petition from the claimants, substantiating the claims. The claimants will have 60 days from the Division's receipt of the intent to claim notices to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the agency determines both claimants have made a substantial showing of lineal descent or cultural affiliation, the Director and Committee shall facilitate a resolution of the competing claims. If the facilitation of resolution between claimants does not result in resolution, determination of ownership shall be made by the Agency in consultation with the Director and Committee based upon a preponderance of the evidence in an informal proceeding which shall comply with Section 63-46b-0.5 et seq., the Utah Administrative Procedures Act.

R230-1-10. Procedure for the Resolution of Claims for Lineal Descent or Cultural Affiliation.

1. After the expiration of time for the substantiating documents of claims regarding lineal descent or cultural affiliation to be submitted has occurred, and the agency has determined all claims have made a substantial showing, the Director, in consultation with the Agency and Committee, shall schedule a time within 60 days to facilitate the resolution of the competing claims and shall notify the claimants of such date.

2. In an informal proceeding, the Director and Committee shall meet with competing claimants and facilitate the resolution between claimants if at all possible.

3. If the facilitation of resolution of the competing claims does not result in resolution, the Agency shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence, and comment on issues concerning their claim.

a. Lineal descent or cultural affiliation may be established by genealogical records, archeological records, oral or written history, oral tradition, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

4. The Agency shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains, by a preponderance of the evidence.

R230-1-11. Adjudication of Disputed Claims.

1. If any party is dissatisfied with the Agency's or Director's decision, the claimants may appeal the decision to the Committee. The Committee shall review the decision and issue findings relating to the identity of, the cultural affiliation of the remains, or an aboriginal land use determination, which shall be used in accordance with 9-9-403(6).

2. A copy of the Committee's findings and the Director's or Agency's decision shall be mailed to each of the claimants and interested parties who have designated a contact person along with a notice explaining the procedure for seeking an appeal of the Director's or Agency's decision in the District Court where the Agency that has temporary possession of the

remains pending this process, is located.

3. If no party has filed an appeal in the District Court within 30 days, the Director's or Agency's decision shall be binding upon the parties.

R230-1-12. Disposition of Unidentified and Unclaimed Remains.

1. When lineal descent and cultural affiliation cannot be determined, and the Division has notified all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, and has received no intent to claim notices within 30 days, then the Director shall, upon recommendation of the agency and in consultation with the Committee, coordinate at least every six months, the placement of the ancient human remains in the Indian burial vault or other designated cemetery until such time as further information regarding the identity and owner of the remains can be obtained.

2. If the remains have not been excavated and have gone through the determination of ownership and control process and are unclaimed, the remains may be permanently left in place upon final approval by the agency and in consultation with the Director.

3. If the remains have been excavated and have gone through the determination of ownership process and are unclaimed, the remains shall be re-interred in the Indian Burial Repository or other designated cemeteries throughout the state.

R230-1-13. Re-interment of Ancient Human Remains.

1. Annually, or as needed, the Director shall present to the Committee an inventory of remains that have completed the process of repatriation and have been determined to be without a lineal descendant or cultural affiliation or unclaimed, that reside in the burial vault. The Director shall include a plan for interment regarding the final resting place of the remains in either the burial vault or designated cemetery, and with approval of the Committee, the Director shall coordinate the interment of the remains.

R230-1-14. Role and Responsibilities of Committee.

1. The Committee shall meet quarterly or as deemed necessary to monitor the identification process described in R230-1-10 conducted by the Agency for lineal descent or cultural affiliation claims per 9-9-405(3).

R230-1-15. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency or non-federal agency.

2. If the remains have already been excavated pursuant to R212-4, the owner or person or tribe in control of the remains may then take possession of the remains from the agency that has temporary possession of the remains.

R230-1-16. Scientific Investigation of Remains.

1. No scientific investigation beyond that allowed in 9-9-4 shall be conducted on remains except upon written permission granted by the Director in consultation with the Committee.

2. If the ownership of the remains has not been determined, and further information regarding the identity and owner of remains becomes available, the agency or other interested parties may petition the Committee to recommend removal of the remains from the Indian burial vault or designated cemetery for testing.

a. The agency will provide to the Committee and Director a report specifying the nature and duration of the testing and the

Committee will determine per majority vote whether to grant the removal request.

R230-1-17. Savings Provision.

1. If, following the conclusion of the process to determine ownership of human remains using lineal descent and cultural affiliation, an owner cannot be identified by the responsible agency, tribes may submit claims based on aboriginal land to the Division. The Director shall make a determination of ownership based upon findings of the Committee and in consultation with the landowner.

KEY: Indian affairs, state lands, Native American remains
July 16, 2008 9-9-104
Notice of Continuation January 31, 2006 9-9-403
9-9-405

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.

B. Except as provided in Subsection (C), loss of support awards are available only to minor children of the deceased victim. Payment of the award may be made to the parent or guardian of the minor child on behalf of the minor child.

C. The Crime Victim Reparations Board may approve loss of support awards to persons who are not minor children, but were physically and financially dependent on the deceased victim.

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

July 28, 2008

63M-7-501 et seq.

Notice of Continuation July 3, 2006

R277. Education, Administration.**R277-109. One-time Signing Bonuses.****R277-109-1. Definitions.**

A. "90 days" means 90 calendar days beginning with the first educator work day.

B. "Board" means the Utah State Board of Education.

C. "Did not work as an educator" means did not work under contract in a position requiring an educator license during the 2007-08 school year.

D. "Qualifying educator" means a person employed:

(1) in one of the following positions:

- (a) classroom teacher;
- (b) speech pathologist;
- (c) librarian or media specialist;
- (d) preschool teacher;
- (e) mentor teacher;
- (f) teacher specialist or teacher leader;
- (g) guidance counselor;
- (h) audiologist;
- (i) psychologist; or
- (j) social worker.

(2) who holds a current and valid Level 1, 2, or 3 Utah Educator License or is a participant in the Utah Alternative Routes to Licensure Program consistent with R277-503.

E. "USOE" means the Utah State Office of Education.

R277-109-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which permits the Board to make rules as necessary to administer the program.

B. The purpose of this rule is to establish definitions and procedures for the implementation of 2008-09 one-time signing bonuses.

R277-109-3. Qualifying Educator Responsibilities.

A. Each qualifying educator shall sign an affidavit affirming eligibility for the signing bonus.

B. An educator who receives funds fraudulently or mistakenly shall be responsible for reimbursing funds to school districts or charter schools.

C. Qualifying educators acknowledge that if total signing bonus funds are reduced, funds may be reclaimed from qualifying educators in subsequent school district and charter school salary payments.

R277-109-4. Public School District and Charter School Responsibilities.

A. School districts and charter schools shall submit the names of qualifying educators who are hired and who begin work prior to September 1, 2008 to the Board on December 1, 2008.

B. School districts or charter schools shall submit the names of qualifying educators who are hired and begin work after September 2, 2008 but before October 1, 2008 to the Board on or after January 2, 2009.

C. Additional names may not be submitted to the Board for program participation by school districts or charter schools after January 15, 2009.

D. The submission of qualifying educators to the Board shall include the following information:

- (1) qualifying educator name;
- (2) qualifying educator CACTUS number; and
- (3) percentage of full time equivalent employment (FTE), such as 1.0 FTE, .50 FTE, for each qualifying educator.

E. School districts and charter schools shall not receive funding for an individual who:

(1) is hired and whose first work day was on or after October 1, 2008;

(2) was employed and worked as an educator in any Utah public school district or charter school during the 2007-08 school year;

(3) works less than 90 days during the 2008-09 school year; or

(4) is employed less than one-half time.

F. School districts and charter schools may combine the signing bonus under Section 53A-17a-148 with other state or local signing bonus programs for the 2008-09 school year.

G. School districts and charter schools shall provide payment of the salary supplement to qualifying educators as follows:

(1) School districts and charter schools shall pay a signing bonus under this program consistent with bonuses set by the Board;

(2) School districts and charter schools shall make the signing bonus payment to qualifying educators in any regular or other salary distribution prior to January 15, 2009;

(3) School districts and charter schools shall use program funds to pay the required employer contributions to retirement, workers compensation, Social Security, and Medicare as provided in Section 53A-17a-148(3)(a);

(4) If the amount of the signing bonus program funds distributed to school districts and charter schools is reduced consistent with the allowance for pro rata reduction under Section 53A-17a-148(4)(b), school districts and charter schools may make adjustments to payroll distributions to qualifying educators so that the total signing bonus amount paid to individual qualifying educators does not exceed the actual amount school districts and charter schools received from the Board.

H. All school districts and charter schools shall participate in the 2008-09 signing bonus program.

I. School districts shall maintain qualifying educator affidavits on file for USOE or legislative review upon request.

R277-109-5. Board Responsibilities.

A. The Board shall provide a form to school districts and charter schools for the required submissions for participation in this program.

B. Signing bonus amount:

(1) The signing bonus paid to the qualifying educator is \$1,000 unless the amount is reduced consistent with Section 53A-17a-148(4).

(2) School districts and charter schools shall receive funds beyond the \$1,000 signing bonus to pay employer costs required under Section 53A-17a-148(3)(a).

(3) All qualifying educators hired under this program shall receive the same \$1,000 signing bonus.

C. Upon receiving the submissions of qualifying educator names, the Board shall review the information to ensure conformity to the requirements for bonuses and payments.

D. The Board shall distribute funds to school districts and charter schools after reviewing required submissions.

E. The distribution of funds shall be included in the regular minimum school program transfers in December and February.

F. The Board shall provide a report to school districts and charter schools of the number of qualifying educators submitted after the December 1 and January 2 submissions.

**KEY: one-time signing bonuses
July 8, 2008**

**Art X Sec 3
53A-1-401(3)
53A-17a-153(6)**

R277. Education, Administration.**R277-113. One-time Performance-based Compensation Program.****R277-113-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Employee" means an individual receiving compensation from a qualifying education entity, not including short term substitute employees or volunteers.
- C. "Qualifying education entity" means a school district or charter school that has met all of the requirements of this rule, including timely submission of the required performance-based compensation plan to the Board.

R277-113-2. Authority and Purpose.

- A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-148(6) which permits the Board to make rules as necessary to administer the program.
- B. The purpose of this rule is to provide criteria for school district and charter school participation in the Performance-based Compensation Program and for distribution of funds to eligible participants.

R277-113-3. School District and Charter School Responsibilities.

- A. School districts and charter schools that elect to participate in the one-time performance-based compensation program shall submit performance-based compensation plans to the Board. Plans of qualifying education entities shall include all the elements required under Section 53A-17a-148(5)(b)(ii).
- B. The plan applies to the 2008-09 school year only.
- C. Plans shall provide for distribution of performance-based compensation only for employee performance during the 2008-09 school year.
- D. School districts and charter schools are encouraged to include additional elements in submitted plans such as:
- (1) measures of student academic progress or growth;
 - (2) specific measures of instructional quality;
 - (3) measures of quality or efficiency in education support functions;
 - (4) measures of parent and student satisfaction;
 - (5) measures of school and school district progress; and
 - (6) other measures that demonstrate improved academic, instructional, or education support performance.
- E. School districts and charter schools are encouraged to include employees, employee association representatives, parents, and others in the development of performance-based compensation plans.
- F. Local school boards and charter school governing boards shall review and approve performance-based plans prior to the submission of plans to the Board.
- G. Participating school districts and charter schools shall provide reports related to this program as requested by the Board and shall provide summary evaluations of the plans including the plans' effectiveness by July 1, 2009.
- H. Participating school districts and charter schools shall submit plans to the USOE prior to July 1, 2008.

R277-113-4. Board Responsibilities.

- A. The Board shall approve plans that include the elements required under Section 53A-17a-148(5)(b)(ii).
- B. The Board shall immediately notify any school district or charter school that submits a plan that is deemed deficient or ineligible or both and may allow for resubmission of plans before July 1, 2008.
- C. Plans shall be sent to the Education Interim Committee for review on or before August 1, 2008.

D. Funds shall be distributed to participating school districts and charter schools on a per-pupil basis in a one-time transfer prior to December 1, 2008.

E. The Board shall collect information from participating school districts and charter schools as needed to enable a complete and accurate report to the Legislature as required, including an assessment of the effectiveness of school district and charter school plans.

**KEY: performance-based compensation program
July 8, 2008**

**Art X Sec 3
53A-1-401(3)
53A-17a-148(6)**

R277. Education, Administration.**R277-471. Oversight of School Inspections.****R277-471-1. Definitions.**

A. "Board" means the Utah State Board of Education.

B. "Certified plans' examiner" means a professional who has current certification through the International Code Council which requires a rigorous testing program.

C. "Charter schools" means:

(1) schools acknowledged and operating as charter schools by local boards of education under Section 53A-1a-505 or by the Board under Section 53A-1a-515; and

(2) charter school applicants that have their applications approved by a chartering entity in accordance with Title 53A, Chapter 1a, Part 5, the Utah Charter Schools Act.

D. "Charter school responsible person or local charter school board building officer (charter school designee)" means the individual or authority designated by the charter school board who has direct administrative and operational control of charter school construction/renovation and has responsibility for the charter school's compliance with the Code on behalf of the charter school board.

E. "Certificate of inspection verification" means a form certifying that the entity responsible for providing inspection services has complied with the provisions of Sections 53A-20-104, 53A-20-105, 10-9a-305, 17-27a-305, and 58-56, Uniform Building Standards Act, as well as the provisions of this rule. The form available on the USOE School Finance and Statistics Section Web page: <http://www.schools.utah.gov/finance/facilities/default.htm>.

F. "Code" means the state-adopted construction code, including all statutes and administrative rules which control the construction, renovation, and inspection of Utah public school buildings.

G. "General plan" means a document that a municipality adopts that sets forth general guidelines for proposed future development of the land within the municipality, consistent with Section 10-9a-103(11).

H. "Public School District Building Official (SDBO)" means the individual or authority designated by the public school district who has direct administrative and operational control of school district construction/renovation and is responsible for the school district's compliance with the Code.

I. "Superintendent" means the State Superintendent of Public Instruction.

J. "School Building Construction and Inspection Resource Manual (Resource Manual)" means a manual which identifies the processes and procedures a school district or charter school shall follow when constructing a new public school building or renovating existing buildings. The Resource Manual was developed by the USOE in response to legislative direction under Section 53A-20-104.5, and is available on the USOE School Finance and Statistics Section Web page: <http://www.schools.utah.gov/finance/facilities/default.htm>.

K. "USOE" means the Utah State Office of Education.

R277-471-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and permits the Board to interrupt disbursements of state aid to any school district or charter school which fails to comply with rules adopted by the Board.

B. The purpose of this rule is to provide specific provisions for the oversight of permanent or temporary public school construction/renovation inspections and to identify local school board and charter school board responsibilities and accountability to the Board.

R277-471-3. School District Building Official, and Charter School Responsible Person.

A. Local boards of education and local charter school boards shall be accountable to ensure that all school district and charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code.

(1) Local school boards shall appoint a School District Building Official (SDBO) who has direct administrative and operational control of all construction, renovation, and inspection of public school district facilities within the school district and shall provide in writing the name of the SDBO to the USOE.

(2) Charter school boards shall be accountable to the State Charter School Board and the Board to ensure that all charter school permanent or temporary construction, renovation, and inspection is conducted in accordance with the Code. Each local charter school board shall appoint a local charter school board building officer who has direct operational responsibility for construction, renovation, and inspection of the charter school. The local charter school board building officer shall report regularly to the local charter school board.

(a) The local charter school board shall provide the name of this officer in writing to the Superintendent.

(b) The local charter school board shall promptly notify the Superintendent in writing of any changes of this individual.

(c) Following notification, the USOE shall provide a construction project number.

B. The SDBO shall monitor school district building construction to ensure compliance with the provisions of the Code.

C. The local charter school board building officer shall monitor all charter school building construction to ensure compliance with the provisions of the Code.

D. The SDBO and local charter school board building officer shall render interpretations of the Code for the school district or charter school. Such interpretations shall be in conformance with the intent and purpose of the Code, insofar as they are expressed in the Code or in legislative intent.

E. The SDBO and local charter school board building officer may adopt and enforce supplemental school district and charter school policies under appropriate school district and charter school policies to clarify the application of the provisions of the Code for school district and charter school personnel.

F. Before any school district or charter school construction project begins, school districts and charter schools shall obtain a construction project number from the USOE and complete and submit construction project identification forms provided by the USOE for all projects which exceed \$99,999 in cost.

G. All school district and charter school plans and specifications shall be approved by a certified plans' examiner before any school district or charter school construction project begins.

H. If a school district or charter school is unable to provide appropriate and proper school construction inspection services, the Superintendent may provide for inspection services from a list of inspectors determined by the Superintendent and charge the school district or charter school for those services. Fees shall be established in advance of inspection services.

I. For all school district or charter school projects that exceed \$99,999, the SDBO and local charter school board building officers shall:

(a) submit inspection summary reports monthly to the USOE;

(b) submit inspection summary reports monthly to the appropriate local government entity building official;

(c) submit inspection certificates to the USOE and appropriate local government entity building official;

(d) maintain all submitted documentation at a designated

school district/charter school location for auditing or monitoring;

(e) identify and provide to the USOE and local government entity building official the total number of inspections with the name, state license number, and disciplines of each inspector;

(f) ensure that each inspector is adequately and appropriately credentialed;

(g) sign the final certificate of inspection and verification form, certifying all inspections were completed in compliance with the law and this rule.

(h) send the final inspection certification and inspection verification to the USOE and to the appropriate local government entity building official upon completion of the project;

J. Reports required under this rule may be paper or electronic.

R277-471-4. Coordination with Local Governments, Utility Providers and State Fire Marshal.

A. Prior to developing plans and specifications for a new public school, or the expansion of an existing public school, school districts and charter schools shall coordinate with affected local government land use authorities and utility providers to:

(1) ensure that the siting or expansion of a school in the intended location will comply with applicable local general plans and land use laws and will not conflict with entitled land uses;

(2) ensure that all local government services and utilities required by the school construction activities can be provided in a logical and cost-effective manner;

(3) avoid or mitigate existing and potential traffic hazards, including consideration of the impacts between the new school and future roadways;

(4) maximize school, student and site safety.

B. Prior to developing plans and specifications for a new public school, or the expansion of an existing school, school districts and charter schools shall coordinate with local health departments and the State Fire Marshal.

C. School districts and charter schools shall maintain documentation for audit purposes of coordination, meetings, and agreements.

R277-471-5. Charter School Land Use Zoning within Municipalities and Counties.

A. If consistent with the general plan, a charter school shall be considered a permitted use in all zoning districts within a municipality or county, except as provided in R277-471-5D.

B. Each land use application for any approval required for a charter school, including an application for a building permit, shall be processed on a first priority basis by municipalities and counties.

C. Parking requirements for a charter school may not exceed the minimum parking requirements for traditional public schools of like size and grade levels or other institutional public uses throughout the municipality or county.

D. If a municipality or county has designated zones for sexually oriented businesses, or businesses which sell alcohol, a charter school may be prohibited from locations which would defeat the purpose for the zone, unless the charter school provides a waiver of liability for the local government entity by the charter school governing board in an open meeting.

R277-471-6. Public School District/Charter School Construction Inspection.

A. A public school district or charter school may employ one of three methods for school construction inspection:

(1) An independent, properly licensed and certified

building inspector;

(2) a properly licensed and certified building inspector, employed by the school district; or

(3) a properly licensed and certified building inspector approved by the local jurisdiction in which the construction activity occurs.

B. Procedure for independent properly licensed and certified building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.

(2) The school district, through the SDBO, or charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) The independent building inspector shall:

(a) not be an employee of the architect, contractor or any subcontractor on the project;

(b) be approved by the applicable local government or school district building inspector; and

(c) be properly licensed and certified to perform all of the inspections that the inspector is required to perform.

(4) After completion of the project, the SDBO or charter school designee shall, upon completion of all required inspections of the school building, file with the USOE and the building inspector of the local jurisdiction in which the building is located, a certificate of inspection verification, certifying that all inspections were completed in accordance with the Code.

(5) The school district or charter school shall seek a certificate authorizing permanent occupancy of the school building from the Superintendent.

(6) Within 30 days after the school district or charter school files a request for the issuance of a certificate authorizing permanent occupancy of the school building, the Superintendent shall:

(a) issue to the school district or charter school a certificate authorizing permanent occupancy of the school building; or

(b) deliver to the local school board or charter school board a written notice indicating deficiencies in the school district's or charter school's compliance with the inspection findings; and

(c) mail a copy of the certificate authorizing permanent occupancy or the notice of deficiency to the building official of the local government entity in which the school building is located.

(7) Upon the local school or charter school board's filing of the certificate of inspection verification and requesting the issuance of a certificate authorizing permanent occupancy of the school building with the USOE, the school district or charter school shall be entitled to temporary occupancy of the school building for a period up to 90 days, beginning on the date the request is filed, if the school district or charter school has complied with all applicable fire and life safety code requirements.

(8) Upon the school district or charter school remedying any inspection deficiencies and notifying the Superintendent that the deficiencies have been remedied, following certification of the information, the Superintendent shall issue a certificate authorizing permanent occupancy of the school building and mail a copy of the certificate to the building official of the local governmental entity in which the school building is located authorizing permanent occupancy of the school building.

(9) The Superintendent may contract with any appropriately qualified entity or person(s) to provide inspection

services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the public school building.

(10) The Superintendent may charge the school district or charter school a fee not to exceed the actual cost of performing the inspection(s) for inspection services that the Superintendent considers necessary to enable the Superintendent to issue a certificate authorizing permanent occupancy of the school building.

(11) A certificate authorizing permanent occupancy issued by the Superintendent shall be considered to satisfy any municipal or county requirement(s) for an inspection or a certification of occupancy.

C. Procedures for properly licensed and certified school district building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the school building to the Superintendent and to the appropriate local governmental entity building official where the building is located for each project that exceeds \$99,999 in cost.

(2) The school district, through the SDBO, or the charter school designee shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A school district may issue its own certificate authorizing permanent occupancy of a school building if it used a building inspector employed by the public school district for inspection of the school building.

(4) Charter schools:

(a) After completion of the project, the charter school may seek a certificate of occupancy from the SDBO of the school district providing the inspection services.

(b) If the charter school seeks a certificate of occupancy from the SDBO, the SDBO shall sign a certificate of inspection verification and a certificate of occupancy certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the municipality or county in which the building is located.

(c) A certificate authorizing permanent occupancy issued by a SDBO with authority to issue the certificate shall satisfy any municipal or county requirement for an inspection or a certification of occupancy.

D. Procedure for properly licensed and certified local municipal or county building inspector:

(1) The SDBO or charter school designee shall provide, on a monthly basis during construction, a copy of each inspection certificate and a monthly inspection summary regarding the public school building to the Superintendent for each project that exceeds \$99,999 in cost.

(2) The school district, through the SDBO or charter school designee, shall identify in the monthly summary reports the total number of inspections as well as the name, state license number and discipline(s) of the state licensed/certified inspectors performing the building inspections.

(3) School districts:

(a) After completion of the project, the SDBO shall sign a certificate of inspection verification form certifying that all inspections were completed in accordance with the Code and file the form with the USOE and the building official of the jurisdiction in which the building is located.

(b) A public school district shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

(4) Charter schools:

(a) After completion of the project, the charter school designee shall obtain a completed certificate of inspection verification form from the local municipal or county building inspector certifying that all inspections were completed in accordance with the Code and file the form with the USOE.

(b) A charter school shall seek a certificate authorizing permanent occupancy of a school building from the jurisdiction in which the building is located; a copy of the certificate of occupancy shall be filed with the USOE.

E. A municipality or county may not:

(1) require school districts or charter schools to landscape, fence, make aesthetic improvements, use specific construction methods or materials, impose requirements for buildings used only for educational purposes, or place limitations prohibiting the use of temporary classroom facilities on school property. All temporary classroom facilities shall be properly inspected to meet the Code.

(2) require a school district or charter school to participate in the cost of any roadway or sidewalk, or a study of the impact of a school on a roadway or sidewalk, that is not reasonably necessary for the safety of school children and not located on or contiguous to school property, unless the roadway or sidewalk is required to connect an otherwise isolated public school or an existing roadway;

(3) require a school district or charter school to pay fees not authorized under 10-9a-305 or 17-27a-305;

(4) require inspection of school construction or assess a fee or other charges for inspection, unless the school district or charter school is unable to provide for inspection by properly licensed and certified inspectors, other than the project architect, contractor or subcontractors;

(5) require a school district or charter school to pay any impact fee for an improvement project that is not reasonably related to the impact of the school project upon the need that the improvement is to address; or

(6) impose regulations upon the location of a public school project except as necessary to avoid unreasonable risks to health or safety of students.

F. A municipality or county may, at its discretion, schedule a time with school district or charter school officials to:

(1) provide a walk-through of school construction at no cost and at a time convenient to the school district or charter school; and

(2) provide recommendations based on the walk-through.

R277-471-7. School Building Construction and Inspection Resource Manual.

A. The USOE shall develop and distribute to each school district and charter school a Resource Manual.

B. The Resource Manual shall include process, legal requirements and resource information on school building construction and inspections.

C. The USOE shall review and, if necessary, update the Resource Manual annually.

D. The Board, local school boards, charter school boards, as well as school district and charter school personnel shall act consistent with the Resource Manual.

R277-471-8. Annual Construction and Inspection Conference.

A. The USOE shall sponsor an annual school construction conference for representative(s) from each school district, charter school, and interested persons involved in the school

building construction industry. The conference shall:

- (1) provide current information on the design, construction, and inspection process of school buildings;
- (2) provide training on school site selection, design, construction, lowest life-cycle costing, and construction inspection matters as determined by the USOE; and
- (3) offer and discuss information to improve the existing public school building construction inspection program.

R277-471-9. Enforcement.

A. School districts and charter schools which fail to comply with the provisions of this rule are subject to interruption of state aid dollars by the Board in accordance with Section 53A-1-401(3) and 53A-17a-144(4)(d).

(1) If a school district or charter school fails to meet or satisfy a school construction inspection requirement or timeline designation under this rule, the school district superintendent or local charter school director shall receive notice by certified mail; and

(2) If after 30 days the requirement has not been met, the USOE shall interrupt the Minimum School Program fund transfer process to the following extent:

- (a) 10 percent of the total monthly Minimum School Program transfer amount the first month;
- (b) 25 percent in the second month; and
- (c) 50 percent in the third and subsequent months.

B. If the USOE interrupted the Minimum School Program fund transfer process, the USOE shall:

(1) upon receipt of confirmation that the proper inspection(s) has (have) taken place or upon receipt of a late report, restart the transfer process within the month (if the confirmation or report is submitted before the tenth working day of the month) or in the following month (if the confirmation or report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting; and

(3) inform the chair of the local governing board if the school district superintendent or charter school director is not responsive in correcting ongoing school construction inspection and reporting problems.

C. A nonrefundable fine in the amount of one half of one percent of the total construction costs shall be assessed school districts and charter schools that fail to report new or remodeling projects to USOE that exceed \$99,999 before construction begins.

(1) Nonrefundable fine amounts shall be deducted from the respective school district's and charter school's Minimum School Program allotment at a rate sufficient to complete collection of the nonrefundable fine by the end of the current fiscal year.

(a) School district nonrefundable fine amounts collected by USOE shall be deposited into the School Building Revolving Account; and

(b) charter school nonrefundable fine amounts collected by USOE shall be deposited into the Charter School Building Subaccount within the School Building Revolving Account.

D. Violation of any land use regulation and the substantive provisions of all Codes is a class C misdemeanor and may be subject to further civil penalties, as established by local ordinance.

R277-471-10. Appeals Procedure for Nonrefundable Fines.

A. School districts or local charter school boards may appeal a fine assessed under R277-471-9C consistent with the following:

(1) A fine may not be appealed until a final administrative decision has been made to assess the fine by the USOE and the fine has been affirmed by the Board.

(2) A district superintendent on behalf of a local school board or a local charter board chair on behalf of a local charter school board may appeal an assessed fine by filing an appeal form provided on the USOE website.

(3) The appeal must be filed within 10 business days of final affirmation of USOE action/withholding by the Board.

(4) The appeal shall be delivered or provided electronically to the USOE as provided by the appeal form.

(5) The appeal form shall require an explanation of unanticipated or compelling circumstances that resulted in local board's or charter school's failure to report new construction or remodeling projects that exceed \$99,999.

(6) The appeal form shall require a notarized statement from the district superintendent or local charter board chair that the information and explanation of circumstances are true and factual statements.

(7) At least three members of the Finance Committee appointed by the Board shall act as a review committee to review the written appeal.

(a) The appeal committee may request additional information from the local school board/local charter board.

(b) The appeal committee may ask the district superintendent or local school district or charter school board chair or school district/charter school business staff to appear personally and provide information.

(c) The fine shall be presumed appropriate and legitimate when reviewed by the appeal committee.

(d) The appeal committee shall make a written recommendation within 10 business days of receipt of the appeal request.

(e) The full Finance Committee of the Board shall review the recommendation.

(f) The Finance Committee shall make a formal recommendation to the Board to accept, modify or reject the appeal explanation and fine.

B. The Board, in a regular monthly meeting, may accept or reject the Finance Committee's final recommendation to affirm the fine, modify the fine, or grant the appeal.

C. Consistent with the Board's general control and supervision of the Utah public school system and given the significant public policy concern for safe schools and cost-effective public school building projects, a local board of education or a local charter board has no further appeal opportunity.

KEY: educational facilities

July 8, 2008

Notice of Continuation November 1, 2004

**Art X Sec 3
53A-1-401(3)
53A-20-104
53A-20-104.5
10-9-106
17-27-105
53A-17a-144(4)(d)**

R277. Education, Administration.**R277-488. Critical Languages Program.****R277-488-1. Definitions.**

A. "ACTFL OPI" means the American Council of Teachers of Foreign Language Oral Proficiency Interview which is a test, both written and verbal, offered at most Utah colleges and universities.

B. "Board" means the Utah State Board of Education.

C. "Credentialed international teacher" means a teacher sponsored under a separate Memoranda of Understanding between the USOE and China, Spain or Mexico. The Memoranda of Understanding are hereby incorporated by reference. Sponsored teachers shall satisfy all conditions of the Memoranda of Understanding prior to working with Utah students.

D. "Critical language" means those languages described under Section 53A-15-104(1).

E. "Critical language program" means the enhanced EDNET program and the international teacher exchange program as defined and funded under Section 53A-15-104.

F. "Dual language immersion" means a distinctive dual language education program in which native English speakers and active speakers of another language are integrated for academic content.

G. Dual language immersion instructional models are:

(1) "One-way" immersion is a program in which a student population consists of English language speakers with limited to no proficiency in the foreign immersion language. In such a model, less than 30 percent of the students have a native language other than English.

(2) "Two-way" immersion is a program in which a student population consists of a majority of English language speakers and a minority of language speakers other than English with dominance in their first language and home language support for this language. A 1:1 ratio is ideally maintained for these two language groups, but a minimum of one-third of each language group (such as 2:1 ratio) is required.

H. "EDNET" means the state's two-way interactive system for video and audio, delivered and available to students in the state's public education system, as defined under Section 53A-15-104(2).

I. "Electronic High School" means the state's electronic high school program explained in Section 53A-17a-131.15 and R277-725.

J. "Foreign exchange student" means a student sponsored by an agency approved by the school district's local school board or charter school's governing board, subject to the limitations of Section 53A-2-206(2).

K. "Language facilitator" means a paraprofessional or licensed educator who is fluent in the critical language being taught by EDNET and who is designated to participate in the Critical Languages Program established under Section 53A-15-104.

L. "Secondary school" means grades 7-12 in whatever schools the grade levels exist.

M. "USOE" means the Utah State Office of Education.

R277-488-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-15-104 which directs the State Superintendent of Public Instruction and the Board to establish, administer, and expand the Critical Languages Program and authorizes the creation of a Dual Language Immersion Pilot Program, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish criteria and procedures for distributing funds to secondary schools

participating in the Critical Languages Program and funds to elementary schools participating in the Dual Language Pilot Program. The intent of this appropriation is to increase the number of students who reach proficiency in a critical language as well as build overall foreign language capacity in the state of Utah and to increase the number of biliterate and bilingual students.

R277-488-3. Critical Language Program Requirements.

A. A secondary school that desires to participate in the Critical Languages Program (enhanced EDNET, traditional instruction or visiting guest teacher program) shall submit an application, provided by the USOE and available each March 14 to the USOE no later than April 14.

B. The application shall designate:

(1) a specific available classroom within the school district or charter school for EDNET access, traditional instruction or instruction by identified credentialed visiting guest teacher teaching under a USOE/foreign country Memorandum of Understanding;

(2) a plan and procedure in place to notify students and parents of the availability of at least one critical language course identified in Section 53A-15-104(1);

(3) for schools using enhanced EDNET delivery, a qualified language facilitator hired and available to students who:

(a) is fluent in the critical language being taught;

(b) has established his fluency by receiving a score of intermediate high or higher on an ACTFL OPI test or USOE-approved equivalent;

(c) is qualified as a paraprofessional under R277-524; or

(d) is a Utah licensed educator; and

(e) has completed a criminal background check including review of identified offenses by the school district or charter school.

(4) requirements for the visiting guest teacher exchange program:

(a) programs shall operate under a Memorandum of Understanding;

(b) international teacher expenses shall be paid as provided by the designated Memorandum of Understanding;

(c) all other conditions provided by individual Memoranda of Understanding shall be satisfied.

C. Schools applying for either the enhanced EDNET, traditional instruction or the visiting guest teacher program shall provide identified materials, including texts and consumables, purchased with funds appropriated by the Legislature.

R277-488-4. Dual Language Immersion Pilot Program Requirements.

A. The program shall provide funding for a planning year in 2008-09 with classes to begin in 2009-10.

B. The program shall provide funds beginning July 1, 2008 as an incentive to 15 qualifying schools to develop dual language programs for the following languages:

(1) Chinese (6);

(2) Spanish (6);

(3) French (2);

(4) Navajo (1).

C. An elementary school that desires to participate in the Dual Language Immersion Pilot Program (either one-way or two-way) shall submit an application, provided by the USOE and available by April 14 to the USOE by May 14.

D. Schools/school districts may request funding for no more than two additional pilot sites.

E. The application shall provide for an immersion model that uses 50 percent of instruction in English and 50 percent of instruction in another language including:

(1) an identified, instructional model (one-way or two-

way), and language choice (Chinese, Spanish, French, or Navajo);

(2) beginning the instructional model in kindergarten, grade 1 or both, and adding an additional grade each year; and

(3) a plan and procedure in place to notify students and parents of the availability of at least one dual language immersion course identified in Section 53A-15-104(1).

F. Priority in funding shall be given to schools in school districts or charter schools that do not currently teach the requested language choice; and

(a) demonstrate adequate local funding and infrastructure to begin a pilot program or expand existing programs;

(b) demonstrate community interest and students committed and prepared to participate in a new or expanded pilot program, including prepared instructors for the program;

(c) have adequate interest, resources, and infrastructure, but do not presently have a program under R277-488;

(d) have a demonstrated community need for improved or expanded foreign language instruction in a specific school or community; and

(e) allow pilot language programs to include all languages identified in Section 53A-15-105.

G. Schools shall hire qualified language teachers for students who:

(1) have a world language endorsement in the language of instruction (Chinese, Spanish, French or Navajo) for a one-way dual language immersion program or a bilingual endorsement in the language of instruction (Chinese, Spanish, French or Navajo) for a two-way dual language immersion program;

(2) are Utah licensed elementary educators; and

(3) have completed a criminal background check, including review of identified offenses by the USOE.

R277-488-5. USOE Responsibilities and Funds.

A. Applications for the expanded Critical Languages Program and Dual Immersion Pilot Program shall be provided by the USOE.

B. Secondary and elementary schools shall be selected for funding for both programs based on an evaluation of applications by a USOE-designated committee which shall include statewide experts.

C. Awards shall be made to individual secondary or elementary schools and funds allocated to school districts and charter schools to be fully distributed to designated schools.

D. Each secondary school selected for funding shall receive a base allocation per critical language offered at the school, designated in Section 53A-15-104(6)(a).

E. Each elementary school selected for funding shall receive a base allocation per dual language immersion offered at the elementary school, designated in Section 53A-15-104(6)(a).

F. Each secondary school selected for funding shall receive a supplemental allocation designated in Section 53A-15-104(6)(b).

(1) School districts and charter schools approved for participation under this rule shall receive funds for students who complete a critical language course with a grade of C or better by June 15;

(2) Secondary schools shall receive additional funding for foreign exchange students enrolled in a high school who complete a critical language course, as designated in Section 53A-15-104(6)(c) and consistent with R277-612.

G. Based on available funds, secondary and elementary schools shall receive six years of ongoing funding.

H. Schools eligible for funding shall be notified by the USOE by June 1 annually.

R277-488-6. Evaluation and Reports.

A. Each secondary or elementary school selected for

funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-104.

B. The USOE may request additional data from secondary or elementary schools that receive funding.

KEY: critical languages, dual language immersion

July 8, 2008

**Art X Sec 3
53A-15-104
53A-1-401(3)**

R277. Education, Administration.**R277-490. Beverley Taylor Sorenson Elementary Arts Learning Program.****R277-490-1. Definitions.**

A. "Arts equipment and supplies" means musical instruments, recording and play-back devices, cameras, projectors, computers to be used in the program, CDs, DVDs, teacher reference books, and art-making supplies. This list is not exhaustive.

B. "Arts program coordinators (coordinator)" means individuals, employed full-time, who are responsible to coordinate arts programs for the school district, charter school or consortium, inform arts teachers, organize arts professional development (including organizing arts local learning communities), oversee/guide/organize the gathering of assessment data, represent the school district, charter school or consortium arts program, and provide general leadership for arts education throughout the school district, charter school or consortium.

C. Beverley Taylor Sorenson Elementary Arts Learning Program model means a program with the following components:

(1) a qualified arts specialist to work side-by-side with the regular classroom teacher minimally once per week to deliver quality, sequential, and developmental arts instruction in alignment with the state Fine Arts Core Curriculum; and

(2) weekly collaboration between the regular classroom teacher and arts specialist in planning arts integrated instruction, with regular 15-30 minute conferences.

D. "Board" means the Utah State Board of Education.

E. "Full-time employee," for purposes of this rule, means an employee that works a schedule consistent with the full-time contract agreement of the school or school district, including evaluations and entitlement to employment benefits.

F. "Highly qualified school arts program specialist (arts specialist)" means:

(1) an educator with a current educator license and a Level 2 or K-12 specialist endorsement in the art form; or

(2) an elementary classroom teacher with a current educator license who is currently enrolled in a Level 2 specialist endorsement program in the art form and who works with a mentor who holds an arts endorsement; or

(3) a professional artist employed by a public school and accepted into the Board Alternative Routes to License (ARL) program under R277-503 to complete a K-12 endorsement in the art form, which includes the Praxis exam in the case of art, music, or theatre.

(4) In addition to required licensure and endorsements, prospective teachers should provide evidence of facilitating elementary Core learning in at least one art form.

G. "Independent evaluator," for purposes of this rule and program, means an evaluator selected jointly by the Board and the Utah Arts Council through the required procurement process. The evaluator shall have experience and expertise in education programs and in the arts.

H. "Matching funds," for purposes of this rule and program, means funds that equal the total grant amount received by a school district/charter school/consortium to fund a school district/charter school/consortium arts coordinator under Section 53A-17a-162(3)(c) and R277-490-5.

I. "Utah Arts Council" is a state and nationally funded government entity that assists with professional development and provides direct matching grants to nonprofit organizations across the state of Utah. The Utah Arts Council also conducts programs which provide outreach services (including financial assistance) to schools, local arts councils and organizations, community centers, performing groups, and individual artists.

R277-490-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-162 which directs the Board to establish a grant program for school districts and charter schools to hire qualified, full-time arts professionals to encourage student participation in the arts in Utah public schools and embrace student learning in Core subject areas.

B. The purpose of this rule is:

(1) to implement the Beverley Taylor Sorenson Elementary Arts Learning Program model in public schools through school districts, charter schools and consortia that submit grants to hire highly qualified, full-time arts specialists;

(2) to distribute funds to arts specialists through school districts and charter schools to purchase supplies and equipment;

(3) to allow ten Utah school districts/consortia to hire arts coordinators;

(4) to establish partnerships within established networks with Utah higher education institutions to provide pre-service training, professional development, research and leadership for arts educators and arts education in Utah public schools; and

(5) appropriately monitor, evaluate and report programs and program results.

R277-490-3. Arts Specialist Grant Program.

A. School districts/charter schools or consortia of school districts or charter schools may submit grant requests consistent with time lines provided in this rule.

B. School district/charter school consortia:

(1) School districts/charter schools may form consortia to employ arts specialists if the combined total student number of the consortium is not less than 300 students.

(2) The school district/charter school shall develop its proposal consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model outlined under R277-490-1C.

(3) The school district/charter school grant shall explain the necessity or greater efficiency and benefit of an arts specialist serving several elementary schools within a consortium of school districts or charter schools.

(4) The school district/charter schools grant shall explain a schedule for the specialist(s) to serve the group of schools within several school districts or charter schools similarly to an arts specialist in a single school.

(5) A consortium grant shall provide information for a consortium arts specialist's schedule that minimizes the arts specialist's travel and allows the arts specialist to be well integrated into several schools.

C. Arts specialist grant requirements

(1) Grant programs shall be developed and submitted to the Board consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model described in R277-490-1C.

(2) Grant applications shall describe arts specialist recruitment efforts.

(3) Grant applications shall describe plans, including timelines, for:

(a) advertising for specialist(s);

(b) employing specialists, including criminal background checks, as required;

(c) a plan for working with specialists to institutionalize the arts program by encouraging and assisting arts specialists to acquire educator licenses or become relicensed;

(d) a plan for training specialists, providing support for specialists (including mentoring) and appropriate evaluation of specialists.

D. School districts/charter schools shall review grant

applications and forward approved applications to the USOE.

E. Arts specialist timelines

(1) School applications shall be due to the school districts by May 1 annually.

(2) Charter school and school district applications shall be due to the USOE by May 7 annually.

(3) The Board staff shall work with the Utah Arts Council to select grantees (or work with prospective grantees to improve applications).

(4) The Board, after close consultation with the Utah Arts Council, shall designate schools/consortia for funding no later than June 1 annually.

R277-490-4. Distribution of Funds for Arts Specialist Supplies.

A. The Board shall distribute pro-rated funds for arts specialist supplies to school districts/charter schools/consortia no later than July 1, 2008.

B. School districts/charter schools shall distribute funds directly to arts specialists based on numbers of guaranteed employees provided for in the approved school district/school/consortia grant.

C. School districts/charter schools/consortia shall require arts specialists to provide adequate documentation of arts supplies purchased consistent with the school/consortium plan, this rule and the law.

D. Summary information about effective supplies and equipment shall be provided in the school/consortium evaluation of the program.

R277-490-5. School Districts/Charter Schools/Consortia Employment of School District/Charter School/Consortia Arts Coordinators.

A. School districts/charter schools/consortia may apply for funds to employ full-time arts coordinators in their school district/charter school/consortium.

B. Applicants shall explain how arts coordinators will be used consistent with the Beverley Taylor Sorenson Elementary Arts Learning Program model, what requirements arts coordinators must meet, and what training will be provided by whom.

C. Applicants shall provide documentation of committed matching funds that equal the request from the school district/charter school/consortium.

D. Preference shall be given to applicants that demonstrate in their proposed recruitment and use of coordinators diligent and creative efforts to employ arts coordinators who mirror the minority or unique populations that make up the schools in which coordinators will work.

E. The Board, following close consultation with the Utah Arts Council, shall select school districts/charter schools/consortia to receive funds under this section.

F. Funds shall be distributed to designated school districts/charter schools/consortia no later than July 1, 2008.

R277-490-6. Arts Program Partnership with Utah Institutions of Higher Education for Pre-service, Professional Development, Research, and Leadership Training.

A. The Board shall work closely with the Utah Arts Council to identify interested Utah higher education institutions eligible, prepared and geographically and programmatically suited to work with identified arts specialists, arts coordinators and the schools and programs in which specialists/coordinators are employed.

B. The Board, in close partnership with the Utah Arts Council, shall determine funding and payment timelines to eligible Utah higher education institutions for designated services as appropriate and necessary.

R277-490-7. Beverley Taylor Sorenson Elementary Arts Learning Program Evaluation and Reporting.

A. The Board, in consultation with the Utah Arts Council, shall contract annually, beginning in May 2009, with an independent qualified evaluator through the state procurement process.

B. The Board and the Utah Arts Council shall jointly report annually to the Education Interim Committee as provided in Section 53A-17a-162(6).

**KEY: arts program, grants, public schools
July 8, 2008**

**Art X Sec 3
53A-1-401(3)
53A-17a-162**

R277. Education, Administration.**R277-504. Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) Licensure.****R277-504-1. Definitions.**

- A. "Board" means the Utah State Board of Education.
- B. "Communication Disorders license area of concentration" means the areas of content required for providing services to individuals from birth through age 22. Communication Disorders area of concentration carries an audiology endorsement.
- C. "Early Childhood license area of concentration" means an Early Childhood Education teaching license required for teaching kindergarten and permitting assignment in kindergarten through grade three. It is recommended for those teaching in formal programs below kindergarten level.
- D. "Early intervention credential" is the highest qualified personnel standard established by the Department of Health that persons must meet in able to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings. Establishment of this standard was a collaborative initiative between the Department of Health and the State Office of Education. In order to provide services to infants and toddlers with disabilities age 0-3 in early intervention settings, a person must have an Early Intervention Credential or a Preschool Special Education (Birth-Age 5) license.
- E. "Elementary (1-8) license area of concentration" means an Elementary teaching license required for teaching grades one through eight.
- F. "Elementary (K-6) license area of concentration" means an Elementary teaching license required for teaching grades kindergarten through six.
- G. "Endorsement" means a specialty field or area listed on the teaching license which indicates the specific qualification of the holder.
- H. "Highest requirements in the State applicable to a specific profession or discipline" means the highest entry-level academic degree needed for any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to that profession or discipline.
- I. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate agreement, to candidates who have also met all ancillary requirements established by law or rule.
- J. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as any additional requirements established by law or rule relating to professional preparation or experience.
- K. "National Council for Accreditation of Teacher Education (NCATE)" is a nationally recognized organization which accredits the education units providing baccalaureate and graduate degree programs for the preparation of teachers and other professional personnel for elementary and secondary schools.
- L. "Preschool Special Education (Birth-Age 5) license area of concentration" means a teaching license required for teaching preschool students with disabilities.
- M. "Secondary license area of concentration" means a Secondary teaching license required for teaching grades six through twelve. Secondary Certificates carry endorsements for the areas in which the holder is qualified.
- N. "Special Education license area of concentration (K-12)" means Special Education teaching license required for teaching students with disabilities in kindergarten through grade twelve. Special Education areas of concentration carry

endorsements in at least one of the following areas:

- (1) Mild/Moderate Endorsement which permits the holder to teach students with mild/moderate learning and behavior problems;
 - (2) Severe Endorsement which permits the holder to teach students with severe learning and behavior problems;
 - (3) Hearing Impaired Endorsement which permits the holder to teach students who are deaf or other hearing impaired;
 - (4) Visually Impaired Endorsement which permits the holder to teach students who are blind or other visually impaired.
- O. "Speech-Language Pathologist (SLP) license" means a speech-language pathologist area of concentration required for teaching students with communication disorders, birth through age 21. A speech-language pathologist license carries a Speech-Language Pathologist endorsement.
- P. "Speech-language technician (SLT) license area of concentration" means an area of concentration in which an individual has completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE.
- Q. "Teacher Education Accreditation Council (TEAC)" is a nationally recognized organization which provides accreditation of professional teacher education programs in institutions offering baccalaureate and graduate degrees for the preparation of K-12 teachers.
- R. "USOE" means Utah State Office of Education.

R277-504-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests the general control and supervision of the public schools in the State Board of Education and by Section 53A-1-402(1)(a) which directs the Board to make rules regarding the licensing of educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to:

- (1) specify the requirements for Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) licensing; and
- (2) specify the standards which must be met for each of these areas by a teacher preparation institution in order to receive Board approval of its program for teachers.

R277-504-3. Level 1 License.

A. The Level 1 license is issued for three years.

B. During the Level 1 provisional period, the employing school district shall supervise the candidate closely and make special assistance available.

C. An applicant for the Level 1 Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist, Speech-Language Technician, and Preschool Special Education (Birth-Age 5) license area of concentration shall have done all of the following:

- (1) graduated with a bachelor's degree, or in the case of Communication Disorders and Speech-Language Pathologist applicants, a masters degree or equivalent, from a nationally or regionally accredited institution consistent with R277-503;
- (2) completed a Board-approved program for the preparation of Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Secondary (6-12), Preschool Special Education (K-12), Communication Disorders (K-12), Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education (Birth-Age 5) specialists;
- (3) been recommended by an institution whose program of preparation is Board-approved and accredited consistent with

R277-503.

D. If a teacher has taught for three years in Utah, a Level 1 license can only be renewed consistent with the following:

- (1) the employing LEA has requested a one year extension consistent with Entry Years Enhancement (EYE); or
- (2) an individual has continuous experience as a SLP in a clinical setting.

E. The Level 1 Secondary License

(1) A Level 1 secondary license with subject endorsement(s) is valid in grades six through twelve.

(2) The 6-12 license requires a major or major equivalent, but the teacher cannot teach in a self-contained class.

(3) An applicant for the Level 1 Secondary license shall have completed an approved teaching major consistent with subjects taught in Utah secondary schools. The license is endorsed for all subjects in which the applicant has at least a minor or has completed equivalent training.

(a) A teaching major requires not fewer than 30 semester hours (45 quarter hours) of credit in one subject.

(b) A teaching minor requires not fewer than 16 semester hours (24 quarter hours) of credit in one subject.

F. A Preschool Special Education (Birth-Age 5) Level 1 License:

(1) Applicants for the Preschool Special Education (Birth-Age 5) license shall have completed a Board-approved program, consistent with R277-503, for teaching infants, toddlers, and preschool-age children with disabilities.

(2) Hearing Impaired/Vision Impaired (HI/VI) Endorsements required under this rule shall be issued to meet "the highest requirements in the State applicable to a specific profession or discipline" required by the Individuals with Disabilities Education Act of 2004 (IDEA), Pub. L. No. 108-446, hereby incorporated by reference.

(a) Preschool Special Education (Birth-Age 5) license holders who teach children who are hearing impaired (birth-age 5) or vision impaired (birth-age 5) or both, in self-contained, categorical classrooms shall hold an endorsement for Hearing Impaired (Birth-Age 5) or Vision Impaired (Birth-Age 5) or both.

(b) All professional personnel teaching children with HI/VI in self-contained, categorical settings shall meet the standards in R277-504-3I(1).

(c) Teachers who hold an equivalent license from a state other than Utah shall be required to meet the standards referred to in R277-504-3I(2)(d) upon receipt of an initial Utah license.

(d) All professional personnel teaching preschool-aged children who are HI/VI in self-contained, categorical classrooms as of January 1998, shall be required to complete a Board-approved training program, consistent with R277-503, making them eligible for the Birth-Age 5 HI/VI endorsements under this rule.

(e) This training shall be developed based on an analysis of presently-held licenses and endorsements, teaching experiences, and training activities as compared to the requirements of the new standards.

G. Applicants for Special Education (K-12) licenses shall have completed a Board-approved program for teaching students with mild/moderate, severe, hearing, or visual impairments. The Special Education license (K-12) is endorsed for any area in which the program has been completed. Educators who hold Special Education licenses may also be issued endorsements.

H. Applicants for Communication Disorders license areas of concentration (audiologist) shall have completed a Board-approved program for teaching pupils with communication disorders which includes the master's degree or 30 semester hours earned after meeting requirements for a bachelor's degree.

I. Speech-Language Pathologist (SLP) License Area of Concentration

(1) Qualifications: To qualify for the SLP area of

concentration, an individual shall have completed a Board-approved program for teaching students with speech/language impairments. Such programs include:

(a) a master's degree and Certificate of Clinical Competence (CCC); or

(b) a master's degree; or

(c) an international equivalent of a master's degree, earned in a communication disorders program, or equivalent after receiving a bachelor's degree at an accredited higher education institution.

(2) An individual who has completed a Board-approved bachelor's degree program in communication disorders at an accredited higher education institution, and acquired the competencies necessary for assignment as a graduate student intern, as determined by the higher education institution, may receive a one-year letter of authorization from the USOE.

(a) This letter of authorization shall be issued under R277-504-3I(2)(d), and may be renewed annually for up to three years if:

(i) the applicant has been admitted to an accredited graduate program at the time the license is issued; and

(ii) the applicant files with the USOE evidence of completion of at least nine quarter hours (six semester hours) of credit applicable to the acquisition of a master's degree or the equivalent in communication disorders each year that the license is to remain in effect.

(b) A graduate student intern shall have been recommended by a higher education institution whose program of preparation is Board-approved. The graduate student intern shall be appropriately supervised by a speech-language pathologist.

(3) An individual with a letter of authorization may perform fully licensed speech-language functions, as directed, solely within the confines of the public school.

(4) This area of concentration does not qualify the individual to provide services outside of the educational setting.

J. Speech-Language Technician (SLT) License Area of Concentration

(1) To qualify for the SLT area of concentration, an individual shall have completed a Board-approved bachelor's degree in communication disorders at an accredited higher education institution and additional training as required by the USOE. Additional professional development shall be completed prior to or within the first year of receiving this area of concentration, in order to meet defined competencies.

(2) A speech-language technician shall work under the supervision of a speech-language pathologist who accepts full responsibility for the work of the speech-language technician.

(3) The supervising SLP maintains full responsibility for the caseload of the SLP and any SLTs supervised by the SLP.

(4) An individual may perform speech-language technician functions and duties solely within the confines of the public school.

(5) This area of concentration does not qualify the individual to provide services outside of the educational setting.

(6) The speech-language technician's function and duties shall conform to Utah's SLP/SLT Handbook, developed by the USOE, 2007.

(7) The performance of SLP and SLT duties shall be strictly consistent with Utah's SLP/SLT Handbook.

(8) Documented clinical employment may be substituted at a school district's discretion for employment in education.

R277-504-4. Level 2 License.

A Level 2 license is issued after:

(1) a candidate completes three years of successful professional teaching;

(2) a candidate completes all other Entry Years Enhancements (EYE) requirements consistent with R277-522;

and

(3) the employing public school district or accredited private school recommends the candidate to receive the Level 2 license, based on information from peers and supervisors.

R277-504-5. Special Validations.

A. An individual holding a Level 2 Elementary license and for whom the employing district has requested a letter of authorization assigning the individual to a kindergarten position may qualify for an Early Childhood license by completing an approved program of early childhood education at an accredited institution of higher education or the Alternative Routes to Licensure Program (ARL). The program may also include district professional development. Practicum experiences should be in the regularly assigned kindergarten classroom of the applicant for the license.

B. An Elementary teacher may be licensed in grades K-3, K-6, or 1-8.

(1) The 1-8 license permits the teacher to teach in any academic area in self-contained classes in grades 1-8.

(2) A teacher shall be endorsed in a subject by the USOE to teach assigned subjects at the 7-8 grade level.

(3) The Middle Level license (5-9) continues to be valid; however, a middle level license (5-9) has not been issued since April 1, 1989 and is no longer required of teachers or issued to teachers assigned to the middle school.

R277-504-6. General Standards for Approval of Programs for the Preparation of Early Childhood, Elementary, Secondary, Special Education (K-12), Communication Disorders, Speech-Language Pathologist and Speech-Language Technician, and Preschool Special Education Teachers.

A. The teacher preparation program of an institution may be approved by the Board if it:

(1) meets the standards prescribed in the NCATE Professional Speciality Association or 90 percent of the completers pass the Board-approved content assessments; and

(2) requires the study of:

(a) state laws and policies which specify content, values, and other expectations of teachers and other professionals in the school system;

(b) techniques for evaluating student progress, including the use and interpretation of both standardized and teacher-made tests; and

(c) knowledge and skills designed to meet the needs of students with disabilities in the regular classroom. These shall include the following domains:

(i) knowledge of disabilities;

(ii) knowledge of the role of nonspecial education teachers in the education of students with disabilities;

(iii) skills in assessing the educational needs and progress of students with disabilities in the regular education classroom;

(iv) skills in the implementation of an educational program for students with disabilities in the regular classroom; and

(v) skills in monitoring student progress.

B. The standard requiring the application of methods and techniques in a clinical setting is met by student teaching carried out under the direction of the institution. The following may be accepted as totally or partially fulfilling this requirement:

(1) two years of full-time contract teaching experience in a regular classroom situation in kindergarten through grade twelve in a public or accredited private or parochial school may totally fulfill the requirement;

(2) teaching in an alternative school or similar school may be accepted for up to one-half of the student teaching requirement;

(3) teaching in a community college, trade-technical college, or other post-secondary teaching experiences may be

accepted for up to one-half of the student teaching requirement;

(4) teaching in a preschool or headstart program may be accepted for up to one-half of the student teaching requirement;

(5) teaching experience in business or industry may be accepted for up to one-half of the student teaching requirement; and

(6) other experience accepted by the Board and designated as totally or partially fulfilling the requirement.

R277-504-7. Standards for Approval of Programs for Early Childhood and Elementary Teachers.

The standards shall be applied to the specific age group or grade level for which the program of preparation is designed. The teacher preparation program of an institution may be approved by the Board if it:

A. meets the standards prescribed in the NCATE Professional Speciality Association, including a student teaching experience; and

B. requires study and experiences needed in disciplines which provide content knowledge needed to teach:

(1) language development and listening, speaking, writing, and reading, with emphasis on language development;

(2) mathematics;

(3) biological and physical science and health;

(4) social studies; and

(5) fine arts.

R277-504-8. Standards for Approval of Program for Preparing Teachers in Major and Minor Fields.

The teacher preparation program of an institution may be approved by the Board if it meets the general and specific standards prescribed in the NCATE Professional Speciality Association, including a student teaching experience.

R277-504-9. Standards for Approval of Programs for Special Education (K-12) and Preschool Special Education (Birth-Age 5) Teachers.

The teacher preparation program of an institution may be approved by the Board if it meets the following standards:

A. Mild/Moderate Endorsement: The teacher preparation program of an institution for mild/moderate endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Speciality Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

B. Severe Disabilities Endorsement: The teacher preparation program of a higher education institution for severe disabilities endorsement may be approved by the Board if it meets the standards prescribed in the Council for Exceptional Children (NCATE Professional Specialty Association) or if 90 percent of the program completers passes the Board-approved content tests for special education teachers.

C. Hearing Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association or if 90 percent of the program completers passes the Board-approved content tests for hearing impaired specialists.

D. Visually Impaired Endorsement: The teacher preparation program of a higher education institution may be approved by the Board if it meets the standards prescribed in the Standards for State Approval of Teacher Education for visually impaired specialists.

R277-504-10. Standards for Approval of Programs for Communication Disorders and Speech-Language Pathologist Licenses.

A. Speech Pathology Area of Concentration: The

preparation program for Speech-Language Pathologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association.

B. Audiology Endorsement: The preparation program for audiologists of a higher education institution may be approved by the Board if it meets the standards prescribed in the NCATE Professional Speciality Association.

KEY: teacher , professional education, accreditation

July 8, 2008

Art X Sec 3

Notice of Continuation September 7, 2004 53A-1-402(1)(a)

53A-1-401(3)

**R277. Education, Administration.
R277-525. Special Educator Stipends.
R277-525-1. Definitions.**

A. "After the school year" means two weeks after the final day of the required contract period, as determined by the employer. For year-round schools, "after the school year" means off-track periods, but not vacation periods.

B. "Before the school year" means two weeks before the first day of the required contract period, as determined by the employer.

C. "Board" means the Utah State Board of Education.

D. "Duties related to the IEP process" means;

(1) duties/responsibilities provided in 53A- 17a-156(4);
(2) preparing paperwork related to the implementation of IDEA; and

(3) other duties or responsibilities related to the IEP process, as determined by the special educator.

Duties related to the IEP process do not include:

(1) professional development;
(2) district level planning; and
(3) direct student instruction.

E. "Federal law regulating students with disabilities" means the Individual with Disabilities Education Act (IDEA), Title I, Part A, Section 602.

F. "Special educator," for purposes of this rule, means:

(1) a licensed special education teacher as defined under 53A-17a-158(c); or

(2) a licensed speech-language pathologist as defined under Section 53A-17a-158(c).

G. "Special education teacher" means an individual who has a Utah educator license with a special education area of concentration and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

H. "Speech-language pathologist" means an individual who has a Utah educator license with a speech-language pathologist area of concentration or a speech-language pathologist license and whose primary assignment is the instruction of students with disabilities who are eligible for special education services.

I. "USOE" means the Utah State Office of Education.

J. "Work day for special educator" means the special educator's contract day as determined by the employer. Stipends shall only be paid for actual days worked. A teacher shall not be paid if days/hours are not actually worked. Days are not transferable among teachers.

R277-525-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-158 which requires the Board to distribute money appropriated for stipends for special educators for additional days of work.

B. The purpose of this rule is provide standards and procedures for distributing money appropriated for stipends for special educators for additional days of work:

(1) in recognition of the added duties and responsibilities assumed by special educators to comply with federal law regulating the education of students with disabilities; and
(2) the need to attract and retain qualified special educators.

R277-525-3. School District/Charter School Responsibilities.

A. School districts and charter schools shall contract with individual special educators, defined under R277-525-1F, and request in writing from the special educators:

(1) the number of days (not to exceed 10 or the number of

days established by the Board) that the special educator commits to work consistent with R277-525-1G and H; and

(2) the time period (before the school year begins or after the school year ends) that the special educator commits to working the additional days.

B. Special educators hired by school districts/charter schools after October 15 shall receive funding for extra days to the extent of funds available.

C. School districts/charter schools shall submit an invoice to the USOE twice within a fiscal year (July 1 to June 30) for reimbursement for additional contract days worked by special educators as follows:

(1) no later than October 1 for special educators who worked before the school year began; and

(2) no later than June 30 for special educators who worked after the school year ended.

D. School districts/charter schools shall submit a final report to the USOE no later than June 30 annually that provides:

(1) the number of contract days worked by designated special educators;

(2) data and information compiled about hours, duties and responsibilities completed by special educators during additional days on a tracking and accounting form provided by the USOE or using another form acceptable to the USOE; and
(3) other assessment or evaluation information requested from the USOE.

R277-525-4. Board/USOE Responsibilities.

A. The Board shall annually review this program and determine, based upon the annual appropriation, the number of special education days that shall be funded.

B. To simplify accounting and evaluation requirements for school districts and charter schools, the USOE shall:

(1) provide model tracking and accounting materials to school districts and charter schools before June 1, 2008.

(2) provide a checklist of appropriate duties or tasks for special educators consistent with R277-525-1D.

(3) distribute funds to participating school districts and charter schools for eligible special educators on a semiannual basis.

(4) request and collect data regarding use of days for appropriate accountability and evaluation.

**KEY: special educators, stipends
July 8, 2008**

**Art X Sec 3
53A-1-401(3)
53A-17a-158**

R392. Health, Epidemiology and Laboratory Services, Environmental Services.**R392-100. Food Service Sanitation.****R392-100-1. Authority and Purpose.**

(1) This rule is authorized by Subsections 26-1-30(2), and 26-15-2.

(2) This rule establishes definitions; sets standards for management and personnel, food operations, and equipment and facilities; and provides for food establishment plan review, permit issuance, inspection, employee restriction, and permit suspension to safeguard public health and provide consumers food that is safe, unadulterated, and honestly presented.

R392-100-2. Incorporation by Reference.

(1) The requirements as found in the U.S. Public Health Service, Food and Drug Administration, Food Code 2005, Chapters 1 through 8, Annex 1, and Annex 2, Federal Food, Drug, and Cosmetic Act, 21, U.S.S. 342, Sec. 402 are adopted and incorporated by reference, with the exclusion of Sections 8-302.14(C)(2),(D) and (E), 8-805.40, and 8-809.20; and

(2) with the following additions or amendments:

(a) Amend section 8-103.10 to read:
8-103.10 Modifications and Waivers.

(A) The regulatory authority may grant a variance by modifying or waiving the requirements of this Code if in the opinion of the regulatory authority a health hazard or nuisance will not result from the variance. If a variance is granted, the regulatory authority shall retain the information specified under section 8-103.11 in its records for the food establishment.

(B) A variance or waiver issued by the regulatory authority and the documentation required in section 8-103.11 must be copied to the Utah Department of Health, Office of Epidemiology, Environmental Sanitation Program within 5 working days of issuance.

(C) A variance or waiver intended for a food establishment which is of a chain with stores in more than one local health jurisdiction in the State must be approved by the Utah Department of Health prior to issuance.

(b) Amend section 8-103.11 to add:

(D) In addition, a variance from section 3-301.11 may be issued only when:

(1) the variance is limited to a specific task or work station;

(2) the applicant has demonstrated good cause why section 3-301.11 cannot be met;

(3) suitable utensils are used to the fullest extent possible with ready-to-eat foods in the rest of the establishment; and

(4) the applicant can demonstrate active management control of this risk factor at all times.

(c) Amend Section 8-302.14 (C) to read:

A statement specifying whether the food establishment is mobile or stationary and temporary or permanent.

(d) Amend section 8-302.14 to renumber (F) to (D), (G) to (E), and (H) to (F).

(e) Amend section 8-304.10(A) to read:

(A) Upon request, the regulatory authority shall provide a copy of the food service sanitation rule according to the policy of the local regulatory agency.

(f) Amend section 8-304.11(J) to read:

Accept notices issued and served by the REGULATORY AUTHORITY according to LAW:

(g) Amend section 8-304.11(K) to read:

Be subject to the administrative, civil, injunctive, and criminal remedies authorized in law for failure to comply with this Code or a directive of the regulatory authority, including time frames for corrective actions specified in inspection reports, notices, orders, warnings, and other directives; and

(h) Amend section 8-401.10(A) to read:

(A) Except as specified in paragraphs (B) and (C) of this

section, the regulatory authority shall inspect a food establishment at least once every 6 months and twice in a season for seasonal operations.

(i) Amend section 8-501.10(B) to read:

(B) Requiring appropriate medical examinations, including collection of specimens for laboratory analysis, of a suspected food employee or conditional employee; and

(j) Add section 8-501.10(C) to read:

(C) Meeting reporting requirements under Communicable Disease Rule R386-702 and Injury Reporting Rule R386-703.

(k) Amend section 8-601.10 to read:

Due process and equal protection shall be afforded as required by law in all enforcement and regulatory actions.

(l) Amend section 8-701.30 to read:

Service is effective at the time the notice is served or when service is made as specified in section 8-701.20(B).

(m) Amend section 8-803.10 to read:

8-803.10 Impoundment of Adulterated Food Products Authorized.

(A) The impoundment of adulterated food is authorized under Section 26-15-9, UCA.

(B) The regulatory authority may impound, by use of a hold order, any food product found in places where food or drink is handled, sold, or served to the public, but is found or is suspected of being adulterated and unfit for human consumption,

(C) Upon five days notice and a reasonable opportunity for a hearing to the interested parties, to condemn and destroy the same if deemed necessary for the protection of the public health and

(D) If the regulatory authority has reasonable cause to believe that the hold order will be violated, or finds that the order is violated, the regulatory authority may remove the food that is subject to the hold order to a place of safekeeping.

(n) Amend section 8-803.60 to read:

The regulatory authority may examine, sample, and test food in order to determine its compliance with this Code in section 8-402.11.

(o) Amend section 8-803.90 to read:

The regulatory authority shall issue a notice of release from a hold order and shall physically remove the hold tags, labels, or other identification from the food if the hold order is vacated.

(p) Amend section 8-804.30 number/catchline to read:

8-804.30 Contents of the Summary Suspension Notice.

(q) Amend section 8-805.10(A) to read:

(A) A person who receives a notice of hearing shall file a response within 10 calendar days from the date of service. Failure to respond may result in license suspension, license revocation, or other administrative penalties.

(r) Amend section 8-805.20 to read:

A response to a hearing notice or a request for a hearing as specified in section 8-805.10 shall be in written form and contain the following:

(A) Response to a notice of hearing must include:

(1) An admission or denial of each allegation of fact;

(2) A statement as to whether the respondent waives the right to a hearing;

(3) A statement of defense, mitigation, or explanation concerning all claims; and

(4) A statement as to whether the respondent wishes to settle some or all of the claims made by the regulatory authority.

(B) A request for hearing must include:

(1) A statement of the issues of fact specified in section 8-805.30(B) for which a hearing is requested; and

(2) A statement of defense, mitigation, denial, or explanation concerning each allegation of fact.

(C) Witnesses - In addition to the above requirements, if witnesses are requested, the response to a notice of hearing and a request for hearing must include the name, address, telephone

number, and a brief statement of the expected testimony for each witness.

(D) Legal Representation - Legal counsel is allowed, but not required. All documents filed by the respondent must include the name, address, and telephone number of the respondent's legal counsel, if any.

(s) Amend section 8-805.50(A)(1) to read:

(1) Except as provided in paragraph (B) of this section, within 5 calendar days after receiving a written request for an appeal hearing from:

(t) Adopt subsections 8-805.50(A)(1)(a) through (c) without changes.

(v) Amend subsection 8-805.50(A)(2) to read:

(2) Within 30 calendar days after the service of a hearing notice to consider administrative remedies for other matters as specified in section 8-805.10(C) or for matters as determined necessary by the regulatory authority.

(v) Amend section 8-805.60 number/catchline to read:
8-805.60 Notice of Hearing Contents.

(w) Amend section 8-805.80 number/catchline to read:
8-805.80 Expedient and Impartial Hearing.

(x) Amend section 8-805.90 number/catchline to read:
8-805.90 Confidentiality of Hearing and Proceedings.

(y) Amend section 8-805.90(A) to read:

(A) Hearings will be open to the public unless compelling circumstances, such as the need to discuss a person's medical or mental health condition, a food establishment's trade secrets, or any other matter private or protected under federal or state law.

(z) Amend section 8-806.30(B) to read:

(B) Unless a party appeals to the head of the regulatory authority within 10 calendar days of the hearing or a lesser number of days specified by the hearing officer

(aa) Adopt subsections 8-806.30(B)(1) through (2) without changes.

(ab) Amend section 8-807.60 to read:

Documentary evidence may be received in the form of a copy or excerpt if provided to the hearing officer and opposing party prior to the hearing as ordered by the hearing officer.

(ac) Amend section 8-808.20 to read:

Respondents accepting a consent agreement waive their rights to a hearing on the matter, including judicial review.

(ad) Amend section 8-811.10(B) to read:

(B) Any person who violates any provision of this rule may be assessed a civil penalty not to exceed the sum of \$5,000.00 or be punished for violation of a class B misdemeanor for the first violation. For any subsequent similar violation within two years, the person may be punished for violation of a class A misdemeanor as provided in section 26-23-6.

(ae) Amend section 8-813.10 number/catchline to read:
8-813.10 Petitions, Penalties, Contempt, and Continuing Violations.

(af) Amend section 8-813.10(B) to replace the phrase (designate amount) with the phrase \$5,000.

(ag) Add paragraph 8-813.10(D) to read:

(D) The adjudicative body, upon proper findings, shall assess violators a fee for each day the violation remains in contempt of its order.

(3) The requirements of the Utah Uniform Building Standards Act Rules as found in Sections R156-56-701(1)(c), and R156-56-803 are adopted and incorporated by reference.

KEY: public health, food services, sanitation

July 17, 2008

Notice of Continuation March 22, 2007

26-1-30(2)

26-15-2

R392. Health, Epidemiology and Laboratory Services, Environmental Services.

R392-502. Hotel, Motel and Resort Sanitation.

R392-502-1. Definitions.

Director - shall mean the Executive Director of the Utah Department of Health.

Hotel, Motel or Resort - shall include tourist court, motor hotel, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short-term basis.

Hotel, Motel or Resort Units - shall mean accommodations to serve two or more people.

"Pet" means a domesticated companion animal that is not included in the definition of a service animal or support animal under federal or state law that allows access of the animal to hotel, motel, and resort facilities.

"Pet Friendly" means the designation of certain guest rooms or all guest rooms by an owner or operator to allow pets to stay in a guest room with the guest.

Wastewater - shall mean discharges from all plumbing facilities such as rest rooms, kitchen, and laundry fixtures, either separately or in combination.

R392-502-2. General.

2.1 It shall be the duty of each person operating a hotel, motel or resort in the State of Utah to carry out the provisions of these rules. Such person should also have the duty of controlling the conduct of occupants to this end, and shall make at least one daily inspection of the area for these purposes.

2.2 Severability - If any provision of this code, or its application to any person or circumstance is declared invalid, the application of such provisions to other person or circumstances, and the remainder of this rule, shall not be affected thereby.

2.3 Hotel, motel and resort sites shall be constructed to provide adequate surface drainage and shall be isolated from any existing or potential health hazard or nuisance.

2.4 All applicable local and state building, zoning, electrical, health, fire codes, and all local ordinances shall be complied with.

R392-502-3. Water Supplies.

3.1 Potable water supply systems for use by hotel, motel or resort occupants shall meet the requirements of the State of Utah rules relating to public drinking water supplies.

3.2 In addition to the rules and regulations relating to public drinking water supplies, the design of water system facilities shall be based on the suppliers engineer's estimate of water demands, but shall in no case be less than the following:

Source Capacity - 150 gallons per day per hotel, motel or resort unit.

Storage Volume - 75 gallons per hotel, motel or resort unit.

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. Non-community 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 as presented in the Utah Plumbing Code.

Other exceptions to the above requirements may be made as permitted by the State of Utah public drinking water rules.

3.2.1 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 purposes, 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.

3.3 Construction of a public drinking water supply system intended to serve occupants of any hotel, motel or resort shall not commence until plans prepared by a licensed professional registered engineer (in accordance with Title 58, Chapter 22, Professional Engineers, and Land Surveyors Licensing Act) have been submitted to and approved in writing by the Utah Department of Environmental Quality. Following construction, the system may not be placed in service until a final inspection is made by a representative of the Utah Department of Environmental Quality or local health department having jurisdiction.

3.3.1 All systems must be monitored in accordance with the State of Utah public drinking water rules, and in cooperation with the local health department having jurisdiction.

3.4 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.

3.4.1 Systems operated on a seasonal basis may be required to sample for bacteriologic analysis at an accelerated frequency as determined by the Director or director of the local health department having jurisdiction.

R392-502-4. Wastewater Disposal.

4.1 All wastewater shall be discharged to a public sewer system where accessible and within 300 feet of the hotel, motel or resort property line.

4.2 Where connection to a public sewer is not available, wastewater shall be discharged into a wastewater disposal system meeting requirements of the State of Utah rules for waste disposal. Unless water usage rates are available, design shall be based on not less than 125 gallons per day per hotel, motel or resort unit.

4.3 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 Environmental Quality, such plans will be forwarded by the local authority along with any appropriate comments. Construction alteration of the disposal system shall not commence until the plans have been approved in writing by the appropriate health agency.

R392-502-5. Plumbing.

5.1 All plumbing in any hotel, motel or resort shall comply with the provisions of the Utah Plumbing Code, and applicable local plumbing codes.

5.2 When adequate plumbing fixtures are not included in each guest room, such facilities shall be made available to hotel, motel and resort occupants as required in the following Table I.

TABLE I
Required Plumbing Fixtures For Overnight Occupants

Plumbing Fixtures	Ratio of Plumbing Fixtures For Overnight Hotel, Motel and Resort(1) Occupants	
	Males	Females
Water Closets	1:10	1:8
Urinals	1:25	--
Lavatories	1:12	1:12
Shower/Bath	1:8	1:8

(1)The number of required plumbing fixtures at resorts may be reduced up to one-half of the above.

5.3 If rest rooms for public use are provided, they shall include adequate plumbing fixtures as required in Table II:

TABLE II
Required Plumbing Fixtures For Public Rest Rooms
In Hotels, Motels and Resorts (a)

Plumbing Fixtures	Number of Persons (b)	Number of Fixtures	
		Males	Females
Water Closets	1-100	1	2
	101-200	2	3
	201-400	3	5
	Over 400, add 1 fixture for each additional 500 men and 1 for each 300 women.		
Urinals (c)	1-200	1	--
	201-400	2	--
	401-600	3	--
	Over 600, add 1 fixture for each 300 persons.		
Lavatories	1-200	1	1
	201-400	2	2
	401-750	3	3
	Over 750, add 1 fixture for each 500 persons.		
Drinking Fountains	1 for each 300 persons		
Other Fixtures	1 service sink		

(a) In remote areas providing other than water flush type toilets, only the requirements for water closets and drinking fountains need apply.

(b) Total number of persons for maximum occupancy for auditoriums, banquet rooms, conference rooms, etc. shall be based on 15 square feet per person.

(c) Where urinals are provided for women, the number shall be the same as those required for men.

5.4 All rest rooms shall be conveniently located. Plumbing fixtures which normally require water for their operation shall be supplied with an adequate potable water supply under pressure and facilities should be provided with hot water as required.

5.5 Wherever toilet facilities for males and females are located in the same building, and adjacent to each other, they shall be separated by sound resistant wall. Direct line of sight to each rest room shall be obstructed.

5.6 Soap and toilet tissue in suitable dispensers and individual towels or other approved hand drying facilities and suitable waste receptacles with lids shall be provided in each rest room.

R392-502-6. Operation and Maintenance.

6.1 Each structure made available for occupancy shall comply with the requirements of the Uniform Building Code.

6.2 Comfort of occupants shall be provided for by adequate heating, lighting, and ventilation. Total window area in any room should be equal to at least 10 percent and in no case less than 5 percent of the floor area. For adequate ventilation, windows shall be openable or mechanical ventilation must be provided. Adequate means shall be employed to minimize odors in all rooms intended for overnight use.

6.3 In dormitory type accommodations, beds shall be separated by a horizontal distance of at least 5 feet, reducible to 3 feet, if beds are alternated head to foot, except in case of double deck bunks, which shall have a minimum horizontal separation of 6 feet under all circumstances. If suitable permanent partitions are installed between beds, spacing requirements may be modified upon approval of the Director or

director of the local health department having jurisdiction.

6.4 Floors, walls and ceilings shall be so constructed as to be easily cleanable and they shall be kept clean and in good repair.

6.5 Each bed, bunk, cot or sleeping facility for use by occupants shall afford reasonable comfort and be maintained in a sanitary condition. Mattresses, mattress covers, quilts, blankets, pillows, pillow slips, sheets, comforters, and other bedding shall be kept clean and in good repair. Bedding shall be made available to each occupant not furnishing his own. Pillows shall have pillow slips and sheets shall be large enough to completely cover mattresses. Bedding shall be changed daily or in between occupant use.

6.6 All eating and drinking utensils for use by guests in rooms, shall be either single service, or washed and sanitized in a manner prescribed in R392-100 and protected from subsequent contamination.

6.7 All food, food service employees, ice, vending machines, food storage, and preparation and serving facilities shall comply with R392-100.

6.8 The dispensing of ice from storage bins where the general public has free access is prohibited.

6.9 Where occupants are permitted to cook in a hotel, motel, or resort unit, a space for kitchen facilities shall be provided, and shall be equipped with at least a minimum of a kitchen sink installed in accordance with requirements of the Utah Plumbing Code.

6.10 Guest rooms used for sleeping purposes shall be supplied with a lavatory, hand soap, and clean individual towels for each guest. Clean individual towels shall be supplied daily or in between occupant use.

6.11 All buildings, rooms and equipment and ground surrounding them shall be maintained in a clean and operable condition.

6.12 All necessary means shall be employed to eliminate and control infestations of insects and rodents on the premises of any hotel, motel, or resort unit. This shall include approved screening or other approved control of outside openings in structures intended for occupancy or food service facilities.

6.13 Pets are not permitted in dining areas, or in swimming pool areas. Pets are not permitted in guest rooms that are not designated as pet friendly.

(a) Each operator must make a pet-oriented election for each facility and post at the registration desk one of the following four signs appropriate to the election:

(i) An operator may elect not to allow any pets in the facility. An operator who makes this election shall post a sign at the registration desk that reads: "NO PETS ALLOWED IN THIS FACILITY".

(ii) An operator may elect to allow pets in all guest rooms of the facility. An operator who makes this election shall post a sign at the registration desk that reads: "PETS ALLOWED IN ALL GUEST ROOMS".

(iii) An operator may elect to allow pets in all guest rooms of the facility, except as posted at specific guest rooms. An operator who makes this election shall post a sign at the registration desk that reads: "PETS ALLOWED IN ALL GUEST ROOMS EXCEPT IN ROOMS POSTED WITH 'NO PETS ALLOWED'". An operator who makes this election shall also post a sign at the entrance to the room in a position clearly visible on entry into the room. The sign shall use the words, "NO PETS ALLOWED" in upper case letters at least three-quarters of an inch, 1.9 centimeters, in height

(iv) An operator may elect not to allow pets in any guest room of the facility, except as posted on specific guest rooms. An operator who makes this election shall post a sign at the registration desk that reads: "NO PETS ALLOWED IN GUEST ROOMS EXCEPT IN ROOMS POSTED AS 'PET FRIENDLY'". An operator who makes this election shall also

post a sign at the entrance to the room in a position clearly visible on entry into the room. The sign shall use the words, "PET FRIENDLY ROOM" in upper case letters at least three-quarters of an inch, 1.9 centimeters, in height

(b) The operator shall post the facility election sign required by subsection (a) at the registration desk in clear view to each potential guest who presents at the registration desk. This may require more than one sign to be posted at the registration desk. The sign shall be in upper case letters at least 1 inch, 2.54 centimeters, in height.

(c) The signs at the guest rooms in a facility that allows pets in a limited number of guest rooms shall be placed in a position clearly visible upon entry into the room.

(d) All signs must be easily readable and must not be obscured in any way.

(e) The operator shall ensure that accumulations of pet hair, fur, feathers, feces, and soiled bedding are removed from rooms at least once per day or as often as necessary to prevent unsanitary conditions or odors. Where available, the operator shall designate an outdoor area on the premises of public hotel, motel, and resort facilities for pet walking. The operator shall keep the premises, including pet walking areas, free of pet waste. If an area for pet walking is impractical or not available, the operator shall:

- (i) require pet owners to keep pets in portable kennels;
- (ii) keep pets diapered; or
- (iii) provide pet waste bags for pet owners to use to dispose of pet waste produced while walking their pets while out of doors.

(f) If an operator of a public hotel, motel or resort facility chooses to modify the status of a room from a pet friendly room to a non-pet friendly room, the operator shall perform a full deep cleaning of the room in a manner likely to remove the allergens. The deep cleaning shall include shampooing of carpets, laundering of bedding, laundering of drapes, washing of all walls, and cleaning of all other objects and surfaces that may harbor allergens.

R392-502-7. Swimming Pools.

7.1 Any swimming pool, wading or therapy pool made available to occupants of any hotel, motel or resort shall comply with R392-302 and all applicable local regulations.

R392-502-8. Solid Waste.

8.1 Solid wastes originating in any hotel, motel or resort 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.

**KEY: public health, hotels, motels, resorts
July 22, 2008
Notice of Continuation July 18, 2007**

26-15-2

R396. Health, Community and Family Health Services, Immunization.**R396-100. Immunization Rule for Students.****R396-100-1. Purpose and Authority.**

(1) This rule implements the immunization requirements of Title 53A, Chapter 11, Part 3. It establishes minimum immunization requirements for attendance at a public, private, or parochial kindergarten, elementary, or secondary school through grade 12, nursery school, licensed day care center, child care facility, family home care, or Head Start program in this state. It establishes:

(a) required doses and frequency of vaccine administration;

(b) reporting of statistical data; and

(c) time periods for conditional enrollment.

(2) This rule is required by Section 53A-11-303 and authorized by Section 53A-11-306.

R396-100-2. Definitions.

As used in this rule:

"Department" means the Utah Department of Health.

"Early Childhood Program" means a nursery or preschool, licensed day care center, child care facility, family care home, or Head Start program.

"Exemption" means a relief from the statutory immunization requirements by reason of qualifying under Sections 53A-11-302 and 302.5.

"Parent" means a biological or adoptive parent who has legal custody of a child; a legal guardian, or the student, if of legal age.

"School" means a public, private, or parochial kindergarten, elementary, or secondary school through grade 12.

"School entry" means a student, at any grade, entering a Utah school or an early childhood program for the first time.

"Student" means an individual enrolled or attempting to enroll in a school or early childhood program.

R396-100-3. Required Immunizations.

(1) A student born before July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, and Rubella.

(2) A student born after July 1, 1993 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, and Hepatitis B.

(3) A student born after July 1, 1993, must also meet the minimum immunization requirements of the ACIP prior to entry into the seventh grade for the following antigens: Tetanus, Diphtheria, Pertussis and Varicella.

(4) A student born after July 1, 1996 must meet the minimum immunization requirements of the ACIP prior to school entry for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Hepatitis B, Hepatitis A, and Varicella.

(5) To attend a Utah early childhood program, a student must meet the minimum immunization requirements of the ACIP for the following antigens: Diphtheria, Tetanus, Pertussis, Polio, Measles, Mumps, Rubella, Haemophilus Influenza Type b, Hepatitis A, Hepatitis B, Pneumococcal, and Varicella vaccines prior to school entry.

(6) The vaccinations must be administered according to the recommendations of the United States Public Health Service's Advisory Committee on Immunization Practices (ACIP) as listed below which are incorporated by reference into this rule:

(a) General Recommendations on Immunization: December 1, 2006/Vol. 55/No. RR-15;

(b) Immunization of Adolescents: November 22, 1996/Vol. 45/No. RR-13;

(c) Combination Vaccines for Childhood Immunization: May 14, 1999/Vol. 48/No. RR-5;

(d) Diphtheria, Tetanus, and Pertussis: Recommendations for Vaccine Use and Other Preventive Measures: August 8, 1991/Vol. 40/No. RR-10;

(e) Pertussis Vaccination: Use of Acellular Pertussis Vaccines Among Infants and Children: March 28, 1997/Vol. 46/No. RR-7;

(f) Use of Diphtheria Toxoid-Tetanus Toxoid-Acellular Pertussis Vaccine as a Five-Dose Series: Supplemental Recommendations of the Advisory Committee on Immunization Practices: November 17, 2000/Vol. 49/No. RR-13;

(g) Preventing Tetanus, Diphtheria, and Pertussis Among Adolescents: Use of Tetanus Toxoid, Reduced Diphtheria Toxoid and Acellular Pertussis Vaccines: March 24, 2006/Vol. 55/No. RR-3;

(h) A Comprehensive Strategy to Eliminate Transmission of Hepatitis B Virus Infection in the United States December 23, 2005/Vol. 54/No. RR-6;

(i) Haemophilus b Conjugate Vaccines for Prevention of Haemophilus influenzae Type b Disease Among Infants and Children Two Months of Age and Older: January 11, 1991/Vol. 40/No. RR-1;

(j) Recommendations for Use of Haemophilus b Conjugate Vaccines and a Combined Diphtheria, Tetanus, and Pertussis, and Haemophilus b Vaccine: September 17, 1993/Vol. 42/No. RR-13;

(k) Measles, Mumps, and Rubella-Vaccine Use and Strategies for Elimination of Measles, Rubella, and Congenital Rubella Syndrome and Control of Mumps: May 22, 1998/Vol. 47/No. RR-8;

(l) Updated Recommendations of the Advisory Committee on Immunization Practices (ACIP) for the Control and Elimination of Mumps: June 9, 2006/Vol. 55/No. 22;

(m) Poliomyelitis Prevention in the United States: May 19, 2000/Vol. 49/No. RR-5;

(n) Prevention of Varicella: June 22, 2007/Vol. 56/No. RR-4;

(o) Prevention of Hepatitis A Through Active or Passive Immunization: May 29, 2006/Vol. 55/No. RR-7; and

(p) Preventing Pneumococcal Disease Among Infants and Young Children: October 6, 2000/Vol. 49/No. RR-9.

R396-100-4. Official Utah School Immunization Record (USIR).

(1) Schools and early childhood programs shall use the official Utah School Immunization Record (USIR) form as the record of each student's immunizations. The Department shall provide copies of the USIR to schools, early childhood programs, physicians, and local health departments upon each of their requests.

(2) Each school or early childhood program shall accept any immunization record provided by a licensed physician, registered nurse, or public health official as certification of immunization. It shall transfer this information to the USIR with the following information:

(a) name of the student;

(b) student's date of birth;

(c) vaccine administered; and

(d) the month, day, and year each dose of vaccine was administered.

(3) Each school and early childhood program shall maintain a file of the USIR for each student in all grades and an exemption form for each student claiming an exemption.

(a) The school and early childhood programs shall maintain up-to-date records of the immunization status for all students in all grades such that it can quickly exclude all non-immunized students if an outbreak occurs.

(b) If a student withdraws, transfers, is promoted or

otherwise leaves school, the school or early childhood program shall either:

(i) return the USIR and any exemption form to the parent of a student; or

(ii) transfer the USIR and any exemption form with the student's official school record to the new school or early childhood program.

(4) A representative of the Department or the local health department may examine, audit, and verify immunization records maintained by any school or early childhood program.

(5) Schools and early childhood programs may meet the record keeping requirements of this section by keeping its official school immunization records in the Utah Statewide Immunization Information System (USIIS).

R396-100-5. Exemptions.

A parent claiming an exemption to immunization for medical, religious or personal reasons, as allowed by Section 53A-11-302, shall provide to the student's school or early childhood program the required completed forms. The school or early childhood program shall attach the forms to the student's USIR.

R396-100-6. Reporting Requirements.

(1) Each school and early childhood program shall report the following to the Department in the form or format prescribed by the Department:

(a) by November 30 of each year, a statistical report of the immunization status of students enrolled in a licensed day care center, Head Start program, and kindergartens;

(b) by November 30 of each year, a statistical report of the two-dose measles, mumps, and rubella immunization status of all kindergarten through twelfth grade students;

(c) by November 30 of each year, a statistical report of tetanus, diphtheria, pertussis, hepatitis B, varicella, and the two-dose measles, mumps, and rubella immunization status of all seventh grade students; and

(d) by June 15 of each year, a statistical follow-up report of those students not appropriately immunized from the November 30 report in all public schools, kindergarten through twelfth grade.

(2) The information that the Department requires in the reports shall be in accordance with the Centers for Disease Control and Prevention guidelines.

R396-100-7. Conditional Enrollment and Exclusion.

A school or early childhood program may conditionally enroll a student who is not appropriately immunized as required in this rule. To be conditionally enrolled, a student must have received at least one dose of each required vaccine and be on schedule for subsequent immunizations. If subsequent immunizations are one calendar month past due, the school or early childhood program must immediately exclude the student from the school or early childhood program.

(1) A school or early childhood program with conditionally enrolled students shall routinely review every 30 days the immunization status of all conditionally enrolled students until each student has completed the subsequent doses and provided written documentation to the school or early childhood program.

(2) Once the student has met the requirements of this rule, the school or early childhood program shall take the student off conditional status.

R396-100-8. Exclusions of Students Who Are Under Exemption and Conditionally Enrolled Status.

(1) A local or state health department representative may exclude a student who has claimed an exemption to all vaccines or to one vaccine or who is conditionally enrolled from school

attendance if there is good cause to believe that the student has a vaccine preventable disease and:

(a) has been exposed to a vaccine-preventable disease; or

(b) will be exposed to a vaccine-preventable disease as a result of school attendance.

(2) An excluded student may not attend school until the local health officer is satisfied that a student is no longer at risk of contracting or transmitting a vaccine-preventable disease.

R396-100-9. Penalties.

Enforcement provisions and penalties for the violation or for the enforcement of public health rules, including this Immunization Rule for Students, are prescribed under Section 26-23-6. A violation is punishable as a class B misdemeanor on the first offense, a class A misdemeanor on the second offense or by civil penalty of up to \$5,000 for each violation.

**KEY: immunizations, rules and procedures
July 29, 2008**

Notice of Continuation July 25, 2008

53A-11-303

53A-11-306

R398. Health, Community and Family Health Services, Children with Special Health Care Needs.

R398-2. Newborn Hearing Screening.

R398-2-1. Purpose and Authority.

(1) The purpose of this rule is to facilitate early detection, prompt referral, and early habilitation of infants with significant, permanent hearing loss.

(2) Authority for the Newborn Hearing Screening program and promulgation of rules to implement the program are found in Section 26-10-6.

R398-2-2. Definitions.

(1) "Hearing loss" means a dysfunction of the auditory system of any type or degree that is sufficient to interfere with the acquisition and development of speech and language skills.

(2) "Screening" means the completion of an objective, physiological test or battery of tests administered to determine the infant's hearing status and the need for further diagnostic testing by an audiologist or physician with the Department approved instrumentation, protocols and pass/refer criteria.

(3) "Auditory brainstem response" means an objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear.

(4) "Automated auditory brainstem response" means objective electrophysiologic measurement of the brainstem's response to acoustic stimulation of the ear, obtained with equipment which automatically provides a pass/refer outcome.

(5) "Evoked otoacoustic emissions" means a specific test method which elicits a physiologic response from the cochlea, and may include Transient Evoked Otoacoustic Emissions and Distortion Products Otoacoustic Emissions test procedures.

(6) "Diagnostic procedures" means audiometric and medical procedures required to diagnose hearing loss.

(7) "Department" means the Utah Department of Health.

(8) "Audiologist" means a person who is licensed by the state where services are provided.

(9) "Follow-up" means appropriate services and procedures relating to the confirmation of hearing loss and appropriate referrals for newborn children with abnormal or inconclusive screening results.

(10) "Referral" means to direct a newborn to a health care professional for appropriate diagnostic procedures to diagnose and determine the existence and extent of a hearing loss; and for appropriate habilitation of a hearing loss.

(11) "Tracking" means the use of information about the infant's newborn hearing screening status to ensure that the infant receives timely and appropriate services to complete the screening and referral process.

(12) "Lost to follow-up" means those newborns who cannot be identified through tracking, and who have not completed the screening and referral process.

(13) "Institution" means a facility licensed by the State of Utah for birthing babies.

(14) "Primary care provider" means the newborn or infant's primary medical caregiver.

(15) "Parent" means a natural biological parent, a step-parent, adoptive parent, legal guardian, or other legal custodian of a child.

R398-2-3. Implementation.

Each newborn in the state of Utah shall submit to the Newborn Hearing Screening testing, except as provided in Section 26-10-6(1).

R398-2-4. Responsibility for Screening.

(1) Each institution shall designate a person to be responsible for the newborn hearing screening program in that institution.

(2) An audiologist who is licensed by the State of Utah

shall oversee each newborn hearing screening program. This audiologist may be full or part time, on or off site, an employee of the institution, or under contract or other arrangement that allows him/her to oversee the newborn hearing screening program. This audiologist shall advise the institution about all aspects of the newborn hearing screening program, including screening, tracking, follow-up, and referral for diagnosis.

(3) Beginning July 1, 1998, if the newborn is born in an institution with 100 or more births annually, and beginning July 1, 1999, if the newborn is born in an institution with less than 100 births annually, the institution must provide hearing screening services as required by this rule prior to discharge, unless the infant is transferred to another institution before screening is completed.

(4) Beginning July 1, 1998, if the newborn is transferred to another institution before screening is completed, the receiving institution must provide hearing screening services as required by this rule prior to discharge.

(5) Beginning July 1, 1999, if the newborn is born outside of an institution, the person in attendance at the birth must arrange for the infant's hearing screening as required by this rule.

(6) Beginning July 1, 1999, if there is no person in attendance at the birth, a parent must have the infant's hearing screened, according to Department protocols, by the time the infant is one month of age.

(7) Newborn hearing screening shall be performed by a person who is appropriately trained and supervised, according to rules as may be established by the Newborn Hearing Screening Committee.

R398-2-5. Information to Parents and Primary Care Providers.

(1) Institutions or persons primarily responsible for births shall provide information about newborn hearing screening to parents and primary care providers of newborns. This shall include:

(a) information, which shall be available to parents at the time of birth, about the purpose of newborn hearing screening, the procedures used for screening, the benefits of newborn hearing screening, and the consequences of hearing loss;

(b) whether each live birth was screened prior to discharge from the institution,

(c) the results of the completed newborn hearing screening procedure;

(d) what follow-up screening procedures, if any, are recommended and where those procedures can be obtained.

(2) For babies who require additional procedures to complete the screening after being discharged from the birthing institution, the institution shall provide parents and the primary care providers with written notice about the availability and importance of the additional screening procedures. For babies who do not complete additional hearing screening procedures, the institution shall send a second written notice to the parents and the primary care provider.

(3) For babies who do not pass the complete newborn hearing screening procedure, the institution or the provider who completes the screening procedure shall provide the parents and the primary care provider with written notice about the results of the screening, recommended diagnostic procedures, where those procedures can be obtained, and resources available for infants and toddlers with hearing loss.

(4) For babies who need additional procedures to complete the screening due to a missed test, inconclusive results, or a failure to pass, and who do not return for the needed screening procedures within 15 days, or for babies who are "lost to follow-up," the institution shall make reasonable efforts within 30 days to locate the parents and inform them of the need for a test. To be considered a reasonable effort, the institution must have

documentation of at least two attempts to contact the infant's parents by mail or phone, and at least one attempt to contact the infant's primary care provider. If necessary, the institution must use information available from its own records, adoption agencies, and the newborn's primary care provider. Contact with the parent may be made by mail, telephone, primary care provider, or public health worker.

R398-2-6. Reporting to Utah Department of Health.

(1) All institutions or persons in attendance at births shall submit information to the Department about the newborn hearing screening procedures being used, the results of the screening, and other information necessary to ensure timely referral where necessary. This information shall be provided to the Department at least monthly. This information shall include:

(a) for each live birth, identifying information for the baby and the hearing screening status, e.g., passed, referred, refused, missed, transferred;

(b) for babies who did not pass the newborn hearing screening or who were not screened, the mother's name, address, telephone number if known, and primary care provider;

(c) any information the institution or practitioner has about the results of follow-up screening or diagnostic procedures, including whether the infant has been "lost to follow-up."

(2) All institutions or persons in attendance at births shall submit information to the Department a summary of the procedures used by the institution or screening program to do newborn hearing screening, including the name of the program director, equipment, screening protocols, referral criteria, and parent education materials. This information shall be provided to the Utah Department of Health bi-annually and within 30 days of any changes to the existing procedures.

(3) Persons who conduct any procedure necessary to complete an infant's hearing screening or audiological diagnostic assessment as a result of a referral from an institution or primary care provider, shall report the results of these procedures to the institution where the infant was born and to the Department.

(4) The Utah Department of Health shall have access to infant's medical records to obtain information necessary to ensure the provision of timely and appropriate follow-up diagnostic and intervention services.

R398-2-7. Penalty for Violation of Rule.

Any person who violates any provision of this rule may be assessed a 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: newborn screening

September 1, 2001

Notice of Continuation July 2, 2008

26-10-6

R398. Health, Community and Family Health Services, Children with Special Health Care Needs.

R398-5. Birth Defects Reporting.

R398-5-1. Purpose and Authority.

This rule establishes reporting requirements for birth defects and stillbirths in Utah and for related test results. Sections 26-1-30(2)(c), (d), (e), (g), (p), (t), 26-10-1(2), and 26-10-2 authorize this rule.

R398-5-2. Definitions.

As used in this rule:

(1) "Birthing center" means a birthing center licensed under Title 26, Chapter 21.

(2) "Birth defect" means any medical disorder of organ structure, function or biochemistry which is of possible genetic or prenatal origin. This includes any congenital anomaly or genetic metabolic disorder listed in the ICD-9-CM (International Classification of Diseases, 9th Revision, Clinical Modification, established by the United States Center for Health Statistics) with any of the following diagnostic codes: 243, 255.2, 255.4, from 269.2 to 279.9, and from 740.0 to 759.9; or listed in the ICD-10 (International Classification of Diseases, 10th Revision, established by the World Health Organization) with any of the following diagnostic codes: E03, E25, from E70 to E90, from D55 to D58, and from Q00-Q99.

(3) "Hospital" means general acute hospital, children's specialty hospital, remote-rural hospital licensed under Title 26, Chapter 21.

(4) "Stillbirth" means a pregnancy resulting in a fetal death at 20 weeks gestation or later.

(5) "Clinic" means physician-owned or operated clinic that regularly provide services for the diagnosis or treatment of birth defects, genetic counseling, or prenatal diagnostic services.

R398-5-3. Reporting by Hospitals and Birthing Centers.

Each hospital or birthing center that admits a patient and detects a birth defect as a result of any outcome of pregnancy, or admits a child under 24 months of age with a birth defect, or is presented with the event of a stillbirth shall report or cause to report to the department within 40 days of discharge the following:

- (1) if live born, child's name;
- (2) child's date of birth (or date of delivery);
- (3) mother's name;
- (4) mother's date of birth;
- (5) delivery hospital;
- (6) birth defects diagnoses;
- (7) mother's state of residency at delivery;
- (8) child's sex; and
- (9) mother's zip code.

R398-5-4. Reporting by Laboratories.

Each laboratory operating in the state that identifies a human chromosomal or genetic abnormality or other evidence of a birth defect shall report the following on a calendar quarterly basis to the department within 40 days of the end of the preceding calendar quarter:

- (1) if live born, child's name and date of birth;
- (2) mother's name;
- (3) mother's date of birth;
- (4) date the sample is accepted by the laboratory;
- (5) test conducted;
- (6) test result; and
- (7) mother's state of residency at delivery.

R398-5-5. Record Abstraction.

Hospitals, birthing centers, and clinics as well as community health care providers shall allow personnel from the department or its contractors to abstract information from the

mother's and child's files on their demographic characteristics, family history of birth defects, prenatal and postnatal procedures or treatments (including diagnostics) related to the birth defect or stillbirth, and outcomes of that and other pregnancies by that mother.

R398-5-6. Liability.

As provided in Title 26, Chapter 25, persons who report, either voluntarily or as required by this rule, information covered by this rule may not be held liable for reporting the information to the Department of Health.

R398-5-7. Penalties.

Pursuant to Section 26-23-6, any person that willfully violates any provision of this rule may be assessed an administrative civil money penalty not to exceed \$1,000 upon an administrative finding of a first violation and up to \$3,000 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: birth defects, birth defect reporting

July 3, 2008 26-1-30(2)(c), (d), (e), (g), (p), (t)

Notice of Continuation September 22, 2004 26-10-1(2)

26-10-2

26-25-1

R398. Health, Community and Family Health Services, Children with Special Health Care Needs.

R398-20. Early Intervention.

R398-20-1. Authority and Purpose.

This rule implements the early intervention program under Part C of the Individuals with Disabilities Education Act (IDEA) and implementing regulations found at 34 CFR 303.500 for children with disabilities under three years of age, and their families. It is authorized by Utah Code Section 26-10-2.

The Utah Department of Health is designated as the lead agency responsible for the administration of the program.

R398-20-2. Services.

(1) The Department provides the following services to eligible individuals and their families, based on individual assessment as required by the IDEA implementing regulations:

- (a) Assistive technology;
- (b) Audiology services;
- (c) Family training, counseling, and home visits;
- (d) Health services;
- (e) Medical services, but only for diagnostic or evaluation purposes;
- (f) Nursing services;
- (g) Nutrition services;
- (h) Occupational therapy;
- (i) Physical therapy;
- (j) Psychological services;
- (k) Service Coordination;
- (l) Social work services;
- (m) Special instruction;
- (n) Speech-language pathology services;
- (o) Transportation; and
- (p) Vision services.

(2) Infants and toddlers from birth through to thirty-six months who are classified according to IDEA requirements as a person with a disability are eligible to receive services. These include children with a diagnosed physical or mental condition that has a high probability of resulting in a developmental delay or who show delays at or below 1.5 Standard Deviations below the mean, or at or below the 7th percentile in one or more areas of development.

(3) Services must be based on the child's written Individualized Family Service Plan (IFSP) for providing services developed according to IDEA requirements.

R398-20-3. Fees.

(1) The parents of a eligible child shall pay a monthly fee for services according to the schedule established in the Fee Table. The monthly fee is applicable for any month in which a service is provided or scheduled and not timely canceled, except for the month in which the child attains 36 month of age. The Department shall not charge a fee for the following IDEA activities and services:

- (a) implementation of child find, such as child developmental screening, or public awareness activities;
- (b) evaluation and assessment;
- (c) service coordination;
- (d) activities to assist a child and the family to receive the rights, procedural safeguards, and authorized services;
- (e) activities related to the development, review and evaluation of the Individual Family Service Plan;
- (f) activities related to child and family rights, including the administrative complaint process and mediation; and
- (g) specialized services related to sensory loss provided through the Utah Schools for the Deaf and Blind (USDB) Parent Infant Program or Deaf Blind services.

(2) The Department shall not charge a fee for services to a child if:

- (a) the child receives services only though the USDB

pursuant to an ISFP;

(b) the child is a ward of the state; or

(c) the child's family meets Head Start income eligibility guidelines.

(4) The Department shall not charge a fee for services if the child or the child's family receives benefits under any of the following programs:

- (a) Medicaid;
- (b) Temporary Assistance to Needy Families (TANF);
- (c) Women Infants and Young Children (WIC);
- (d) Refugee Resettlement Program (RCA); and
- (e) Primary Care Network (PCN).

(3) The fee is a per family fee without regard to the number of eligible children receiving services.

(5) The monthly fee is as follows:

TABLE FEES			
Percent of poverty	186	200	250
Family fee	10.00	20.00	30.00
Family size	ANNUAL INCOME		
2	22,543.00 or less	22,543.01-24,240.00	24,240.01-30,300.00
3	28,384.00 or less	28,384.01-30,520.00	30,520.01-38,150.00
4	34,224.00 or less	34,224.01-36,800.00	36800.01-46,000.00
5	40,064.00 or less	40,064.01-43,080.00	43,080.01-53,850.00
6	45,905.00 or less	45,905.01-49,360.00	49,360.01-61,700.00
7	51,745.00 or less	51,745.01-55,640.00	55,640.01-69,550.00
8	57,586.00 or less	57,586.01-61,920.00	61,920.01-77,400.00
Add for each additional family member	5,840.00	6,280.00	7,850.00
PART TWO OF TABLE			
Percent of poverty	300	400	500
Family fee	40.00	50.00	60.00
Family size	ANNUAL INCOME		
2	30,300.01-36,360.00	36,360.01-48,480.00	48,480.01-60,600.00
3	38,150.01-45,780.00	45,780.01-61,040.00	61,040.01-76,300.00
4	46,000.01-55,200.00	55,200.01-73,600.00	73,600.01-92,000.00
5	53,850.01-64,620.00	64,620.01-86,160.00	86,160.01-107,700.00
6	61,700.01-74,040.00	74,040.01-98,720.00	98,720.01-123,400.00
7	69,550.01-83,460.00	83,460.01-111,280.00	111,280.01-139,100.00
8	77,400.01-92,880.00	92,880.01-123,840.00	123,840.01-154,800.00
Add for each additional family member	9,420.00	12,560.00	15,700.00

PART THREE OF TABLE

Percent of poverty	600	700
Family fee	80.00	100.00
Family size	ANNUAL INCOME	
2	60,600.01- 72,720.00	72,720.01- 84,840.00
3	76,300.01- 91,560.00	91,560.01- 106,820.00
4	92,000.01- 110,400.00	110,400.01- 128,800.00
5	107,700.01- 129,240.00	129,240.01- 150,780.00
6	123,400.01- 148,080.00	148,080.01- 172,760.00
7	139,100.01- 166,920.00	166,920.01- 194,740.00
8	154,800.01- 185,760.00	185,760.01- 216,720.00
Add for each additional family member	18,840.00	21,980.00

R398-20-4. Income Reporting-Fee Determination.

(1) The child's family shall annually report the family income using the Fee Determination Form to determine the monthly family fee. The IFSP team shall review the form at its six-month review. The family may submit an updated form if there is a change in income.

(2) The Fee Determination Form provides guidelines to the family on what should be counted in its report of income.

(3) Completion of the form is voluntary. However, a child's parents who choose not to complete the Fee Determination Form must pay the maximum level on the fee schedule.

(4) Upon request, the family must provide a copy of the most recent federal income tax filing to the Department and its early intervention providers to verify family income as reported by the child's parents. If the federal income tax filing is unavailable, the parents may submit the prior three months' check stubs to extrapolate annual income.

R398-20-5. Hardship, Extenuating Circumstances.

(1) An eligible child shall not be denied service because of a family's inability to pay. If a family is able to pay, but chooses not to, the Department may withhold services.

(2) The Department may waive all or part of the fee if there are extenuating family circumstances that affect a family's ability to pay, such as long-term hospitalization of a family member, casualty loss, moving expense, or other unusual expenses.

KEY: early intervention, education, disability

August 6, 2003

Notice of Continuation July 31, 2008

26-10-2

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-6. Reduction in Certain Targeted Case Management Services.****R414-6-1. Introduction and Authority.**

This rule describes the Utah Medicaid Program's reduction in certain targeted case management services. Utilization of cost-containment methods is authorized by Section 26-18-2.3.

R414-6-2. Definition.

"Targeted Case Management Services" are a set of planning, coordinating and monitoring activities that assist Medicaid recipients in the target group to access needed housing, employment, medical, nutritional, social, education, and other services to promote independent living and functioning in the community.

R414-6-3. Targeted Case Management Services for Recipients with HIV/AIDS.

Upon the effective date of this rule, targeted case management services for recipients with HIV/AIDS are not available.

R414-6-4. Targeted Case Management Services for Recipients Exposed to Tuberculosis.

Upon the effective date of this rule, targeted case management services for recipients exposed to tuberculosis are not available.

**KEY: Medicaid, case management
July 22, 2008
Notice of Continuation April 21, 2008**

26-18

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.**R414-55. Medicaid Policy for Hospital Emergency Department Copayment Procedures.****R414-55-1. Introduction and Authority.**

This rule establishes Medicaid copayment policy for non-emergency use of outpatient hospital emergency departments by Medicaid clients who are not in any of the categories exempted from copayment requirements. The rule is authorized by 42 CFR 447.15 and 447.50 through 447.59, Oct. 2003 ed., which are adopted and incorporated by reference.

R414-55-2. Definitions.

In addition to the definitions in R414-1, the following definitions also apply to this rule:

- (1) "Child" means any person under the age of 18.
- (2) "Copayment" means that form of cost sharing required of a Medicaid client at the time a service is provided, with the amount of copayment specified beforehand.
- (3) "Emergency Services" means those services defined by a select group of International Classification of Diseases, Ninth Revision, (ICD9) diagnosis codes which Medicaid shall identify for hospital Emergency Departments by means of Medicaid Information Bulletins.
- (4) "Hospital Emergency Department" means that area of a hospital in which emergency services are provided on a 24-hour-a-day basis.

R414-55-3. Copayment Policy.

- (1) Medicaid clients in the following categories are exempted from copayment requirements:
 - (a) children;
 - (b) pregnant women; and
 - (c) institutionalized individuals.
- (2) Emergency services are exempted from copayment requirements.
- (3) Family planning services and supplies are exempted from copayment requirements.
- (4) Medicaid shall impose a copayment in the amount of \$6 when a Medicaid client, as designated on his Medicaid card, receives non-emergency services in a Hospital Emergency Department.
- (5) The provider shall collect the copayment amount from the Medicaid client for those services which require copayment. Medicaid shall deduct the \$6 copayment amount from the reimbursement paid to the provider.

KEY: Medicaid**June 17, 2004****Notice of Continuation July 18, 2008****26-1-5****26-18-3**

R426. Health, Health Systems Improvement, Emergency Medical Services.**R426-7. Emergency Medical Services Prehospital Data System Rules.****R426-7-1. Authority and Purpose.**

- (1) This rule is established under Title 26 chapter 8a.
- (2) The purpose of this rule is to establish minimum mandatory EMS data reporting requirements.

R426-7-2. Definitions.

As used in this rule:

- (1) "Emergency Medical Services Provider" means:
 - (a) a licensed ground or air ambulance provider; or
 - (b) a designated first responder.
- (2) "EMS Incident" means an instance in which an Emergency Medical Services Provider is requested to provide emergency medical services, including a mutual aid request, and which results in:
 - (a) a 911 response;
 - (b) an inter-facility transport;
 - (c) patient refusal of care;
 - (d) no care needed;
 - (e) a cancelled response; or
 - (f) an instance where no patient is found.
- (3) "Patient Care Report" means a record of the response by each responding Emergency Medical Services Provider unit to each patient during an EMS Incident.

R426-7-3. Prehospital Data Set.

(1) Emergency medical service providers shall collect data as identified by the Department in this rule.

(2) Emergency Medical Services Providers shall submit the data to the Department electronically in the National Emergency Medical Services Information System (NEMSIS) format. For Emergency Medical Services Providers directly using a reporting system provided by the Department, the data is considered submitted to the Department as soon as it has been entered or updated in the Department-provided system.

(3) Emergency Medical Services Providers shall submit NEMSIS Demographic data elements within 30 days after the end of each calendar quarter in the format defined in the NEMSIS EMSDemographicDataSet. Some data may change less frequently than quarterly, but Emergency Medical Services Providers shall submit all required data elements quarterly regardless of whether the data have changed.

(4) Emergency Medical Services Providers shall submit NEMSIS EMS incident data elements for each Patient Care Report within 30 days of the end of the month in which the EMS incident occurred, in the format defined in the NEMSIS EMSDataSet.

(5) If the Department determines that there are errors in the data, it may ask the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the supplier for corrections, the Emergency Medical Services Provider is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(6) The minimum required demographic data elements that must be reported under this rule include the following NEMSIS EMSDemographicDataSet elements:

- D01_01 EMS Agency Number
- D01_02 EMS Agency Name
- D01_03 EMS Agency State
- D01_04 EMS Agency County
- D01_05 Primary Type of Service
- D01_06 Other Types of Service
- D01_07 Level of Service
- D01_08 Organizational Type

- D01_09 Organization Status
 - D01_10 Statistical Year
 - D01_11 Other Agencies In Area
 - D01_12 Total Service Size Area
 - D01_13 Total Service Area Population
 - D01_14 911 Call Volume per Year
 - D01_15 EMS Dispatch Volume per Year
 - D01_16 EMS Transport Volume per Year
 - D01_17 EMS Patient Contact Volume per Year
 - D01_18 EMS Billable Calls per Year
 - D01_19 EMS Agency Time Zone
 - D01_20 EMS Agency Daylight Savings Time Use
 - D01_21 National Provider Identifier
 - D02_01 Agency Contact Last Name
 - D02_02 Agency Contact Middle Name/Initial
 - D02_03 Agency Contact First Name
 - D02_04 Agency Contact Address
 - D02_05 Agency Contact City
 - D02_06 Agency Contact State
 - D02_07 Agency Contact Zip Code
 - D02_08 Agency Contact Telephone Number
 - D02_09 Agency Contact Fax Number
 - D02_10 Agency Contact Email Address
 - D02_11 Agency Contact Web Address
 - D03_01 Agency Medical Director Last Name
 - D03_02 Agency Medical Director Middle Name/Initial
 - D03_03 Agency Medical Director First Name
 - D03_04 Agency Medical Director Address
 - D03_05 Agency Medical Director City
 - D03_06 Agency Medical Director State
 - D03_07 Agency Medical Director Zip Code
 - D03_08 Agency Medical Director Telephone Number
 - D03_09 Agency Medical Director Fax Number
 - D03_10 Agency Medical Director's Medical Specialty
 - D03_11 Agency Medical Director Email Address
 - D04_01 State Certification Licensure Levels
 - D04_02 EMS Unit Call Sign
 - D04_04 Procedures
 - D04_05 Personnel Level Permitted to Use the Procedure
 - D04_06 Medications Given
 - D04_07 Personnel Level Permitted to Use the Medication
 - D04_08 Protocol
 - D04_09 Personnel Level Permitted to Use the Protocol
 - D04_10 Billing Status
 - D04_11 Hospitals Served
 - D04_13 Other Destinations
 - D04_15 Destination Type
 - D04_17 EMD Vendor
 - D05_01 Station Name
 - D05_02 Station Number
 - D05_03 Station Zone
 - D05_04 Station GPS
 - D05_05 Station Address
 - D05_06 Station City
 - D05_07 Station State
 - D05_08 Station Zip
 - D05_09 Station Telephone Number
 - D06_01 Unit/Vehicle Number
 - D06_03 Vehicle Type
 - D06_07 Vehicle Model Year
 - D07_02 State/Licensure ID Number
 - D07_03 Personnel's Employment Status
 - D08_01 EMS Personnel's Last Name
 - D08_03 EMS Personnel's First Name
- (7) The minimum required Patient Care Report data elements that must be reported under this rule include the following NEMSIS EMSDataSet elements:
- E01_01 Patient Care Report Number
 - E01_02 Software Creator

E01_03	Software Name	E09_13	Primary Symptom
E01_04	Software Version	E09_14	Other Associated Symptoms
E02_01	EMS Agency Number	E09_15	Providers Primary Impression
E02_02	Incident Number	E09_16	Provider's Secondary Impression
E02_04	Type of Service Requested	E10_01	Cause of Injury
E02_05	Primary Role of the Unit	E10_02	Intent of the Injury
E02_06	Type of Dispatch Delay	E10_03	Mechanism of Injury
E02_07	Type of Response Delay	E10_04	Vehicular Injury Indicators
E02_08	Type of Scene Delay	E10_05	Area of the Vehicle impacted by the collision
E02_09	Type of Transport Delay	E10_06	Seat Row Location of Patient in Vehicle
E02_10	Type of Turn-Around Delay	E10_07	Position of Patient in the Seat of the Vehicle
E02_12	EMS Unit Call Sign (Radio Number)	E10_08	Use of Occupant Safety Equipment
E02_20	Response Mode to Scene	E10_09	Airbag Deployment
E03_01	Complaint Reported by Dispatch	E10_10	Height of Fall
E03_02	EMD Performed	E11_01	Cardiac Arrest
E04_01	Crew Member ID	E11_02	Cardiac Arrest Etiology
E05_01	Incident or Onset Date/Time	E11_03	Resuscitation Attempted
E05_02	PSAP Call Date/Time	E11_04	Arrest Witnessed by
E05_03	Dispatch Notified Date/Time	E11_05	First Monitored Rhythm of the Patient
E05_04	Unit Notified by Dispatch Date/Time	E11_06	Any Return of Spontaneous Circulation
E05_05	Unit En Route Date/Time	E11_08	Estimated Time of Arrest Prior to EMS Arrival
E05_06	Unit Arrived on Scene Date/Time	E11_10	Reason CPR Discontinued
E05_07	Arrived at Patient Date/Time	E12_01	Barriers to Patient Care
E05_08	Transfer of Patient Care Date/Time	E12_08	Medication Allergies
E05_09	Unit Left Scene Date/Time	E12_14	Current Medications
E05_10	Patient Arrived at Destination Date/Time	E12_18	Presence of Emergency Information Form
E05_11	Unit Back in Service Date/Time	E12_19	Alcohol/Drug Use Indicators
E05_12	Unit Cancelled Date/Time	E12_20	Pregnancy
E05_13	Unit Back at Home Location Date/Time	E13_01	Run Report Narrative
E06_01	Last Name	E14_01	Date/Time Vital Signs Taken
E06_02	First Name	E14_02	Obtained Prior to this Units EMS Care
E06_03	Middle Initial/Name	E14_03	Cardiac Rhythm
E06_04	Patient's Home Address	E14_04	SBP (Systolic Blood Pressure)
E06_05	Patient's Home City	E14_05	DBP (Diastolic Blood Pressure)
E06_06	Patient's Home County	E14_07	Pulse Rate
E06_07	Patient's Home State	E14_09	Pulse Oximetry
E06_08	Patient's Home Zip Code	E14_10	Pulse Rhythm
E06_09	Patient's Home Country	E14_11	Respiratory Rate
E06_10	Social Security Number	E14_14	Blood Glucose Level
E06_11	Gender	E14_15	Glasgow Coma Score-Eye
E06_12	Race	E14_16	Glasgow Coma Score-Verbal
E06_13	Ethnicity	E14_17	Glasgow Coma Score-Motor
E06_14	Age	E14_18	Glasgow Coma Score-Qualifier
E06_15	Age Units	E14_19	Total Glasgow Coma Score
E06_16	Date of Birth	E14_20	Temperature
E06_17	Primary or Home Telephone Number	E14_22	Level of Responsiveness
E07_01	Primary Method of Payment	E14_24	Stroke Scale
E07_15	Work-Related	E14_26	APGAR
E07_16	Patient's Occupational Industry	E14_27	Revised Trauma Score
E07_17	Patient's Occupation	E14_28	Pediatric Trauma Score
E07_34	CMS Service Level	E15_01	NHTSA Injury Matrix External/Skin
E07_35	Condition Code Number	E15_02	NHTSA Injury Matrix Head
E08_05	Number of Patients at Scene	E15_03	NHTSA Injury Matrix Face
E08_06	Mass Casualty Incident	E15_04	NHTSA Injury Matrix Neck
E08_07	Incident Location Type	E15_05	NHTSA Injury Matrix Thorax
E08_11	Incident Address	E15_06	NHTSA Injury Matrix Abdomen
E08_12	Incident City	E15_07	NHTSA Injury Matrix Spine
E08_13	Incident County	E15_08	NHTSA Injury Matrix Upper Extremities
E08_14	Incident State	E15_09	NHTSA Injury Matrix Pelvis
E08_15	Incident ZIP Code	E15_10	NHTSA Injury Matrix Lower Extremities
E09_01	Prior Aid	E15_11	NHTSA Injury Matrix Unspecified
E09_02	Prior Aid Performed by	E16_01	Estimated Body Weight
E09_03	Outcome of the Prior Aid	E16_02	Broselow/Luten Color
E09_04	Possible Injury	E16_03	Date/Time of Assessment
E09_05	Chief Complaint	E16_04	Skin Assessment
E09_06	Duration of Chief Complaint	E16_05	Head/Face Assessment
E09_07	Time Units of Duration of Chief Complaint	E16_06	Neck Assessment
E09_11	Chief Complaint Anatomic Location	E16_07	Chest/Lungs Assessment
E09_12	Chief Complaint Organ System	E16_08	Heart Assessment

- E16_09 Abdomen Left Upper Assessment
- E16_10 Abdomen Left Lower Assessment
- E16_11 Abdomen Right Upper Assessment
- E16_12 Abdomen Right Lower Assessment
- E16_13 GU Assessment
- E16_14 Back Cervical Assessment
- E16_15 Back Thoracic Assessment
- E16_16 Back Lumbar/Sacral Assessment
- E16_17 Extremities-Right Upper Assessment
- E16_18 Extremities-Right Lower Assessment
- E16_19 Extremities-Left Upper Assessment
- E16_20 Extremities-Left Lower Assessment
- E16_21 Eyes-Left Assessment
- E16_22 Eyes-Right Assessment
- E16_23 Mental Status Assessment
- E16_24 Neurological Assessment
- E18_01 Date/Time Medication Administered
- E18_02 Medication Administered Prior to this Units EMS

Care

- E18_03 Medication Given
- E18_04 Medication Administered Route
- E18_05 Medication Dosage
- E18_06 Medication Dosage Units
- E18_07 Response to Medication
- E18_08 Medication Complication
- E18_09 Medication Crew Member ID
- E18_10 Medication Authorization
- E19_01 Date/Time Procedure Performed Successfully
- E19_03 Procedure
- E19_04 Size of Procedure Equipment
- E19_05 Number of Procedure Attempts
- E19_06 Procedure Successful
- E19_07 Procedure Complication
- E19_08 Response to Procedure
- E19_09 Procedure Crew Members ID
- E19_10 Procedure Authorization
- E19_12 Successful IV Site
- E19_13 Tube Confirmation
- E19_14 Destination Confirmation of Tube Placement
- E20_01 Destination/Transferred To, Name
- E20_03 Destination Street Address
- E20_04 Destination City
- E20_05 Destination State
- E20_06 Destination County
- E20_07 Destination Zip Code
- E20_10 Incident/Patient Disposition
- E20_14 Transport Mode from Scene
- E20_15 Condition of Patient at Destination
- E20_16 Reason for Choosing Destination
- E20_17 Type of Destination
- E22_01 Emergency Department Disposition
- E22_02 Hospital Disposition
- E23_03 Personal Protective Equipment Used
- E23_09 Research Survey Field
- E23_10 Who Generated this Report?
- E23_11 Research Survey Field Title

(8) Emergency Medical Services Providers shall use elements E23_09 and E23_11 to report biosurveillance indicators. When any of the following indicators are present in an incident, the Emergency Medical Services Provider shall provide an instance of E23_09 and E23_11, with E23_09 set to "true" and E23_11 set to one of the following:

- B01_01 Abdominal Pain
- B01_02 Altered Level of Consciousness
- B01_03 Apparent Death
- B01_04 Bloody Diarrhea
- B01_05 Fever
- B01_06 Headache
- B01_07 Inhalation

- B01_08 Rash/Blistering
- B01_09 Nausea/Vomiting
- B01_10 Paralysis
- B01_11 Respiratory Arrest
- B01_12 Respiratory Distress
- B01_13 Seizures

(9) Emergency Medical Services Providers are not required to submit other NEMSIS data elements but may optionally do so. Emergency Medical Services Providers may also use additional instances of E23_09 and E23_11 for their own purposes.

(10) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, each responding emergency medical services provider unit that cared for the patient during the incident shall provide a report of patient status, containing information critical to the ongoing care of the patient, to the receiving facility within one hour after the patient arrives at the receiving facility in at least one of the following formats:

- (a) NEMSIS XML; or
- (b) Paper form.

(11) For each patient transported to a licensed acute care facility or a specialty hospital with an emergency department, the receiving facility shall provide at least the following information to each Emergency Medical Services Provider that cared for the patient, upon request by the Emergency Medical Services Provider:

- (a) the patient's emergency department disposition; and
- (b) the patient's hospital disposition.

R426-7-4. ED Data Set.

(1) All hospitals licensed in Utah shall provide patient data as identified by the Department.

(2) This data shall be submitted at least quarterly to the Department. Corporate submittal is preferred.

(3) The data must be submitted in an electronic format determined and approved by the Department.

(4) If the Department determines that there are errors in the data, it may return the data to the data supplier for corrections. The data supplier shall correct the data and resubmit it to the Department within 30 days of receipt from the Department. If data is returned to the hospital for corrections, the hospital is not in compliance with this rule until corrected data is returned, accepted and approved by the Department.

(5) The minimum required data elements include:

- Unique Patient Control Number
- Record Type
- Provider Identifier (hospital)
- Patient Social Security Number
- Patient Control Number
- Type of Bill
- Patient Name
- Patient's Address (postal zip code)
- Patient Date of Birth
- Patient's Gender
- Admission Date
- Admission Hour
- Discharge Hour
- Discharge Status
- Disposition from Hospital
- Patient's Medical Record Number
- Revenue Code 1 ("001" sum of all charges)
- Total Charges by Revenue Code 1 ("001" last total Charge Field, is sum)
- Revenue Code 2 ("450" used for record selection)
- Total Charges by Revenue Code 2 (Charges associated with code 450)
- Primary Payer Identification
- Estimated Amount Due

Secondary Payer Identification
Estimated Amount Due
Tertiary Payer Identification
Estimated Amount Due
Patient Estimated Amount Due
Principal Diagnosis Code
Secondary Diagnosis Code 1
Secondary Diagnosis Code 2
Secondary Diagnosis Code 3
Secondary Diagnosis Code 4
Secondary Diagnosis Code 5
Secondary Diagnosis Code 6
Secondary Diagnosis Code 7
Secondary Diagnosis Code 8
External Cause of Injury Code (E-Code)
Procedure Coding Method Used
Principal Procedure
Secondary Procedure 1
Secondary Procedure 2
Secondary Procedure 3
Secondary Procedure 4, and
Secondary Procedure 5

R426-7-5. Penalty for Violation of Rule.

As required by Section 63-46a-3(5): Any person or agency who violates any provision of this rule, per incident, may be assessed a 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 is a violation of a class A misdemeanor as provided in Section 26-23-6.

KEY: emergency medical services
July 31, 2008
Notice of Continuation January 24, 2006

28-8a

R438. Health, Epidemiology and Laboratory Services, Laboratory Services.**R438-13. Rules for the Certification of Institutions to Obtain Impounded Animals in the State of Utah.****R438-13-1. Introduction.**

The purpose of these rules is to enable the proper execution of Section 26-26, for controlling the humane use of animals obtained from impound establishments for the diagnosis and treatment of human and animal diseases; the advancement of veterinary, dental, medical, and biological sciences; and the testing, improvement, and standardization of laboratory specimens, biologic products, pharmaceuticals and drugs.

R438-13-2. Definitions.

"ADMINISTRATOR" means a Department of Health staff member appointed by the Director to administer these rules.

"ANIMAL" means any unredeemed, abandoned or stray dog or cat impounded and requested by an institution for purposes specified in Section 26-26-(1-7), as amended, and these rules. Animals obtained from any source other than an establishment are not covered by these rules. Owners of voluntarily released animals may elect by signature whether the animal may or may not be used in research.

"ANIMAL FACILITY" means an area where impounded animals are housed or kept for recovery.

"COMMITTEE" means a body of seven individuals appointed by the Director for purposes of these rules.

"DEPARTMENT" means the Utah Department of Health.

"DIRECTOR" means the Executive Director of the Department of Health.

"ESTABLISHMENT" means any public place maintained for the impounding, care, and disposal of animals seized by lawful authority.

"INSPECTION TEAM" means an animal control officer recommended by the Utah Animal Control Officers' Association (UACO) and one licensed veterinarian, both approved by the institution being inspected and appointed by the Administrator.

"INSPECTOR" means a representative of the United States Department of Agriculture (USDA) or a qualified person acceptable to the Director.

"INSTITUTION" means any school or college of agriculture, veterinary medicine, medicine, pharmacy, dentistry, or other educational, hospital or scientific establishment, as determined by the committee and approved by the Director, which is properly concerned with the investigation of or instruction concerning the structure or functions of living organisms, or the cause, prevention, control, or cure of diseases or abnormal conditions of human beings or animals.

"PHYSICIAN" means any person who is licensed by the Utah Department of Commerce under either the Utah Medical Practice Act or the Utah Osteopathic Medicine Licensing Act to practice medicine and surgery in all its branches, or a physician in the employment of the government of the United States who is similarly qualified.

"VETERINARIAN" means any person who is licensed by the Department of Commerce under the Veterinary Practice Act to practice veterinary medicine, surgery, and dentistry or a veterinarian in the employment of the government of the United States who is similarly qualified.

R438-13-3. Department of Health - Power to Certify Institutions.

The Department, under the powers and duties conferred upon it by Section 26-26-2, may issue a certificate to obtain impounded animals to any institution requesting such certification upon being assured that the institution meets the requirements of Section 26-26-1 et seq., and has satisfied the requirements for certification as detailed in these rules, as determined after an inspection.

R438-13-4. Committee - Responsibilities, Membership, and Term of Appointment.

There is created an Impound Animals Advisory Committee pursuant to Section 26-1-20 Utah.

A. Responsibilities

The committee shall review and evaluate all applications of institutions requesting certification under these rules, or applications for renewal of certification, as well as cause to be investigated any complaints of violation of Section 26-26-1 et seq. these rules by any individual, institution, or establishment, and shall inform the Director of its findings and make recommendations for or against certification or enforcement of the law and these rules.

B. Membership

The committee shall include not less than one representative from the following: institutions directly involved with the use of laboratory animals, a physician, a representative of establishments, a veterinarian, a representative of animal welfare advocates, and two other members to be appointed by the Director, one of which must represent the public. The committee shall elect a chairman and a vice chairman from its membership for terms not to exceed one year. The committee shall meet a minimum of two times annually.

C. Terms of Appointment

Appointments shall be made for a period of three years. Any member may be appointed to a second consecutive term; however, no more than two consecutive terms may be served. A former committee member may return after an absence of one term.

R438-13-5. Administrator - Duties and Responsibilities.

The Director may appoint a member of the Department staff to be responsible for the administration of these rules. The administrator shall be a nonvoting member of the committee and shall issue certificates, receive and review all applications and records, conduct investigations, and receive and review reports of an inspector, consistent with the requirements of Section 26-26 and shall advise the committee of all findings.

R438-13-6. Requirements for Institutions for Certification.

Any institution requesting certification under this act shall be found to have the proper personnel and facilities for the care and humane treatment of any animal procured under this act, and so shown by the application and by an inspection of the animal facilities by an inspector.

A. Personnel

The care and management of animals shall be performed by qualified personnel.

1. The animal facilities shall be under the direct supervision of a diplomate of the American College of Laboratory Animal Medicine, a physician, veterinarian, or dentist, or a person formally trained in the biological sciences and having no less than three years of pertinent training and experience in animal care, or a person qualified by specialized education, training and experience essentially equivalent to the above categories.

2. Animal care personnel shall be qualified by training and experience in the care of animals as determined by the animal facility supervisor.

3. Apprentice personnel shall be under the direct and immediate supervision of regular animal care personnel.

4. The size of the animal care staff shall be adequate to assure daily attention to the needs of the animals.

5. Provision shall be made for the emergency care of animals whenever needed.

B. Physical Facilities and Animal Care

1. Sanitary practices and humane care of animals shall conform to standards as described in the National Institutes of Health Publication No. 86-23 revised 1985, "Guide for the Care

and Use of Laboratory Animals" and the Animal Welfare Act 9 CFR parts 1, 2, 3 1990 edition which are incorporated by reference.

2. At the conclusion of an experiment which does not require euthanasia for the collection of samples, the institution may, providing the establishment agrees and for the purpose of adoption, return to the establishment any healthy animal posing no contagious threat to humans. If the establishment does not agree to accept the animal, the institution shall euthanize the animal.

C. Inspections

Institutions seeking initial certification must submit evidence of a successful on-site inspection of their impounded animal facilities by the United States Department of Agriculture (USDA). Institutions unable to be inspected by USDA are subject to inspection by a Department of Health inspection team. After initial certification, institutions wishing to maintain certified status shall be inspected at least annually by the USDA, an inspection team or both.

D. Fees

Fees for certification will be set and administered by the Department, with approval of the State Legislature.

E. Animal Care and Use Committee

Each institution shall appoint an animal care and use committee. This committee should include a scientist from the institution, a doctor of veterinary medicine, and a person who is not affiliated with the institution in any way other than a member of the committee.

This committee should be responsible for evaluating the animal care and use program. Its duties should include those described in NIH publication No. 86-23, Guide for the Care and Use of Laboratory Animals.

R438-13-7. Application for Certification.

Application for certification shall be initiated by the institution wishing to obtain unredeemed impounded animals. The application shall be made on a form furnished by the Department, and shall include:

- A. the name and address of the institution;
- B. the name of the person who will be responsible for the supervision of procurement and handling of the animal. The Administrator must be notified within ten days of personnel changes;
- C. an estimate of the maximum number and species of animals to be obtained by the institution during the calendar year.
- D. the names of members of the institution's animal care and use committee.

R438-13-8. Issuance of Certificate.

A. Upon receipt of an application, an inspector shall review the animal facility of the institution and shall submit a report of the review to the committee. The inspector's report shall be attached to the application and the recommendations made by the committee and submitted to the Director. It shall be the prerogative of the Director to determine if the institution meets the requirements of Section 26-26-1 et seq. and these rules.

B. A certificate, once granted, cannot be transferred.

C. Any certificate shall be valid only for the calendar year for which it is issued. Any institution wishing to renew a certificate shall do so on a form furnished by the Department, and shall state any changes made or contemplated since the most recent application was submitted.

D. The certificate of approval or duplicate thereof, as supplied by the Department, shall be displayed in a prominent place in the approved animal quarters or approved laboratory.

R438-13-9. Records.

Each institution shall appoint a person to be responsible for the procurement of and maintenance of records on all animals obtained from establishments. Records shall be kept by the institution of all animals procured under certification on forms provided by the Department. Information for the purpose of record keeping shall be provided on the "Record of Transfer and Receipt of Impounded Animal" form and the "Requisition of Impounded Animals" form.

A. Records shall include:

1. a description of the animal, including breed, if known;
2. the date and place where the animal was procured;
3. the physical condition of the animal when received by the institution;
4. the cage or pen number or other identification;
5. the experimental or scientific use of the animal, including information as to whether anesthesia was or was not used;
6. name and address of person who adopted animal, if adopted;
7. the method of euthanasia of the animal, if euthanasia is performed.

B. The institution is to provide a copy of the "Record of Transfer and Receipt of Impounded Animals" form, with parts A and B completed, to an establishment for each animal received.

C. After the final disposition of the animal, a copy of the completed form shall be mailed or delivered to the administrator by the institution.

The completed form shall be maintained by the institution for not less than two years and shall be made available for inspection at any time deemed necessary by the Director or his authorized representative.

R438-13-10. Requisitions.

An establishment may require written requisitions for animals prior to their release to an institution. The requisition shall be executed in duplicate on forms provided by the Department. The original shall be furnished to the establishment and one copy retained by the institution. The requisition shall include:

- A. name and address of the institution;
- B. name and address of the establishment;
- C. number, species, size and sex of the animals desired;
- D. number of certificate;
- E. date requisition was issued.

R438-13-11. Duties of Establishments.

A. Each establishment shall keep a public record of all animals received and disposed.

B. Whenever a request for impounded animals is submitted to a supervisor of an establishment, it shall be his duty to make available to the institution the number of animals of the species, size, and sex specified in the requisition, from the unredeemed animals in his charge. If the number of animals specified by the requisition is not available, the supervisor shall immediately make available all unredeemed animals as are then in the establishment under his supervision. The supervisor shall then withhold from destruction all unredeemed animals of the species, size, and sex specified by the requisition until the number of animals is sufficient to complete the requisition. The institution shall accept the available animals and provide for their transportation to the institution.

C. The institution shall compensate the establishment for the actual expense for holding animals beyond the time of notice to the institution of their availability until they have been obtained by the institution.

D. At any time after a requisition has been issued to an establishment and before notice of the availability of the animals requisitioned has been made to the institution, the institution

may cancel all or any unfilled part of the requisition.

E. It shall be unlawful for any establishment to release any animal to an institution not holding a valid certificate issued under these rules.

R438-13-12. Receipts.

Whenever unredeemed animals are received by an institution, the institution shall furnish the establishment a receipt therefor. Receipts shall be issued in triplicate and shall be countersigned by a representative of the establishment. A copy shall be mailed or delivered to the administrator by the institution and one copy shall be retained by the institution. A receipt shall be issued for each animal obtained. The receipt shall show the date that the animal was delivered to the agent of the institution by the establishment, and the signature of the person to whom it was delivered.

R438-13-13. Maintenance of Animals by the Institution.

A. No animal obtained by an institution on requisition as herein provided shall be sold or given into the possession of any other person or organization unless released to its previous owner or adopted after the experiment to a private citizen for possession as a pet. All animals shall be transported immediately from the establishment to the institution in a humane manner and maintained by the institution for the remainder of the life of the animal unless adopted under the provision of these rules. Nothing shall prohibit the institution from releasing an animal to its previous owner if satisfactory proof of ownership is provided to the institution. The institution may require the owner to reimburse the institution for actual expenses for maintaining the animal from the time it was received by the institution until it was delivered to the previous owner.

B. Any animal procured by an institution under these rules shall be handled, transported and disposed of in a humane manner.

R438-13-14. Revocation of Certification.

Violation of Section 26-26-1 et seq. or these rules violates Section 26-23-6 and is cause to consider the cancellation of any certificate issued under these rules.

A. Notification of Intent To Revoke

Upon receipt of evidence of a violation, the Director shall issue written notice, pursuant to Section 63-46b-3, of intent to revoke the certificate of the institution 30 days following receipt of notice.

B. Notice of Hearing

The institution shall have 15 days from receipt of notice to file a written response to show why the certificate should not be revoked, and to request an informal hearing under Sections 63-46b-4 and 63-46b-5. If requested by the institution, the Director shall grant an informal hearing upon 15 days written notice.

C. Action On Hearing

If after the hearing the Director decides the certificate shall be revoked, copies of the revocation shall be sent to the institution and all establishments providing animals for the institution. Institutions may seek review of agency action as outlined in Section 63-46b-12.

R438-13-15. Renewal of Canceled Certificate.

An institution may submit an application for the renewal of a certificate canceled by reason of violation of the law or these rules not less than 30 days after final action was taken. The application shall be accompanied by documented evidence that the reason for cancellation has been removed. Upon being assured that the institution is acting in good faith and upon receipt of a favorable recommendation from the committee, the Director may issue a new certificate.

R438-13-16. Complaint.

Anyone who files a complaint with the Department against an individual, institution or establishment violating any part of R438-13 et seq., shall supply in writing specific information regarding the alleged violation or violations. The complaint shall include the time, date, place, individual or persons involved and the names of witnesses who may be called upon to testify. This statement must be in the form of a sworn affidavit and must be notarized. Preliminary investigations of complaints may be conducted at the discretion of the Director or a designated representative without the filing of a notarized sworn affidavit.

**KEY: animals, laboratories, laboratory animals
1989**

26-26-1 to 7

Notice of Continuation July 16, 2008

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 Section 62A-1-111.

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 an 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 an amendment to the 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**July 23, 2008****Notice of Continuation May 27, 2008****62A-1-111**

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 employs 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.

(2) All online training courses shall be provided on a secure website.

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

July 14, 2008

Notice of Continuation June 22, 2007

62A-15-401

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 employs 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;

(j) techniques for declining a sale including rehearsal and practice of these techniques using face-to-face role play; and

(k) recognition of beverages containing alcohol including examples of such beverages.

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.

(2) All online training courses shall be provided on a secure website.

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
July 14, 2008**

62A-15-401

R590. Insurance, Administration.**R590-186. Bail Bond Surety Business.****R590-186-1. Purpose.**

This rule establishes uniform criteria and procedures for the initial and renewal licensing, of a bail bond surety company, and sets standards of conduct for those in the bail bond surety business in the State of Utah.

R590-186-2. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-35-104 which requires the commissioner to adopt by rule specific licensure, and certification guidelines and standards of conduct for the bail bond business;

(2) Subsection 31A-35-301(1) which authorizes the commissioner to adopt rules necessary to administer Chapter 35 of Title 31A;

(3) Subsection 31A-35-401(1)(c) which allows the commissioner to adopt rules governing the granting of licenses for bail bond surety companies;

(4) Subsection 31A-35-401(2) which allows the commissioner to require by rule additional information from bail bond applicants applying for licensure;

(5) Subsection 31A-35-406(1)(b) which allows the commissioner to establish by rule the annual renewal date for the renewal of a license as a bail bond surety company.

R590-186-3. Scope and Applicability.

This rule applies to any person engaged in the bail bond surety business.

R590-186-4. Initial Company License.

(1) Persons desiring to become licensed as bail bond surety companies shall file with the Bail Bond Surety Oversight Board (Board) a bail bond company application which can be obtained from the Insurance Department.

(2) The applicant shall pay the annual license fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide at least one of the following:

(a) If the applicant relies on a letter of credit as the basis for issuing a bail bond, the applicant shall provide an irrevocable letter of credit with a minimum face value of \$300,000 assigned to the State of Utah from an entity qualified by state or federal regulators to do business as a financial institution in the state of Utah.

(b) If the applicant relies on the ownership of real or personal property located in Utah as the basis for issuing bail bonds, the applicant shall provide a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year. The financial statement must show a net worth of at least \$300,000, including a minimum of \$100,000 in liquid assets. The applicant shall also provide a copy of the applicant's federal income tax returns for the prior two years and, for each parcel of real property owned by the applicant and included in the applicant's net worth calculation, a preliminary title report dated not more than one month prior to the date of the application and an appraisal dated not more than two years prior to the date of the application.

(c) If the applicant relies on their status as the agent of a bail bond surety insurer as the basis for issuing bail bonds, the applicant shall provide a Qualifying Power of Attorney issued by the bail bond surety insurer.

(3) Applications approved by the Board will be forwarded to the insurance commissioner for the issuance of a license.

(4) Applications disapproved by the Board may be appealed to the insurance commissioner within 15 days of mailing the notice of disapproval.

R590-186-5. Company License Renewal.

A licensed bail bond surety company shall renew its license

on or before July 15 of each year by meeting the following requirements:

(1) file with the insurance commissioner a renewal application, pay the required renewal licensing fee set forth in R590-102, Insurance Department Fee Payment Deadlines, and provide the additional information described in this section.

(2) If the applicant relies on the ownership of real or personal property as the financial basis for issuing bail bonds the applicant must include the following with the renewal:

(a) a statement that no material changes have occurred negatively affecting the property's title, including any liens or encumbrances that have occurred since the last license renewal;

(b) a financial statement reviewed by a certified public accountant as of the end of the most current fiscal year showing a net worth of at least \$300,000, at least \$100,000 of which must consist of liquid assets and a copy of the applicant's federal income tax return for the prior year; and

(c) the following items are required as indicated:

(i) renewal in 2002, 2008, and 2014: a preliminary title report dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation; or

(ii) renewal in 2005, 2011, and 2017: a preliminary title report and a current appraisal dated not more than one month prior to the date of the renewal application for each parcel of real property owned by the applicant and included in the applicant's net worth calculation.

(3) Renewal applicants who were licensed as a bail bond surety company prior to December 31, 1999, may opt to apply under the lower limits in effect at that date.

(a) For renewal applicants relying on a letter of credit as the financial basis for issuing bail bonds, the amount is reduced to \$250,000.

(b) For renewal applicants relying on real or personal property as the basis for issuing bail bonds, the amount is reduced to a net worth of at least \$250,000, at least \$50,000 of which must consist of liquid assets.

(c) Renewal applicants opting for lower limits are limited to the 5 to 1 ratio of outstanding bond obligations as shown in R590-186-9.

R590-186-6. Agent License and Renewal.

(1) Bail bond surety companies and insurers are required to issue bail bonds only through licensed bail bond agents that have been contracted with and appointed by the insurer or designated by the bail bond surety company for whom they are issuing bail bonds.

(2) All persons doing business as bail bond agents must be licensed in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing. Bail bond agent licenses are individual limited line licenses. These licenses are issued for a two year period and require no licensing examination or continuing education.

(3) Individual bail bond agent licenses must be renewed at the end of the two year licensing period in accordance with Chapter 23 of Title 31A and applicable department rules regarding individual agent licensing renewal.

R590-186-7. Unprofessional Conduct.

Persons in the bail bond surety business may not engage in unprofessional conduct. For purposes of this rule, unprofessional conduct means the violation of any applicable insurance law, rule, or valid order of the commissioner, or the commission of any of the following acts by bail bond sureties, by bail bond surety agents or by bail bond enforcement agents working for bail bond sureties:

(1) having a license as a surety revoked in this or any other state;

(2) being involved in any transaction which shows unfitness to act in a fiduciary capacity or a failure to maintain the standards of fairness and honesty required of a trustee or other fiduciary;

(3) willfully misstating or negligently reporting any material fact in the initial or renewal application or procuring a misstatement in the documents supporting the initial or renewal application;

(4) being the subject of any outstanding civil judgment which would reduce the surety's net worth below the minimum required for licensure;

(5) being convicted of any felony or of any misdemeanor that involves the misappropriation of money or property, dishonesty or perjury;

(6) failing to report any collateral taken as security on any bond to the principal, indemnitor, or depositor of such collateral;

(7) failing to preserve, or to retain separately, or both, any collateral taken as security on any bond;

(8) failing to return collateral taken as security on any bond to the depositor of such collateral, or the depositor's designee, within ten business days of having been notified of the exoneration of the bond and upon payment of all fees owed to the bail bond agent, whichever is later;

(9) failing to advise the insurance commissioner of any change that has reduced the surety's net worth below the minimum required for licensure;

(10) using a relationship with any person employed by a jail facility or incarcerated in a jail facility to obtain referrals;

(11) offering consideration or gratuities to jail personnel or peace officers or inmates under any circumstances which would permit the inference that said consideration was offered to induce bonding referrals or recommendations;

(12) failing to deliver to the incarcerated person, or the person arranging bail on behalf of the incarcerated person, prior to the time the incarcerated person is released from jail, a one page disclosure form which at a minimum includes:

(a) the amount of the bail;

(b) the amount of the surety's fee, including bail bond premium, preparation fees, and credit transaction fees;

(c) the additional collateral, if any, that will be held by the surety;

(d) the incarcerated person's obligations to the surety and the court;

(e) the conditions upon which the bond may be revoked;

(f) any additional charges or interest that may accrue;

(g) any co-signors or indemnitors that will be required; and

(h) the conditions under which the bond may be exonerated and the collateral returned.

(13) using an unlicensed bail bond agent or unlicensed bail bond enforcement agent;

(14) using a bail bond agent not contracted and appointed by the bail bond surety company;

(15) charging excessive or unauthorized premiums, excessive fees or other unauthorized charges;

(16) requiring unreasonable collateral security;

(17) failing to provide an itemized statement of all expenses deducted from collateral, if any;

(18) requiring as a condition of his executing a bail bond that the principal agree to engage the services of a specified attorney;

(19) preparing or issuing fraudulent or forged bonds or power of attorney;

(20) signing, executing, or issuing bonds by an unlicensed person;

(21) executing bond without countersignature by a licensed agent at time of issue;

(22) failing to account for and to pay any premiums held by the licensee in a fiduciary capacity to the bail bond surety

company, bail bond surety insurer or other person who is entitled to receive them;

(23) knowingly violating, advising, encouraging, or assisting the violation of any statute, court order, or injunction in the course of a business regulated under this chapter;

(24) conviction of felony involving illegally using, carrying, or possessing a dangerous weapon;

(25) conviction of any act of personal violence or force against any person or conviction of threatening to commit any act of personal violence or force against any person, including but not limited to violent felonies as defined under Utah Code Annotated Section 76-3-203.5;

(26) soliciting sexual favors as a condition of obtaining, maintaining, or exonerating bail bond, regardless of the identity of the person who performs the favors;

(27) acting as an unlicensed bail bond enforcement agent; and

(28) failing to comply with the provisions of the Utah statutes and rules regulating the bail bond surety business or order of the insurance commissioner.

R590-186-8. Investigating Unprofessional Conduct.

The Board and the commissioner shall investigate allegations of unprofessional conduct on the part of any bail bond surety, or bail bond surety agent. Complaints alleging unprofessional conduct shall be submitted in writing to the Department of Insurance.

(1) Investigations shall be completed in the following manner:

(a) Upon receipt of a complaint of unprofessional conduct, the commissioner shall provide a copy of the complaint to the person against whom the complaint was made, and, if warranted, to the person's surety. The commissioner may edit the copy of the complaint mailed under this subsection as may be necessary to protect the identity or interests of the person making the complaint if the complainant so requests.

(b) The subject of the complaint shall provide to the commissioner a written response to the complaint within 15 days of the date the complaint was mailed to him.

(c) At the next meeting of the Board the commissioner shall present to the Board the complaint and the action undertaken by the Department to investigate the complaint.

(d) After the investigation is completed, the commissioner shall present the findings and recommended disposition to the Board. The Board may concur with the commissioner's recommended disposition, recommend a different disposition, request additional investigation, or conduct its own investigation.

(i) If the Board conducts its own investigation it may take and record witness statements under oath and may request any documents or other evidence from any person, including necessary financial records.

(ii) Witnesses may be compensated for their appearances as specified in 31A-2-301.

(iii) The Board may request a Subpoena from the commissioner to compel the production of documents or other evidence or to compel the testimony of a witness.

(iv) After the Board completes its investigation, it shall:

(A) close the investigation if the allegations have been shown to be unfounded or if the matter complained of is satisfactorily resolved; or

(B) if the investigation shows that unprofessional conduct did occur that requires the imposition of sanctions, it shall compile the evidence necessary to pursue the matter in an administrative proceeding by the Department of Insurance, and shall make a written report of its findings and of its recommendations for the penalties to be applied, and forward the report and evidence to the commissioner for further action within 15 days of the conclusion of the investigation.

(2) Except for matters referred to the commissioner for further proceedings, the Board shall retain in the Utah Insurance Department a file on each of the investigations it conducts concerning unprofessional conduct for a period of 5 years. Files regarding investigations conducted by the Board shall be classified as protected under Governmental Records Access and Management Act (GRAMA).

R590-186-9. Bonding Limits.

(1) An insurance bondsman may not maintain outstanding bail bond obligations in excess of the amount allowed by the insurance company.

(2) A letter of credit bondsman and/or a property bondsman may not maintain outstanding bail bond obligations in excess of the amounts provided in the table below:

TABLE

Financial Requirements	Ratio of Outstanding Bond Obligations to Letter of Credit or Net Worth and Liquidity Amounts
\$250,000 line of credit or net worth/\$50,000 liquidity)	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 5 to 1
300,000 or more line of credit limit or net worth/ at least \$100,000 liquidity	licensed 0 to 36 months: 5 to 1 licensed over 36 months: 10 to 1

(3) The commissioner may reduce the bonding limit of a letter of credit or a property bail bond company who has qualified for the 10 to 1 ratio if that bail bond company's line of credit limit or net worth or liquidity limit falls below the limits stated in Subsection(2) above.

R590-186-10. Publication of Licensed Bail Bond Surety Companies.

On or before September 1 of each year, the Board shall publish a list of bail bond surety companies licensed to do business in the State of Utah.

R590-186-11. Definition.

In reference to subsection 31A-35-701(5) "members of their immediate families" shall be defined as: spouse, children, stepchildren, children-in-law, mother, father, brother, sister, mother-in-law, father-in-law, sister-in-law, brother-in-law, step-mother, step-father, step-brother, step-sister, half-brother, and half-sister.

R590-186-12. Penalties.

Violations of this rule are punishable pursuant to Section 31A-2-308.

R590-186-13. Enforcement Date.

The commissioner will begin enforcing the revised provision of this rule 45 days from the rule's effective date. Non-revised provisions are enforceable as of the effective date.

R590-186-14. 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 and the provisions of this rule are declared to be severable.

KEY: insurance
March 21, 2002 **31A-35-104**
Notice of Continuation July 29, 2008 **31A-35-301**
31A-35-401
31A-35-406

R590. Insurance, Administration.**R590-187. Assessment of Title Insurance Agencies and Title Insurers for Costs Related to Regulation of Title Insurance.****R590-187-1. Authority.**

This rule is promulgated by the commissioner pursuant to Subsections 31A-2-201(3) and 31A-23a-415(2)(d).

R590-187-2. Purpose.

The purpose of this rule is:

(1) to establish the costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance;

(2) to determine a filing date for each title insurance agency or insurer to report to the commissioner the number of counties in which a title insurance agency or a title insurer maintains offices;

(3) to establish a deadline for the payment of the assessment; and

(4) to determine the premium year used in calculating the assessment of title insurers.

R590-187-3. Scope.

This rule applies to all title insurers, and title insurance agencies.

R590-187-4. Definitions.

For the purpose of the rule the commissioner adopts the definitions as set forth in Section 31A-1-301, and the following:

(1) "Office" means headquarters of an agency or company.

(2) "Branch Office" means local or area office of the headquarters of an agency or company.

R590-187-5. Costs and Expenses.

(1) The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists will consist of the salary and state paid benefits; travel expenses, including daily vehicle expenses; computer hardware and software expenses; e-commerce expenses and wireless communications expenses for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature and would include any salary increases or increases in benefits.

R590-187-6. Reporting of Counties.

(1) A title insurance agency and title insurer shall deliver to the commissioner, a Branch Office Report within 30 days of the opening or closing of any office, of any change of address, or a change in branch manager.

(2) Branch Office Report form is available from the department, or from the department's web page. This form shall be utilized in reporting the office information required by this rule.

R590-187-7. Title Insurer Assessment.

The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year. The direct premiums written shall be taken from the insurer's annual statements for that year.

R590-187-8. Assessment Payment Deadline.

Payment.

(1) Checks shall be made payable to the Utah Insurance Department. A check that is dishonored in the process of the collection will not constitute payment of the fee for which it was issued and any action taken pursuant to the fee payment will be negated. Any late fees or penalties will apply until proper payment is made. Tender of a check to the department, that is subsequently dishonored, is a violation of this rule.

(2) Cash payments. The department is not responsible for un-receipted cash that is lost or miss-delivered.

(3) Electronic payments.

(a) Credit Card. Credit cards may be used to pay any fee due to the department. Credit card payments that are dishonored will not constitute payment of the fee and any action taken based on the payment will be negated. Late fees and other penalties, resulting from the negated action, will apply until proper payment is made. A credit card payment that is dishonored is a violation of this rule.

(b) Automated clearinghouse (ACH). Payers or purchasers desiring to use this method must contact the department for the proper routing and transit information. Payments that are made in error to, or which are received by another agency or that are not deposited into the department's account will not constitute a legal remittance of the fee and any action taken based on such tender will be deemed to not meet obligations under this rule. Late fees and other penalties resulting from the negated action will apply until proper payment is made. An ACH payment that is dishonored is a violation of this rule.

R590-187-9. Enforcement Date.

The commissioner will begin enforcing the revised provisions of this rule 45 days from the rule's effective date.

R590-187-10. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance

January 8, 2004

Notice of Continuation July 29, 2008

31A-2-201

31A-23a-415

R592. Insurance, Title and Escrow Commission.**R592-7. Title Insurance Continuing Education Program.****R592-7-1. Authority.**

This rule is promulgated pursuant to Subsections 31A-2-404(2)(a) and (g), which direct the Title and Escrow Commission to make rules for the administration of the provisions in this title related to title insurance and the approval of continuing education programs related to title insurance.

R592-7-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) delegate authority from the Commission to the commissioner to provisionally approve continuing education programs related to title insurance; and

(b) establish procedures for the Commission to approve continuing education programs related to title insurance provisionally approved by the commissioner.

(2) This rule applies to all title licensees, applicants for a title insurance license, unlicensed persons doing business as a title licensee, and continuing education providers submitting continuing education programs related to title insurance for approval pursuant to 31A-2-404.

R592-7-3. Definitions.

"Title licensee" has the same meaning as found in Section 31A-2-402(3).

R592-7-4. Program Approval.

(1) The Commission hereby delegates to the commissioner provisional authority to approve continuing education programs related to title insurance including:

(a) continuing education course providers; and

(b) continuing education courses.

(2) The commissioner will report to the Commission on all continuing education programs related to title insurance provisionally approved by the commissioner. This report will include approved:

(a) continuing education course providers; and

(b) continuing education courses added to the Department's list of approved continuing education courses.

(3) The Commission will review the report and

(a) concur with and thus approve the continuing education course providers and continuing education courses provisionally approved by the commissioner; or

(b) disapprove the provisionally approved continuing education course providers or continuing education courses.

(4) If the Commission disapproves a provisionally approved continuing education provider or continuing education course, the commissioner will:

(a) remove the provider or the course from the Department's approved provider or course list; and

(b) notify the provider of the disapproval.

R592-7-5. Program Submission.

(1) Title insurance related continuing education providers shall submit initial and renewal provider approval information to the commissioner in accordance with 31A-23a-202 and R590-142.

(2) Approved title insurance related continuing education providers shall submit requests for continuing education course approval to the commissioner in accordance with 31A-23a-202 and R590-142.

R592-7-6. 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 31A-2-308.

R592-7-7. Enforcement Date.

The commissioner will begin enforcing this rule upon the rule's effective date.

R592-7-8. Severability.

If any section, term, or provision of this rule shall be adjudged invalid for any reason, such judgment shall not affect, impair or invalidate any other section, term, or provision of this rule and the remaining sections, terms, and provisions shall be and remain in full force.

**KEY: title insurance continuing education
July 14, 2008**

**31A-2-308
31A-2-402
31A-2-404
31A-23a-202**

R592. Insurance, Title and Escrow Commission.**R592-8. Application Process for an Attorney Exemption for Title Agency Licensing.****R592-8-1. Authority.**

This rule is promulgated by the Title and Escrow Commission pursuant to Section 31A-2-404 which authorizes the Commission to make rules for the administration of the provisions in this title related to title insurance and Section 31A-23a-204 which authorizes the Commission to make a rule to exempt attorneys with real estate experience from the three year licensing requirement to license a title agency.

R592-8-2. Purpose and Scope.

- (1) The purposes of this rule are:
 - (a) to delegate to the Commissioner preliminary approval or denial of a request for exemption;
 - (b) to provide a description of the types of real estate experience that could be used by an attorney seeking to qualify for the exemption;
 - (c) to provide a process to apply for a request for exemption; and
 - (d) to provide a process to appeal a denial of a request for exemption.
- (2) This rule applies to all attorneys seeking an exemption under the provisions of 31A-23a-204.

R592-8-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402 and 31A-23a-102, the following definitions shall apply for the purposes of this rule:

- (1) "Attorney" means a person licensed and in good standing with the Utah State Bar.
- (2) "Real estate experience" includes:
 - (a) law firm transactional experience consisting of any or all of the following:
 - (i) real estate transactions, including drafting documents, reviewing and negotiating contracts of sale, including real estate purchase contracts (REPC), commercial transactions, residential transactions;
 - (ii) financing and securing construction and permanent financing;
 - (iii) title review, due diligence, consulting and negotiations with title companies, researching and drafting opinions of title, coordinating with title companies, pre-closing;
 - (iv) zoning, development, construction, homeowners associations, subdivisions, condominiums, planned unit developments;
 - (v) conducting closings; and
 - (vi) estate planning and probate-related transactions and conveyances.
 - (b) law firm litigation experience consisting of any or all of the following:
 - (i) foreclosures;
 - (A) judicial and non-judicial;
 - (B) homeowner association (HOA) lien foreclosure;
 - (ii) either side of homeowner vs HOA litigation;
 - (iii) state construction registry litigation - mechanics lien filing and litigation;
 - (iv) real estate disputes or litigation involving:
 - (A) a real estate contract;
 - (B) a boundary line;
 - (C) a rights of way and/or easement;
 - (D) a zoning issue;
 - (E) a property tax issue;
 - (F) a title issue or claim;
 - (G) a landlord/tenant issue; and
 - (F) an estate and/or probate litigation involving real property assets, claims, and disputes.
 - (c) non-law firm experience consisting of any or all of the

following:

- (i) real estate agent, broker, developer, investor;
- (ii) mortgage broker;
- (iii) general contractor;
- (iv) professor or instructor teaching real estate licensing, real estate contracts, or real estate law;
- (v) lender involved with any or all of the following real estate lending activities:
 - (A) lending;
 - (B) escrow; or
 - (C) foreclosure;
- (vi) private lender;
- (vii) in-house counsel involved in real estate transactions for bank, mortgage lender, credit union, title company, or title agency;
- (viii) employment with or counsel to a government agency involved in regulation of real estate, such as HUD, FHA, zoning, tax assessor, county recorder, insurance department, and Federal or state legislatures;
- (ix) escrow officer;
- (x) title searcher; or
- (xi) surveyor; and
- (d) other experience with real estate not included in (a), (b), and (c) above.

R592-8-4. Delegation of Authority.

The Commission hereby grants its preliminary concurrence to the approval or denial of a request for exemption requested by an attorney pursuant to 31A-23a-204 to the Utah Insurance Commissioner.

R592-8-5. Request for Exemption Process.

- (1) An individual title licensee, who is an attorney as defined in this rule desiring to obtain an agency license under the exemption provided in 31A-23a-204(1)(c), shall make a request for exemption to the Commissioner in accordance with the requirements of this subsection.
- (2) The applicant will submit a letter addressed to the Commission:
 - (a) requesting exemption from the licensing time period requirements in 31A-23a-204(1)(a)(i); and
 - (b) providing the following information:
 - (i) the applicant's name, mailing address and email, telephone number, and title license number;
 - (ii) a description of the applicant's real estate experience; and
 - (iii) why the applicant feels that experience qualifies the applicant for the exemption.
- (3) The Commissioner will review the request for exemption within five business days of its receipt and
 - (a) request additional information from the applicant;
 - (b) preliminarily approve the request for exemption; or
 - (c) preliminarily disapprove the request for exemption.
- (4) The Commissioner will report monthly to the Commission all preliminarily approved or denied requests for exemption received and reviewed since the previous Commission meeting.
- (5) The Commission will concur or non-concur with the Commissioner's preliminary approval or denial of a request for exemption.
- (6) If the Commissioner's preliminary denial of a request for exemption is concurred with by the Commission, the Commissioner will:
 - (a) notify the applicant of the denial; and
 - (b) inform the applicant of his right to agency review pursuant to R590-160.
- (7) If the Commissioner's preliminary approval of a request for exemption is concurred with by the Commission, the Commissioner will expeditiously notify the applicant to submit

an electronic license application and pay the required fees and assessments.

R592-8-7. 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.

R592-8-8. Enforcement Date.

The Commission will begin enforcing this rule on the rule's effective date.

R592-8-9. 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 remaining provisions to other persons or circumstances shall not be affected.

**KEY: attorney exemption application process
July 14, 2008**

31A-1-301
31A-2-308
31A-2-402
31A-2-404
31A-23a-102
31A-23a-204

R592. Insurance, Title and Escrow Commission.**R592-9. Title Insurance Recovery, Education, and Research Fund Assessment Rule.****R592-9-1. Authority.**

This rule is promulgated pursuant to Section 31A-41-202 which requires the Title and Escrow Commission to determine the amount of required assessments from individual title insurance producers and title insurance agencies to provide funding for the recovery, education, and research fund.

R592-9-2. Purpose and Scope.

(1) The purpose of this rule is:

(a) to establish the amounts for individual title insurance producer assessments; and

(b) to establish the amounts for title insurance agency assessments.

(2) This rule applies to all individual title insurance producer applicants and licensees and all title insurance agency license applicants and licensees and any unlicensed person doing the business of title insurance.

R592-9-3. Establishing Assessment Amounts.

(1) Prior to July 1 of each year, the Commission shall establish the assessment amounts for:

(a) an initial producer license for an individual title insurance producer applicant;

(b) a renewal license for a licensed individual title insurance producer;

(c) an initial agency license for a title insurance agency applicant; and

(d) an annual assessment for a licensed title insurance agency.

(2) Annual licensed title insurance agency assessment amounts shall be established for the following four premium bands of title insurance premiums:

(a) Band A: \$0 to \$1 million;

(b) Band B: more than \$1 million to \$10 million;

(c) Band C: more than \$10 million to \$20 million; and

(d) Band D: more than \$20 million.

(3) The individual producer and agency assessment amounts shall be adopted by motion of the Commission.

(4) The adopted assessment amounts shall be posted on the Insurance Department's web page.

R592-9-4. Individual Title Insurance Producer Assessment.

(1) Beginning July 1, 2009:

(a) A person applying for an initial individual title insurance producer license or a licensed individual title producer adding an additional title insurance line of authority shall pay an assessment not to exceed \$20.00 at the time of application; and

(b) a licensee renewing an individual title insurance producer license shall pay an assessment not to exceed \$20.00 at the time of application.

(2) An individual title insurance producer assessment will be paid in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-9-5. Title Insurance Agency Assessment.

(1) Beginning July 1, 2008, a person applying for an initial title insurance agency license shall pay an assessment of \$1,000 at the time of application.

(2) Beginning January 1, 2009, a licensed title insurance agency shall pay an annual assessment.

(3) An agency's placement in one of the four assessment bands will be determined by an agency's title insurance written premium volume for the preceding calendar year as of December 31 of that calendar year.

(4) An agency's annual assessment will be paid in accordance with R590-102, Insurance Department Fee Payment

Rule.

R592-9-6. 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.

R592-9-7. Enforcement Date.

The commissioner will begin enforcing this rule July 1, 2008.

R592-9-8. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, such invalidity may not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

**KEY: title recovery fund assessment
July 14, 2008**

**31A-2-308
31A-41-202**

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**

Notice of Continuation July 28, 2008

63G-2-101 et seq.

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-101. Restrictions on State Employees.****R645-101-100. Responsibility.**

110. The Director will:

111. Provide advice, assistance, and guidance to Board members and all state employees required to file statements pursuant to R645-101-310;

112. Promptly review the statement of employment and financial interests and supplements, if any, filed by each employee, to determine if the employee has correctly identified those listed employment and financial interests which constitute a direct or indirect financial interest in a coal mining or reclamation operation;

113. Resolve prohibited financial interest situations by ordering or initiating remedial action;

114. Certify on each statement that review has been made, that prohibited financial interests, if any, have been resolved, and that no other prohibited interests have been identified from the statement;

115. Submit to the Director of the Office such statistics and information, as he or she may request, to enable preparation of the annual report to Congress;

116. Submit to the Director of the Office the initial listing and the subsequent annual listings of positions as required by R645-101-312 and R645-101-313.

117. Furnish a blank statement 45 days in advance of the filing date established by R645-101-321 to each Board member and state employee required to file a statement; and

118. Inform, annually, each Board member and state employee required to file a statement with the Director or such other official designated by Utah law or rule, or the name, address, and telephone number of the person whom they may contact for advice and counseling.

120. Division employees performing any duties or functions under the Act will:

121. Have no direct or indirect financial interest in coal mining and reclamation operations;

122. File a fully completed statement of employment and financial interest upon entrance to duty, and annually thereafter on the specified filing date; and

123. Comply with directives issued by persons responsible for approving each statement and comply with directives issued by those persons responsible for ordering remedial action.

130. Members of the Board will recuse themselves from proceedings which may affect their direct or indirect financial interests.

R645-101-200. Penalties.

210. Criminal Penalties. Criminal penalties are imposed by Section 40-10-7 of the Act which prohibits each employee of the Division who performs any function or duty under the Act from having a direct or indirect financial interest in any coal mining or reclamation operation. The Act provides that whoever knowingly violates the provisions of Section 40-10-7 of the Act will, upon conviction, be punished by a fine of not more than \$2,500, or by imprisonment of not more than one year or by both.

220. Failure to File Financial Statement. Any employee who fails to file the required statement will be considered in violation of the intended employment provisions of Section 40-10-7 of the Act and will be subject to removal from his or her position.

R645-101-300. Filing and Contents of Financial Reports.

310. Who will File:

311. Each Board member and any employee who performs any function or duty under the Act is required to file a statement of employment and financial interests. An employee who occupies a position which has been determined by the Director

not to involve performance of any function or duty under the Act, or who is no longer employed by the Division at the time a filing is due, is not required to file a statement;

312. The Director will prepare a list of those positions within the Division that do not involve performance of any functions or duties under the Act. Only those employees who are employed in a listed organizational unit, or who occupy a listed position, will be exempted from the filing requirements of Section 40-10-7 of the Act;

313. The Director will annually review and update this position listing. For monitoring and reporting reasons, the listing must be submitted to the Director of the Office and must contain a written justification for inclusion of the positions listed. Proposed revisions or a certification that revision is not required will be submitted to the Director of the Office no later than September 30 of each year. The Director may revise the listing by the addition or deletion of positions at any time he or she determines such revisions are required to carry out the purpose of the State Program. Additions to, and deletions from, the listing of positions are effective upon notification to the incumbents of the positions added or deleted.

320. When to File:

321. Board members and employees performing functions or duties under the Act will file annually on February 1 of each year, or at such other date as may be agreed to by the Director of the Office;

322. New employees hired, appointed, or transferred to perform functions or duties under the Act and any new Board members will be required to file at the time of entrance to duty;

323. New employees and new Board members are not required to file an annual statement on the subsequent annual filing date if this date occurs within two months after their initial statement was filed. For example, an employee or Board member entrance date of December 1, 1978, would file a statement on that date. Because December 1 is within two months of February 1, the employee would not be required to file his or her next annual statement until February 1, 1980.

330. Where to File: The Director will file his or her statement with the Director of the Office. All other employees and Board members, as provided in R645-101-310, will file their statement with the Director or such other official as may be designated by Utah law or rule.

340. What to Report:

341. Each board member and employee will report all information required on the statement of employment and financial interests of the employee, his or her spouse, minor children, or other relatives who are full-time residents of the employee's home. The report will be on Office Form 705-1 as provided by the Division. The statement consists of three major parts:

341.100. A listing of all financial interests, including employment, security, real property, creditor, and other financial interests held during the course of the preceding year;

341.200. A certification that none of the listed financial interests represent a direct or indirect financial interest in a coal mining and reclamation operation except as specifically identified and described by the employee as part of the certificate; and

341.300. A certification by the reviewer that the form was reviewed, that prohibited interests have been resolved, and that no other prohibited interests have been identified from the statement.

342. Listing of all financial interests. The statement will set forth the following information regarding any financial interest:

342.100. Employment: Any continuing financial interests in business entities and nonprofit organizations through a pension or retirement plan, shared income, salary, or other income arrangement as a result of prior or current employment.

The board member or employee, his or her spouse, or other resident relative is not required to report a retirement plan from which he or she will receive a guaranteed income. A guaranteed income is one which is unlikely to be changed as a result of actions taken by the Division;

342.200. Securities: Any financial interest in business entities and nonprofit organizations through ownership of stock, stock options, bonds, securities, or other arrangements including trusts. A board member or employee is not required to report mutual funds, investment clubs, or regulated investment companies not specializing in coal mining and reclamation operations;

342.300. Real Property: Ownership, lease, royalty, or other interests or rights in lands or minerals. Board members or employees are not required to report lands developed and occupied for a personal residence; and

342.400. Creditors: Debts owed to business entities and nonprofit organizations. Board members or employees are not required to report debts owed to financial institutions (banks, savings and loan associations, credit unions, and the like) which are chartered to provide commercial or personal credit. Also excluded are charge accounts and similar short-term debts for current and ordinary household and living expenses.

343. Board member or employee certification, and, if applicable, a listing of exceptions.

343.100. The statement will provide for a signed certification by the board member or employee that to the best of his or her knowledge:

343.110. None of the listed financial interests represent an interest in a coal mining and reclamation operation except as specifically identified and described as exceptions by the board member or employee as part of the certificate; and

343.120. The information shown on the statement is true, correct, and complete.

343.200. A board member or employee is expected to:

343.210. Have complete knowledge of his or her personal involvement in business enterprises such as a sole proprietorship and partnership, his or her outside employment and the outside employment of the spouse and other covered relatives; and

343.220. Be aware of the information contained in the annual financial statement or other corporate or business reports routinely circulated to investors or routinely made available to the public.

343.300. The exceptions shown in the board member or employee certification of the form must provide enough information for the Director to determine the existence of a direct or indirect financial interest. Accordingly, the exceptions should:

343.310. List the financial interests;

343.320. Show the number of shares, estimated value or annual income of the financial interests; and

343.330. Include any other information which the employee believes should be considered in determining whether or not the interest represents a prohibited interest.

343.400. Board members and employees are cautioned to give serious consideration to their direct and indirect financial interests before signing the statement of certification. Signing the certification without listing known prohibited financial interests may be cause for imposing the penalties prescribed in R645-101-210.

R645-101-400. Gifts and Gratuities.

410. Except as provided in R645-101-420, board members and employees will not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan, or any other thing of monetary value from a coal company which:

411. Conducts, or is seeking to conduct, operations that are regulated by the Division; or

412. Has interests that may be substantially affected by the

performance or nonperformance of the board member's or employee's official duty.

420. The prohibitions in R645-101-410 do not apply in the context of obvious family or personal relationships, such as those between the parents, children, or spouse of the board member or employee and the employee, when the circumstances make it clear that it is those relationships rather than the business of the persons concerned which are the motivating factors. A board member or employee may accept:

421. Food and refreshments of nominal value on infrequent occasions in the ordinary course of a luncheon, dinner, or other meeting where a board member or employee may properly be in attendance; and

422. Unsolicited advertising or promotional material, such as pens, pencils, note pads, calendars, and other items of nominal value;

430. Board members or employees found guilty of violating the provisions of R645-101-400 will be subject to administrative remedies in accordance with existing or adopted Utah rules or policies.

R645-101-500. Resolving Prohibited Interests.

510. Actions to be taken by the Director:

511. Remedial action to effect resolution. If an employee has a prohibited financial interest, the Director will promptly advise the employee that remedial action which will resolve the prohibited interest is required within 90 days;

512. Remedial action may include:

512.100. Reassignment of the employee to a position which performs no function or duty under the Act; or

512.200. Divestiture of the prohibited financial interest; or

512.300. Other appropriate action which either eliminates the prohibited interest or eliminates the situation which creates the conflict.

513. Reports of noncompliance. If 90 days after an employee is notified to take remedial action that the employee is not in compliance with the requirements of the State Program, the Director will report the facts of the situation to the Director of the Office who will determine whether action to impose the penalties prescribed by the Federal Act should be initiated. The report to the Director of the Office will include the original or a certified true copy of the employee's statement and any other information pertinent to the determination by the Director of the Office, including a statement of actions being taken at the time the report is made.

520. Actions to be taken by the Director of the Office:

521. Remedial action to effect resolution. Violations of rules under R645-101 by the Director will be cause for remedial action by the Governor of Utah, or other appropriate state official, based on recommendations from the Director of the Office on behalf of the Secretary of the U.S. Department of the Interior. The Governor, or other appropriate state official, based on recommendations from the Director of the Office on behalf of the Secretary of the U.S. Department of the Interior. The Governor, or other appropriate state official, will promptly advise the Director that remedial action which will resolve the prohibited interest is required within 90 days;

522. Remedial action should be consistent with the procedures prescribed for other Division employees in R645-101-512.

R645-101-600. Appeals Procedures.

Employees have the right to appeal an order for remedial action under R645-101-500, and will have 30 days to exercise this right before disciplinary action is initiated or the matter is referred to the Utah Attorney General for criminal prosecution.

610. Employees, other than the Director, may file their appeal, in writing, pursuant to the provision of the State Personnel Management Act (Section 67-19-1 et seq.).

620. The Director may file his or her appeal, in writing, with the Director of the Office who will refer it to the Conflict of Interest Appeals Board within the U.S. Department of the Interior.

KEY: reclamation, coal mines

1989

40-10-1 et seq

Notice of Continuation July 28, 2008

R645. Natural Resources; Oil, Gas and Mining; Coal.**R645-104. Protection of Employees.****R645-104-100. Protected Activity.**

110. No person will discharge or in any other way discriminate against, cause to be fired, or discriminate against any employee because that employee or his or her authorized representative has:

111. Filed, instituted, or caused to be filed or instituted any proceedings under the State Program by:

111.100. Reporting alleged violations or dangers to the Secretary, the Board, the Division, the employer or his or her authorized representative;

111.200. Requesting an inspection or investigation; or

111.300. Taking any other action which may result in a proceeding under the State Program;

112. Made statements, testified, or is about to do so:

112.100. In any informal or formal adjudicatory proceeding;

112.200. In any informal conference proceeding;

112.300. In any rulemaking proceeding;

112.400. In any investigation, inspection, or other proceeding under the State Program; or

112.500. In any judicial proceeding under the State Program; and

113. Has exercised on his or her own behalf, or on behalf of others, any right granted by the Act.

120. Each employer conducting operations which are regulated under this Act will, within 30 days from the effective day of these rules, provide a copy of R645-104 to all current employees and to all new employees at the time of their hiring.

R645-104-200. Procedures for Filing an Application for Review of Discrimination.

210. Who May File. Any employee, or his or her authorized representative, who believes that he or she has been discriminated against by any person in violation of R645-104-110 may file an application for review. For the purpose of the R645 Rules, an application for review means the presentation of a written report of discrimination stating the reasons why the person believes he or she has been discriminated against and the facts surrounding the alleged discrimination.

220. Where to File. The employee, or authorized representative, may file the application for review with the Division. The Division will maintain a log of all filings.

230. Time for Filing. The employee, or his or her authorized representative, will file an application for review within 30 days after the alleged discrimination occurs. An application is considered filed:

231. On the date delivered, if delivered in person, to the Division; or

232. On the date mailed to the Division.

240. Running of the Time for Filing. The time for filing begins when the employee knows, or has reason to know, of the alleged discriminatory activity.

R645-104-300. Investigation and Conference.

310. Within seven days after receipt of any application for review, the Division will mail a copy of the application for review to the person alleged to have caused the discrimination, will file the application for review with the Board, and will notify the employee and the alleged discriminating person that the Division will investigate the complaint. The alleged discriminating person may file a response to the application for review within ten days after he or she receives the copy of the application for review. The response will specifically admit, deny, or explain each of the facts alleged in the application unless the alleged discriminating person is without knowledge, in which case, he or she will so state.

320. The Division will initiate an investigation of the

alleged discrimination within 30 days after receipt of the application for review. The Division will complete the investigation within 60 days of the date of the receipt of the application for review. If circumstances surrounding the investigation prevent completion within the 60-day period, the Division will notify the person who filed the application for review and the alleged discriminating person of the delay, the reason for the delay, and the expected completion date for the investigation.

330. Within seven days after completion of the investigation, the Division will invite the parties to an informal conference to discuss the findings and preliminary conclusions of the investigation. The purpose of the informal conference is to attempt to conciliate the matter. If a complaint is resolved at an informal conference, the terms of the agreement will be recorded in a written document that will be signed by the alleged discriminating person, the employee, and the representative of the Division. If the Division concludes, on the basis of a subsequent investigation, that any party to the agreement has failed in any material respect to comply with the terms of any agreement reached during an informal conference, the Division will take appropriate action to obtain compliance with the agreement.

340. Following the investigation, and any informal conference held, the Division will complete a report of investigation which will include a summary of the results of the conference. Copies of this report will be available to the parties in the case.

R645-104-400. Request for Hearing.

410. If the Division determines that a violation of R645-104 has probably occurred and was not resolved at an informal conference, the Director will request a hearing on the employee's behalf before the Board within ten days of the scheduled informal hearing. The parties will be notified of the determination. If the Director declines to request a hearing, the employee will be notified within ten days of the scheduled informal conference and informed of his or her right to request a hearing on their own behalf.

420. The employee may request a hearing with the Board after 60 days have elapsed from the filing of his or her application.

R645-104-500. Formal Adjudicatory Proceedings.

510. Formal adjudication of a complaint filed under R645-104 will be conducted before the Board under R641 Rules.

520. A hearing will be held as promptly as possible, consistent with the opportunity for discovery provided for under the R641 Rules.

530. Upon a finding of violation of R645-104-100, the Board will order the appropriate affirmative relief including, but not limited to, the rehiring or reinstatement of the employee or representative of employees to his or her former position with compensation. At the request of the employee, a sum equal to the aggregate amount of all costs and expenses including attorneys' fees which have been reasonably incurred by the employee for, or in connection with, the institution and prosecution of the proceedings will be assessed against the person committing the violation.

540. On or after ten days after filing an application for review under R645-104, the employee may seek temporary relief from the Board under the R641 Rules.

KEY: reclamation, coal mines

1989

Notice of Continuation July 28, 2008

40-10-1 et seq.

**R645. Natural Resources; Oil, Gas and Mining; Coal.
R645-401. Inspection and Enforcement: Civil Penalties.
R645-401-100. Information on Civil Penalties.**

110. Objectives. Civil penalties are assessed under UCA 40-10-20 of the State Program and R645-401 to deter violations and to ensure maximum compliance with the terms and purposes of the State Program on the part of the coal mining industry.

120. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R645-401 to determine whether a civil penalty will be assessed, the amount of the penalty, and whether each day of a continuing violation will be deemed a separate violation for purposes of the total penalty assessed.

R645-401-200. When Penalty Will Be Assessed.

210. The assessment officer will assess a penalty for each cessation order.

220. The assessment officer will assess a penalty for each notice of violation, if the violation is assigned 51 points or more under the point system described in R645-401-300 and R645-401-400.

230. The assessment officer may assess a penalty for each notice of violation assigned 50 points or less under the point system described in R645-401-300 and R645-401-400. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R645-401-310.

R645-401-300. Point System for Penalties.

310. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

311. The operator's history of previous violations at the particular coal mining and reclamation operation, regardless of whether any led to a civil penalty assessment. Special consideration will be given to violations contained in or leading to a cessation order. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R645-401-321.100 or R645-401-321.200.

312. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit or exploration area.

313. The degree of fault of the operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

314. The operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement. Consideration will also be given to whether the operator gained any economic benefit as a result of a failure to comply.

320. Assessment of Points.

321. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular coal exploration or coal mining and reclamation operation. Points will be assigned as follows:

321.100. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only one year;

321.200. No violation for which the notice or order has been vacated will be counted; and

321.300. Each violation will be counted without regard to whether it led to a civil penalty assessment.

322. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

322.100. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following schedule:

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

322.200. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

322.300. Alternative to R645-401-322.100 and R645-401-322.200 for an Administrative Hindrance Violation. In the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R645-401-322.100 and R645-401-322.200, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

323. Degree of Fault.

323.100. The assessment officer will assign up to 30 points based on the degree of fault of the permittee in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

323.110. A violation which occurs through no fault of the operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

323.120. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault; Fault means the failure of a permittee to prevent the occurrence of any violation of his or her permit or any requirement of the State Program due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the State Program due to indifference, lack of diligence, or lack of reasonable care; and

323.130. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

323.200. In calculating points to be assigned for degree of fault, the acts of all persons working on the coal exploration or coal mining and reclamation operation site will be attributed to the permittee, unless that permittee establishes that they were acts of deliberate sabotage.

324. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee. Points will be assigned as follows:

324.100. Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

DEGREE OF GOOD FAITH	POINTS	27	770
		28	880
Immediate Compliance	-11 to -20	29	990
Rapid Compliance	- 1 to -10	30	1,100
Normal Compliance	0	31	1,210
		32	1,320

324.200. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee does not have the resources at hand to achieve compliance of the violated standard.

TABLE			
DEGREE OF GOOD FAITH	POINTS	41	2,310
		42	2,420
Rapid Compliance	-11 to -20	43	2,530
Normal Compliance	- 1 to -10	44	2,640
Extended Compliance	0	45	2,750
		46	2,860
		47	2,970
		48	3,080
		49	3,190
		50	3,300
		51	3,410
		52	3,520
		53	3,630
		54	3,740
		55	3,850
		56	3,960
		57	4,070
		58	4,180
		59	4,290
		60	4,400
		61	4,510
		62	4,620
		63	4,730
		64	4,840

325. Definition of Compliance.

325.100 Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

325.200. Rapid Compliance requires evidence that the permittee used diligence to abate the violation.

325.300. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

325.400. Extended Compliance means that the permittee took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

326. The Effect on the Operator's Ability to Continue in Business. Initially, it will be presumed that the operator's ability to continue in business will not be affected by the order of assessment. The operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee's ability to continue in business. A reduction of the penalty or a special payment plan may be ordered if the information provided by the operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee's ability to continue in business or will create undue hardship on the permittee's operation.

330. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R645-401-320 to a dollar amount, according to the following schedule:

TABLE	
Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660

R645-401-400. Assessment of Separate Violations for Each Day.

410. The assessment officer may assess separately a civil penalty for each day from the date of issuance of the notice of violation or cessation order to the date set for abatement of the violation. In determining whether to make such an assessment, the assessment officer will consider the factors listed in R645-401-300 and may consider the extent to which the permittee gained any economic benefit as a result of a failure to comply. For any violation which continues for two or more days, and which is assigned more than 64 points under R645-401-320, the assessment officer will assess a civil penalty for a minimum of two separate days.

420. Whenever a violation contained in a notice of violation or cessation order has not been abated within the abatement period set in the notice or order, a civil penalty of not less than \$750.00 will be assessed for each day during which such failure continues, except that, if the permittee initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

421. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the State Program, after determination that the permittee will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date on which the board issues a final order; and

422. If the permittee initiates review proceedings under the State Program with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the State Program, the daily assessment of a penalty will not be made for any period before entry of a final order by the court.

430. Such penalty for the failure to abate the violation will not be assessed for more than 30 days for each violation. If the permittee has not abated the violation within the 30-day period, the Division will within 30 days appeal such noncompliance to the Board for resolution under Subsections 40-10-20(5), 40-10-20(6), 40-10-22(1)(d), or 40-10-22(2) of the Act, or by other appropriate means.

R645-401-500. Waiver of Use of Formula to Determine Civil Penalty.

510. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R645-401-330 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust. However, the assessment officer will not waive the use of the formula or reduce the proposed assessment on the basis of an argument that a reduction in the proposed penalty could be used to abate violations of the State Program or any condition of any permit or exploration approval. The basis for every waiver will be fully explained and documented in the records of the case.

520. If the assessment officer waives the use of the formula, he or she will use the criteria set forth in R645-401-320 to determine the appropriate penalty. When the assessment officer has elected to waive the use of the formula, he or she will give a written explanation of the basis for the assessment made to the permittee.

R645-401-600. Procedures for Assessment of Civil Penalties - Proposed Assessment.

610. Within 15 days of service of a notice or order, the permittee may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

620. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee, by certified mail, within 30 days of the issuance of the notice or order.

621. If the mail is tendered at the address of that permittee set forth in the sign required under R645-301-521.200 or at any address at which that permittee is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R645-401-620 will be deemed to have been complied with upon such tender.

622. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee:

622.100. Proves actual prejudice as a result of the delay; and
622.200. Makes a timely objection to the delay.

630. Unless an assessment conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment because of the length of the abatement period. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R645-401-620, within 30 days after the date the violation is abated.

R645-401-700. Procedures for Informal Assessment Conference.

710. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the violator.

720. Informal Assessment Conference Scheduling and Findings.

721. The Division will assign an assessment conference officer to hold assessment conferences. The assessment conference will be informal. The assessment conference will be

held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee proves actual prejudice as a result of the delay.

722. The Division will post notice of the time and place of the conference at all Division offices at least five days before the conference. Any person will have a right to attend and participate in the conference.

723. The assessment conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

723.100. Settle the issues, in which case a settlement agreement will be prepared and signed by the assessment conference officer on behalf of the Division and by the permittee; or

723.200. Affirm, raise, lower, or vacate the penalty.

730. The assessment conference officer will promptly serve the permittee with a notice of his or her action in the manner provided in R645-401-620, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

740. Informal Conference Settlement Agreement.

741. If a settlement agreement is entered into, the permittee will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

742. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R645-401-723.200 within 30 days from the date of the rescission.

750. The assessment conference officer may terminate the conference when he or she determines that the issues cannot be resolved or that the permittee is not diligently working toward resolution of the issues.

760. At formal review proceedings before the Board, no evidence as to statements made or evidence produced by one party at an assessment conference will be introduced as evidence by another party or to impeach a witness.

R645-401-800. Requests for Formal Hearing.

810. A permittee charged with a violation may contest the proposed penalty or the fact of the violation by submitting (a) a petition to the Board and (b) an amount equal to the proposed penalty or, if a conference has been held, the reassessed or affirmed penalty to the Division (to be held in escrow as provided in R645-401-820) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

820. The Division will transfer all funds submitted under R645-401-810 to an escrow fund pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R645-401-920 or R645-401-930.

830. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of the procedural rules of the Board (R641 Rules). The fact of the violation may not be contested if the fact has been finally decided before the Board under R645-400-360.

R645-401-900. Final Assessment and Payment of Penalty.

910. If the permittee fails to request a hearing as provided in R645-401-810, the proposed assessment will become a final order of the Division and the penalty assessed will become due

and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under UCA 40-10-20(3)(e).

920. If any party requests judicial review of a final order of the Board the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R645-401-930, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

930. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R645-401, the Division will within 30 days of receipt of the order refund to the permittee all or part of the escrowed amount, with interest from the date of payment into escrow to the date of the refund at the legal rate applicable as provided in section 15-1-1, UCA.

940. If the review results in an order increasing the penalty, the permittee will pay the difference to the Division within 15 days after the order is received by such permittee.

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**R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-6. Inspection and Enforcement: Division Authority
and Procedures.**

**R647-6-101. General Information on Authority and
Procedures.**

(1) Enforcement Authority. Nothing in the Utah Mined Land Reclamation Act will be construed as eliminating any additional enforcement rights or procedures which are available under State law to the Division, but which are not specifically enumerated in Sections 40-8-8, 40-8-9 and 40-8-9.1 of the Utah Mined Land Reclamation Act.

(2) Inspection Program. The Division will conduct inspections of each mining operation and reclamation under its jurisdiction for the purpose of enforcing the provisions of Title 40, Chapter 8.

2.11. Division representatives shall be allowed to enter upon and through any minerals mining operation and reclamation without advance notice. Division Representatives need to check in on site or make an attempt to contact the permittee or operator, if available, prior to proceeding through the site.

2.12. Division representatives shall be allowed to inspect any monitoring equipment or method of exploration, operation or reclamation and have access to and may copy any records required under the Utah Mined Land Reclamation Act.

(3) Compliance Conference.

3.11. A permittee or operator may request an on-site compliance conference with an authorized representative of the Division to review the compliance status of any condition or practice at any mining operation and reclamation. Any such conference will not constitute an inspection within the meaning of Section 40-8-9 and R647-6-101.2.

3.12. The Division may accept or refuse any request to conduct a compliance conference under R647-6-101.3.11. A conference will be considered an inspection if a condition or practice exists which is described in R647-6-102.1.11.111 or 1.11.112.

3.13. The authorized representative at any compliance conference will review such conditions and practices in order to advise whether any such condition or practice is, or may become a violation of any requirement of the Utah Mined Land Reclamation Act or any applicable permit or exploration approval.

3.14. Neither the holding of a compliance conference under this section nor any statement given by the authorized representative at such a conference will affect:

3.14.111. Any rights or obligations of the Division or of the permittee or operator with respect to any inspection, notice of violation or cessation order, whether prior or subsequent to such compliance conference; or

3.14.112. The validity of any notice of violation or cessation order issued with respect to any condition or practice reviewed at the compliance conference.

R647-6-102. Provisions of State Enforcement.

1. Cessation Orders.

1.11. The Division will immediately order a cessation of mining operations and reclamation or of the relevant portion thereof, if it finds, on the basis of any Division inspection, any violation of the Utah Mined Land Reclamation Act, or any condition of a permit under the Utah Mined Land Reclamation Act, which:

1.11.111. Creates an imminent danger to the health or safety of the public; or

1.11.112. Is causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

1.12. Mining operations and reclamation conducted by any person without a valid permit constitute a condition or practice

described in R647-6-102.1.111 or 1.11.112.

1.13. If the cessation ordered under R647-6-102.1.11 will not completely abate the conditions described in R647-6-102.1.11.111 or 1.11.112 in the most expeditious manner physically possible, the Division will impose affirmative obligations on the permittee or operator to abate the violation. The order will specify the time by which abatement will be accomplished.

1.14. When a notice of violation has been issued under R647-6-102.2 and the permittee or operator fails to abate the violation within the abatement period fixed or subsequently extended by the Division then the Division will immediately order a cessation of mining operations and reclamation, or of the portion relevant to the violation. A cessation order issued under R647-6-102.1.14 will require the permittee or operator to take all steps the Division deems necessary to abate the violations covered by the order in the most expeditious manner physically possible.

1.15. A cessation order issued under R647-6-102.1.11 or R647-6-102.1.14 will be in writing, signed by the authorized representative of the Division who issued it, and will set forth with reasonable specificity:

1.15.111. The nature of the violation;

1.15.112. The remedial action or affirmative obligation required, if any, including interim steps, if appropriate;

1.15.113. The time established for abatement, if appropriate, including the time for meeting any interim steps;

1.15.114. A reasonable description of the portion of the mining operation and reclamation to which it applies; and

1.15.115. That the order will remain in effect until the violation has been abated or until vacated, modified or terminated in writing by the Division.

1.16. Reclamation and other activities intended to protect public health and safety and the environment will continue during the period of any order unless otherwise provided.

1.17. The Division may modify, terminate or vacate a cessation order for good cause and may extend the time for abatement if the failure to abate within the time previously set was not caused by lack of diligence on the part of the permittee or operator.

1.18. The Division will terminate a cessation order by written notice to the permittee or operator, when it is determined that all conditions, practices or violations listed in the order have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations under R647-7.

2. Notices of Violation.

2.11. When on the basis of any Division inspection the Division determines that there exists a violation of the Utah Mined Land Reclamation Act or any condition of a permit required by the Utah Mined Land Reclamation Act, which does not create an imminent danger or harm for which a cessation order must be issued under R647-6-102.1, the Division will issue a notice of violation to the permittee or operator fixing a reasonable time not to exceed 90 days for the abatement of the violation and providing opportunity for a conference before the Division.

2.12. A notice of violation issued under R647-6-102.2 will be in writing, signed by the authorized representative of the Division, and will set forth with reasonable specificity:

2.12.111. The nature of the violation;

2.12.112. The remedial action required, which may include interim steps;

2.12.113. A reasonable time for abatement, which may include time for accomplishment of interim steps; and

2.12.114. A reasonable description of the portion of the mining operation or reclamation to which it applies.

2.13. The Division may extend the time set for abatement or for accomplishment of an interim step, if the failure to meet

the time previously set was not caused by lack of diligence on the part of the permittee or operator. The total time for abatement under a notice of violation, including all extensions, will not exceed 90 days from the date of issuance except upon a showing by the permittee or operator that it is not feasible to abate the violation within 90 calendar days due to one or more of the circumstances in R647-6-102.2.16. An extended abatement date pursuant to this section will not be granted when the permittee or operator's failure to abate within 90 days has been caused by lack of diligence or intentional delay by the permittee or operator in completing the remedial action required.

2.14. If the permittee or operator fails to meet any time set for abatement or for accomplishment of an interim step, the Division will issue a cessation order under R647-6-102.1.14.

2.15. The Division will terminate a notice of violation by written notice to the permittee or operator, when the Division determines that all violations listed in the notice of violation have been abated. Termination will not affect the right of the Division to assess civil penalties for those violations which have been abated, nor will termination affect the right of the Division to assess civil penalties for those violations under R647-7.

2.16. Circumstances which may qualify a mining operation and reclamation for an abatement period of more than 90 days are:

2.16.111. Where good cause is shown by the permittee or operator;

2.16.112. Where climatic conditions preclude complete abatement within 90 days;

2.16.113. Where due to climatic conditions, abatement within 90 days would clearly cause more environmental harm than it would prevent; or

2.16.114. Where the permittee's or operator's action to abate the violation within 90 days would violate safety standards established by the Mine Safety and Health Act of 1977.

2.17. Other requirements on abatement times extended beyond 90 days.

2.17.111. Whenever an abatement time in excess of 90 days is permitted, interim abatement measures will be imposed to the extent necessary to minimize harm to the public or the environment.

2.17.112. The permittee or operator will have the burden of establishing by clear and convincing proof that he or she is entitled to an extension under R647-6-102.2.16 and R647-6-102.2.17.

2.17.113. Any determination made under R647-6-102.2.13 will contain a right of appeal pursuant to R647-5.

3. Service of Notices of Violation, Cessation Orders and Show Cause Orders.

3.11. A notice of violation, cessation order, or order to show cause will be served on the permittee or operator promptly after issuance by one of the following methods:

3.11.111. Personal service, in accordance with the Utah Rules of Civil Procedure. Service shall be effective on the date of personal service.

3.11.112. Delivery by United States mail or by courier service, provided the person being served signs a document indicating receipt. Service shall be complete on the date the receipt is signed.

3.11.113. First posting a copy of the notice at a conspicuous location at the mine site or offices of the place of violation, and thereafter by personally delivering or mailing a copy by certified mail to the permittee or operator at the last address provided to the Division. Service shall be complete upon personal delivery or three days after the date of mailing.

3.12. Service on the permittee or operator shall be sufficient if service is made upon:

3.12.111. an officer of a corporation,

3.12.112. the person designated by law for service of

process, or the registered agent for the corporation,

3.12.113. an owner, or partner of an entity other than a corporation, or

3.12.114. a person designated in writing by the permittee or operator as a person authorized to receive notice from the Division for matters pertaining to the mining operation and reclamation.

3.13. Proof of Service.

3.13.111. Proof of personal service shall be made in accordance with the provisions of the Utah Rules of Civil Procedure,

3.13.112. Proof of service by certified mail or courier shall be made by obtaining a copy of the receipt signed by the recipient.

3.13.113. Proof of posting, or personal delivery may be made by a signed written statement of the person effecting posting, or personal delivery stating the date, time, and place of posting. In addition, if personal delivery, the person to whom the notice was delivered.

4. Stop Work Conference.

4.11. Except as provided in R647-6-102.4.12 a notice of violation or cessation order which requires cessation of mining, will expire within 30 days after it is served unless a Stop Work Conference, under the rules of informal process (R645-5), has been held within that time. The Stop Work Conference will be held within 5 days of request, at or reasonably close to the mine site so that the site may be viewed during the conference or at any other location acceptable to the Division and the permittee or operator. The Division office nearest to the mine site will be deemed to be reasonably close to the mine site unless a closer location is requested and agreed to by the Division and permittee or operator. Expiration of a notice or order will not affect the Division's right to assess civil penalties for the violations mentioned in the notice or order under R647-7.

4.12. A notice of violation or cessation order will not expire as provided in R647-6-4.11, if the condition, practice or violation in question has been abated or if the Stop Work Conference has been waived, or if, with the consent of the permittee or operator, the conference is held upon agreement later than 30 days after the notice or order was served. For purposes of R647-6-4.12:

4.12.111. The conference will be deemed waived if the permittee or operator:

4.12.111.A. Is informed, by written notice served in the manner provided in R647-6-102.3, that he or she will be deemed to have waived a conference unless he or she requests one within 30 days after service of the notice; and

4.12.111.B. Fails to request a conference within that time;

4.12.112. The written notice referred to in R647-6-4.12.111.A., will be served no later than five days after the notice or order is served on the permittee or operator; and

4.12.113. The permittee or operator will be deemed to have consented to an extension of the time for holding the conference if his or her request is received on or after the 21st day after service of the notice or order. The extension of time will be equal to the number of days elapsed after the 21st day.

4.13. The Division will give as much advance notice as is practicable of the time, place, and subject matter of the Stop Work Conference to the permittee or operator.

4.14. The Division will also post notice of the conference at the Division office closest to the mine site.

4.15. A Stop Work Conference will be conducted by a representative of the Division who may accept oral or written arguments and any other relevant information from any person attending.

4.16. Within five days after the close of the conference, the Division will affirm, modify or vacate the notice or order in writing. The decision will be sent to the permittee or operator.

4.17. The granting or waiver of a conference will not

affect the right of any person to have a conference in R647-7-106 or to have a formal review under Subsection 40-8-9(5). No evidence as to statements made or evidence produced at a Stop Work Conference will be introduced as evidence or to impeach a witness at formal review proceedings of that matter before the Board.

4.17.111. Any order or decision issued by the Division as a result of a conference as provided for under Subsection 40-8-9(5) and R647-6-102 including an order upholding the cessation order shall be a modification of the cessation order.

5. Inability to Comply.

5.11. No cessation order or notice of violation issued under R647-6 may be vacated because of inability to comply.

5.12. Unless caused by lack of diligence, inability to comply may be considered only in mitigation of the amount of civil penalty under R647-7 and of the duration of the suspension of a permit under R647-6.

KEY: minerals reclamation

June 1, 2004

Notice of Continuation July 28, 2008

40-8-1 et seq.

**R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-7. Inspection and Enforcement: Civil Penalties.
R647-7-101. Information on Civil Penalties.**

1. Objectives. Civil penalties are assessed under Section 40-8-9.1 of the Utah Mined Land Reclamation Act and R647-7 to deter violations and to ensure maximum compliance with the terms and purposes of the Utah Mined Land Reclamation Act on the part of the minerals mining industry.

2. How Assessments Are Made. The Division will appoint an assessment officer to review each notice of violation and cessation order in accordance with the assessment procedures described in R647-7 to determine whether a civil penalty will be assessed and the amount of the penalty.

R647-7-102. Penalty To Be Assessed.

1. The assessment officer will assess a penalty for each cessation order.

2. The assessment officer may assess a penalty for each notice of violation under the point system described in R647-7-103. In determining whether to assess a penalty, the assessment officer will consider the factors listed in R647-7-103.

3. Within 15 days of service of a notice of violation or cessation order, the permittee or operator may submit written information about the violation to the assessment officer at the Division offices. The assessment officer will consider any information so submitted in determining the facts surrounding the violation and the amount of the penalty.

R647-7-103. Point System for Penalties.

1. Amount of Penalty. In determining the amount of the penalty, if any, to be assessed, consideration will be given to:

1.11. The permittee or operator's history of previous violations at the particular mining operation and reclamation, regardless of whether any led to a civil penalty assessment. However, a violation will not be considered if the notice or order containing the violation meets the conditions described in R647-7-103.2.11.111 or R647-7-103.2.11.112.

1.12. The seriousness of the violation based on the likelihood and extent of the potential or actual impact on the public or environment, both within and outside the permit area.

1.13. The degree of fault of the permittee or operator in causing or failing to correct the violation, either through act or omission. Such degree will range from inadvertent action causing an event which was unavoidable by the exercise of reasonable care to reckless, knowing or intentional conduct.

1.14. The permittee or operator's demonstrated good faith, by considering whether he took extraordinary measures to abate the violation in the shortest possible time, or merely abated the violation within the time given for abatement.

1.15. Consideration will also be given to whether the permittee or operator gained any economic benefit as a result of a failure to comply.

2. Assessment of Points.

2.11. History of Previous Violations. The assessment officer will assign up to 25 points based on the history of previous violations. One point will be assigned for each past violation contained in a notice of violation. Five points may be assigned for each violation contained in a cessation order. The history of previous violations, for the purpose of assigning points, will be determined and the points assigned with respect to the particular mining operation and reclamation. Points will be assigned as follows:

2.11.111. A violation will not be counted, if the notice or order is the subject of pending administrative or judicial review, or if the time to request such review, or to appeal any administrative or judicial decision has not expired, and thereafter, it will be counted for only three years;

2.11.112. No violation for which the notice or order has been vacated will be counted; and

2.11.113. Each violation will be counted without regard to whether it led to a civil penalty assessment.

2.12. Seriousness. The assessment officer will assign up to 45 points based on the seriousness of the violation as follows:

2.12.111. Probability of occurrence. The assessment officer will assign up to 20 points based on the probability of the occurrence of the event which a violated standard is designed to prevent. Points will be assessed according to the following table:

TABLE 1

PROBABILITY OF OCCURRENCE	POINTS
None	0
Insignificant	1 - 4
Unlikely	5 - 9
Likely	10 - 19
Occurred	20

2.12.112. Extent of potential or actual damage. The assessment officer will assign up to 25 points, based on the extent of the potential or actual damage to the public health and safety or the environment, in terms of duration, area and impact of such damage.

2.12.113. Alternative to R647-7-103.2.12.111 and R647-7-103.2.12.112, in the case of a violation of an administrative requirement, such as a requirement to keep records, the assessment officer will, in lieu of R647-7-103.2.12.111 and R647-7-103.2.12.112, assign up to 25 points for seriousness, based upon the extent to which enforcement is hindered by the violation.

2.13. Degree of Fault.

2.13.111. The assessment officer will assign up to 30 points based on the degree of fault of the permittee or operator in causing or failing to correct the violation, condition, or practice which led to the notice or order, either through act or omission. Points will be assessed as follows:

2.13.111.A. A violation which occurs through no fault of the permittee or operator, or by inadvertence which was unavoidable by the exercise of reasonable care, will be assigned no penalty points for degree of fault;

2.13.111.B. A violation which is caused by fault of the operator will be assigned 15 points or less, depending on the degree of fault. Fault means the failure of a permittee or operator to prevent the occurrence of any violation of his or her permit or any requirement of the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of such permit or the Utah Mined Land Reclamation Act due to indifference, lack of diligence, or lack of reasonable care; and

2.13.111.C. A violation which occurs through a greater degree of fault, meaning reckless, knowing or intentional conduct will be assigned 16 to 30 points, depending on the degree of fault.

2.13.112. In calculating points to be assigned for degree of fault, the acts of all persons working at the mining operations on the mine site will be attributed to the permittee or operator, unless that permittee or operator establishes that they were acts of deliberate sabotage or acts of a third-party otherwise authorized to occupy the same lands.

2.14. Good Faith in Attempting to Achieve Compliance. The assessment officer will subtract points based on the degree of good faith of the permittee or operator. Points will be assigned as follows:

2.14.111. Easy Abatement Situation. An easy abatement situation is one in which the operator has on-site the resources necessary to achieve compliance of the violated standard within the permit area.

DEGREE OF GOOD FAITH	POINTS		
Immediate Compliance	-11 to -20	28	880
Rapid Compliance	- 1 to -10	29	990
Normal Compliance	0	30	1,100
		31	1,210
		32	1,320
		33	1,430

2.14.112. Difficult Abatement Situation. A difficult abatement situation is one which requires submission of plans prior to physical activity to achieve compliance, or the permittee or operator does not have the resources at hand to achieve compliance of the violated standard.

TABLE 3

DEGREE OF GOOD FAITH	POINTS		
Rapid Compliance	-11 to -20	42	2,420
Normal Compliance	- 1 to -10	43	2,530
Extended Compliance	0	44	2,640
		45	2,750
		46	2,860
		47	2,970
		48	3,080
		49	3,190
		50	3,300
		51	3,410
		52	3,520
		53	3,630
		54	3,740
		55	3,850
		56	3,960
		57	4,070
		58	4,180
		59	4,290
		60	4,400
		61	4,510
		62	4,620
		63	4,730
		64	4,840
		65	4,950

2.15. Definition of Compliance.

2.15.111. Immediate Compliance requires evidence that the violation has been abated immediately (which is a question of fact) following issuance of the notice of violation.

2.15.112. Rapid Compliance requires evidence that the permittee or operator used diligence to abate the violation.

2.15.113. Normal Compliance means that the operator complied within the abatement period required under the notice of violation or by the violated standards.

2.15.114. Extended Compliance means that the permittee or operator took minimal actions for abatement to stay within the limits of the notice of violation or the violated standard; or that the plan submitted for abatement was incomplete.

2.16. The Effect on the permittee or operator's Ability to Continue in Business. Initially, it will be presumed that the permittee or operator's ability to continue in business will not be affected by the order of assessment. The permittee or operator may submit to the assessment officer information concerning the operator's financial status to show that payment of the civil penalty will affect the permittee or operator's ability to continue in business. A reduction of the penalty, work in kind, or a special payment plan may be ordered if the information provided by the permittee or operator demonstrates that the civil penalty will substantially reduce the likelihood of the permittee or operator's ability to continue in business.

3. Determination of Amount of Penalty. The assessment officer will determine the amount of any civil penalty converting the total number of points assigned under R647-7-103.3 to a dollar amount, according to the following table:

Points	Dollars
1	22
2	44
3	66
4	88
5	110
6	132
7	154
8	176
9	198
10	220
11	242
12	264
13	286
14	308
15	330
16	352
17	374
18	396
19	418
20	440
21	462
22	484
23	506
24	528
25	550
26	660
27	770

4. Whenever a violation contained in a cessation order has not been abated, a civil penalty of not less than \$750.00 will be assessed for each day during which such failure continues, except that, if the permittee or operator initiates review proceedings with respect to the violation, the abatement period will be extended as follows:

4.11. If suspension of the abatement requirements of the notice or order is ordered in a temporary relief proceeding under the Utah Mined Land Reclamation Act, after determination that the permittee or operator will suffer irreparable loss or damage from the application of the requirements, the extended period permitted for abatement will not end until the date specified in the Board final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

4.12. If the permittee or operator initiates review proceedings under the Utah Mined Land Reclamation Act with respect to the violation, in which the obligations to abate are suspended by the court pursuant to the Utah Mined Land Reclamation Act, the extended period permitted for abatement will not end until the date specified in the court final order; and a penalty will not be assessed until the time allowed for abatement by the order has expired.

R647-7-104. Waiver of Use of Formula to Determine Civil Penalty.

1. The assessment officer upon his or her own initiative or upon written request received by the Division within 15 days of receipt of a notice of violation or a cessation order, may waive the use of the formula contained in R647-7-103 to set the civil penalty, if they determine that, taking into account exceptional factors present in the particular case, the penalty is demonstrably unjust.

R647-7-105. Procedures for Assessment of Civil Penalties - Proposed Assessment.

1. The assessment officer will serve a copy of the proposed assessment and of the worksheet showing the computation of the proposed assessment on the permittee or operator, by certified mail, within 30 days of the issuance of the notice or

order.

1.11. If the mail is tendered at the address of the permittee or operator set forth in the permit application or at any address at which that permittee or operator is in fact located, and he or she refuses to accept delivery of or to collect such mail, the requirements of R647-7-105.1 will be deemed to have been complied with upon such tender.

1.12. Failure by the Division to serve any proposed assessment within 30 days will not be grounds for dismissal of all or any part of such assessment unless the permittee or operator:

1.12.111. Proves actual prejudice as a result of the delay; and

1.12.112. Makes a timely objection to the delay.

2. Unless a conference has been requested, the assessment officer will review and reassess any penalty if necessary to consider facts which were not reasonably available on the date of issuance of the proposed assessment. The assessment officer will serve a copy of any such reassessment and of the worksheet showing the computation of the reassessment in the manner provided in R647-7-105.1, within 30 days after the date the violation is abated.

R647-7-106. Procedures for Informal Conference.

1. The Division will arrange for a conference to review the fact of the violation and/or the proposed assessment or reassessment, upon written request of the permittee or operator, if the request is received within 30 days from the date the proposed assessment or reassessment is received by the permittee or operator.

2. Informal Conference Scheduling and Findings.

2.11. The Division will assign a conference officer to hold conferences. The conference will be informal. The conference will be held within 60 days from the date of issuance of the proposed assessment or the end of the abatement period, whichever is later. PROVIDED: That a failure by the Division to hold such a conference within 60 days will not be grounds for dismissal of all or part of an assessment unless the permittee or operator proves actual prejudice as a result of the delay.

2.12. The Division will provide notice of the time and place of the conference to the operator or permittee and post notice of the conference at the main Division office at least five days before the conference. Any person may attend the conference.

2.13. The conference officer will consider all relevant information on the violation. Within 30 days after the conference is held, the conference officer will either:

2.13.111. Settle the issues, in which case a settlement agreement will be prepared and signed by the conference officer on behalf of the Division and by the permittee or operator;

2.13.112. Affirm, raise, lower, or vacate the penalty; or

2.13.113. Affirm, deny, modify or vacate the violation.

3. The conference officer will promptly serve the permittee or operator with a notice of his or her action in the manner provided in R647-7-105.1, and will include a worksheet if the penalty has been raised or lowered. The reasons for the conference officer's action will be fully documented in the file.

4. Informal Conference Settlement Agreement.

4.11. If a settlement agreement is entered into, the permittee or operator will be deemed to have waived all rights to further review of the violation or penalty in question, except as otherwise expressly provided for in the settlement agreement. The settlement agreement will contain a clause to this effect.

4.12. If full payment of the amount specified in the settlement agreement is not received by the Division within 30 days after the date of signing, the Division may enforce the agreement or rescind it and proceed according to R647-7-106.2.13.112 within 30 days from the date of the rescission.

5. The conference officer may terminate the conference

when he or she determines that the issues cannot be resolved or that the permittee or operator is not diligently working toward resolution of the issues.

6. At formal review proceedings of the matter before the Board, no evidence as to statements made or evidence produced by one party at a conference will be introduced as evidence by another party or to impeach a witness.

R647-7-107. Requests for Formal Hearing.

1. A permittee or operator charged with a violation may contest the proposed penalty or the fact of the violation by submitting: (a) a petition to the Board; and (b) an amount equal to the proposed penalty (or, if a conference has been held, the reassessed or affirmed penalty) to the Division (to be held in escrow as provided in R647-7-107.2) within 30 days of receipt of the proposed assessment or reassessment, or 30 days from the date of service of the conference officer's action, whichever is later, but in every case, the penalty must be escrowed prior to commencement of the formal hearing.

2. The Division will transfer all funds submitted under R647-7-107.1 to an escrow account pending completion of the administrative and judicial review process, at which time it will disburse them as provided in R647-7-108.2 or R647-7-108.3.

3. Formal review of the violation fact or penalty will be conducted by the Board under the provisions of R641, rules of practice and procedure before the Board.

R647-7-108. Final Assessment and Payment of Penalty.

1. If the permittee or operator fails to request a hearing as provided in R647-7-107, the proposed assessment or reassessment will become a final order of the Division and the penalty assessed will become due and payable upon expiration of the time allowed to request a hearing and upon the Division fulfilling its responsibilities under Subsection 40-8-9.1(3)(e).

2. If any party requests judicial review of a final order of the Board, the proposed penalty will be held in escrow until completion of the review. Otherwise, subject to R647-7-108.3, the escrowed funds will be transferred to the Division in payment of the penalty, and the escrow will end.

3. If the final decision of the administrative and judicial review results in an order reducing or eliminating the proposed penalty assessed under R647-7, the Division will within 30 days of receipt of the order refund to the permittee or operator all or part of the escrowed amount and interest accumulated, if any.

4. If the review results in an order increasing the penalty, the permittee or operator will pay the difference to the Division within 15 days after the order is received by such permittee or operator.

KEY: minerals reclamation

June 1, 2004

Notice of Continuation July 28, 2008

40-8-1 et seq.

**R647. Natural Resources; Oil, Gas and Mining; Non-Coal.
R647-8. Inspection and Enforcement: Individual Civil Penalties.**

R647-8-101. Information on Individual Civil Penalties.

1. The rules in R647-8 provide guidance to exercise the authority set forth in Subsection 40-8-9.1(6).
2. Individual civil penalties will be assessed by a Division-appointed assessment officer using the process described in R647-8.

R647-8-102. When an Individual Civil Penalty May Be Assessed.

1. Except as provided in R647-8-102.2, the assessment officer may assess an individual civil penalty against any corporate director, officer, or agent of a permittee or operator, or any other person who may be liable under Section 40-8-9.1 who knowingly and willfully authorized, ordered or carried out a violation, failure, or refusal.
2. The assessment officer will not assess an individual civil penalty in situations resulting from a permit violation by a corporate permittee or operator until a cessation order has been issued by the Division to the corporate permittee or operator for the violation, and the cessation order has remained unabated for 30 days.

R647-8-103. Amount of the Individual Civil Penalty.

1. In determining the amount of an individual civil penalty assessed under R647-8-102, the assessment officer will consider the criteria specified in Section 40-8-9.1, including:
 - 1.11. The individual's history of authorizing, ordering or carrying out previous violations, failures or refusals at the particular mining operation and reclamation;
 - 1.12. The seriousness of the violation failure or refusal (as indicated by the extent of damage and/or the cost of reclamation), including any irreparable harm to the environment and any hazard to the health or safety of the public; and
 - 1.13. The demonstrated good faith of the individual charged in attempting to achieve rapid compliance after notice of the violation, failure, or refusal.
2. The individual civil penalty will not exceed \$5,000 for each violation. Each day of continuing violation may be deemed a separate violation and the assessment officer may assess a separate individual civil penalty for each day the violation, failure or refusal continues, from the date of service of the underlying notice of violation, cessation order, or other order incorporated in a final decision issued by the Board, until abatement or compliance is achieved.

R647-8-104. Procedure for Assessment of Individual Civil Penalty.

1. Notice. The Division will serve on each individual to be assessed an individual civil penalty a notice of proposed individual civil penalty assessment, including a narrative explanation of the reasons for the penalty, the amount to be assessed, and a copy of any underlying notice of violation and cessation order.
2. Final order and opportunity for review. The notice of proposed individual civil penalty assessment shall become a final order of the Division 30 days after service upon the individual unless:
 - 2.11. The individual files within 30 days of service of the notice of proposed individual civil penalty assessment a petition for review with the Board; or
 - 2.12. The Division and the individual or responsible corporate permittee or operator agree within 30 days of service of the notice of proposed individual civil penalty assessment to a schedule or plan for the abatement or correction of the violation, failure or refusal.
3. Service. Service of notice under R647-8-104 will

satisfy the standard of R641, concerning the rules of practice and procedure before the Board.

R647-8-105. Payment of Penalty.

1. No abatement or appeal. If a notice of proposed individual civil penalty assessment becomes a final order in the absence of a petition for review or abatement agreement, the penalty will be due upon issuance of the final order.
2. Appeal. If an individual named in a notice of proposed individual civil penalty assessment files a petition for review in accordance with R641, the penalty will be due upon issuance of a final Board order affirming, increasing, or decreasing the proposed penalty.
3. Abatement agreement. Where the Board and the corporate permittee, operator, or individual have agreed in writing on a plan for the abatement of or compliance with the unabated order, an individual named in a notice of proposed individual civil penalty assessment may postpone payment until receiving either a final order from the Board stating that the penalty is due on the date of such final order, or written notice that abatement or compliance is satisfactory and the penalty has been withdrawn.
4. Delinquent payment. Following the expiration of 30 days after the issuance of a final order assessing an individual civil penalty, any delinquent penalty will be subject to interest at the rate established quarterly by the U.S. Department of the Treasury for use in applying late charges on late payments to the Federal Government, pursuant to Treasury Financial Manual 6-8020.20. The Treasury current value of funds rate is published by the Fiscal Service in the notices section of the Federal Register. Interest on unpaid penalties will run from the date payment first was due until the date of payment. Failure to pay overdue penalties will result in referral to the Utah Attorney General for appropriate collection action.

**KEY: minerals reclamation
June 1, 2004
Notice of Continuation July 28, 2008**

40-8-1 et seq.

R649. Natural Resources; Oil, Gas and Mining; Oil and Gas.**R649-6. Gas Processing and Waste Crude Oil Treatment.****R649-6-1. Gas Processing Plants.**

1. In accordance with Section 40-6-16 any operator of a facility or plant in which liquefiable hydrocarbons are removed from natural gas, including wet gas or casinghead gas, and the remaining residue gas is conditioned for delivery for sale, recycling, or other use, shall file monthly, Form 13-A and Form 13-B.

1.1. Reports shall be filed for all gas processing plants or facilities to account for the receipt, processing, and disposition of all gas by the plant.

1.2. Plant operators that are required by contractual arrangements to allocate the residue gas and extracted liquids processed by the plant or facility to the individual producing wells, shall identify each well or entity connected to the plant or facility by API number and report the metered wet gas volumes, residue gas volumes returned to the field, and all allocated residue gas and natural gas liquid volumes.

R649-6-2. Waste Crude Oil Treatment Facilities.

1. Prior to the construction of a waste crude oil treatment facility, an application shall be submitted to the division describing the ownership, location, type, and capacity of the facility contemplated; the extent and location of the surface area to be disturbed, including any pit, pond, or land associated with the facility; and a reclamation plan for the site. Approval of the application must be issued by the division before any ground clearing or construction shall occur.

2. As a condition for approval of any application, the owner or operator shall post a bond in an amount determined by the division to cover reclamation costs for the site. Failure to post the bond shall be considered sufficient grounds for denial of the application.

3. No waste crude oil treatment facility operator shall accept delivery of crude oil obtained from any tank, reserve pit, disposal pond or pit, or similar facility unless the delivery is accompanied by a run ticket, invoice, receipt or similar document showing the origin and quantity of the crude oil.

KEY: oil and gas law**1989****40-6-1 et seq****Notice of Continuation July 28, 2008**

R651. Natural Resources, Parks and Recreation.**R651-407. Off-Highway Vehicle Advisory Council.****R651-407-1. Appointment and Description of Vehicle Advisory Council Membership.**

The board will appoint an eleven-member off-highway vehicle advisory council representing off-highway vehicle users in the state. One member will be from each of the following interests: the Bureau of Land Management; the U.S.D.A. Forest Service; the Utah School and Institutional Trust Lands Administration; snowmobiling; motorcycling; all-terrain vehicle usage; four-wheel drive vehicle usage; off-highway vehicle dealers; off-highway vehicle safety; a youth member; and a member-at-large.

KEY: off-highway vehicles**July 5, 2004****41-22-10(1)****Notice of Continuation July 7, 2008**

R651. Natural Resources, Parks and Recreation.**R651-408. Off-Highway Vehicle Education Curriculum Standards.****R651-408-1. Student Requirements.**

1. A student under 18 years old attending any off-highway vehicle education course shall be required to have a parent or adult responsible for that student attend at least the first hour of any classroom session, and all of any applicable skills module.

2. All students shall submit to the course instructor a Parental Consent and Waiver form signed by their parent or legal guardian during any off-highway vehicle education class.

3. All students participating in the skills module shall wear the following safety equipment: a properly fitted and fastened, safety-rated helmet, designed for motorized use, safety proven eye protection, gloves, and long pants and sturdy shoes or boots that cover the foot and ankle.

4. A student must receive a grade of 70 percent or better on the written test before participating in a corresponding skills module. A score of 70 percent is also necessary on the skills module in order to be certified.

5. A student may challenge the written test or any of the skills modules by passing the appropriate test.

6. A student failing any test or skills module may be retested no sooner than seven days after the initial test. If the student fails the retest of a skills module, then he must retake the entire module.

7. A student participating in the skills module must be able to straddle the machine, with a slight bend to his knees, while his feet are on the foot rests.

R651-408-2. Safety Instructor Requirements.

1. An off-highway vehicle safety instructor shall teach a minimum of two off-highway vehicle courses or skills modules per year to maintain instructor certification.

R651-408-3. Off-Highway Vehicle Education Fees.

1. The fee for the off-highway vehicle education course is \$10.

2. The fee to challenge the off-highway vehicle education course by taking the knowledge and skills test is \$5.

3. A duplicate off-highway vehicle education certificate is \$2.

R651-408-4. Volunteer Certified Safety Instructor Reimbursement.

Volunteer certified OHV safety instructors will be reimbursed \$5 for each student they train and test in the Division's OHV Education Program.

KEY: off-highway vehicles**April 1, 2003****Notice of Continuation July 7, 2008****41-22-31****41-22-32****41-22-33**

R651. Natural Resources, Parks and Recreation.**R651-601. Definitions as Used in These Rules.****R651-601-1. Division.**

"Division" means the Division of Parks and Recreation, Department of Natural Resources.

R651-601-2. Ranger.

"Ranger" means any employee of the Division who is designated by the Director or his designee as a law enforcement officer as defined in Section 53-13-103.

R651-601-3. Division Representative.

"Division Representative" means any employee of the Division authorized by the Director or his designee to act in an official capacity.

R651-601-4. Natural and Cultural Resources.

"Natural and Cultural Resources" means those features and values including all lands, minerals, soils and waters, natural systems and processes, and all plants, animals, topographic, geologic and paleontological components of a park area as well as all historic and pre-historic, sites, trails, structures, inscriptions, rock art and artifacts representative of a given culture occurring on or within any park area.

R651-601-5. Park System.

"Park system" means all natural and cultural resource, and all buildings and other improvements owned, leased, or otherwise managed by the Division.

R651-601-6. Park Area.

"Park area" means any individual park property in the park system.

R651-601-7. Manager.

"Manager" means the Division representative in charge of a park area.

R651-601-8. Permission.

"Permission" means oral or written authorization by a park representative.

R651-601-9. Permit.

"Permit" means written authorization by a park representative.

R651-601-10. Posted.

"Posted" means displayed printed instruction or information.

R651-601-11. Person.

"Person" means individual, corporation, company, partnership, trust, firm, or association of persons.

R651-601-12. Commercial Activity.

"Commercial Activity" means any activity, private or otherwise, that is for the purpose of commercial gain, or that is part of any scheme or plan established for the purpose of obtaining commercial gain. This includes, but is not limited to:

- (1) sales of goods or merchandise.
- (2) rentals of equipment.
- (3) collection of entrance or admission fees.
- (4) collection of storage or use fees.
- (5) sales of services.
- (6) delivery service of rental equipment to the park area by a rental agency as part of a customer rental agreement.

R651-601-13. Commercial Gain.

"Commercial gain" means compensation in money,

services, or other consideration as part of a scheme or effort to generate income or financial advantage of any kind.

R651-601-14. Concession Contract.

"Concession Contract" means a use agreement granted to an individual, partnership, corporation, or other recognized organization, for the purpose of providing services or sales of goods or merchandise for conducting commercial activity.

R651-601-15. Special Use Permit.

"Special Use Permit" means a temporary authorization or concession, not to exceed one year, for the purpose of conducting commercial activity.

R651-601-16. Cooperative Agreement.

A written instrument whereby two or more parties agree to terms governing the parties' relationship, much as a contract. Informal interoffice communication definition does not apply in this case.

R651-601-17. Definitions.

(1) "Motorized Transportation Device" means any motorized device used as a mode of transportation that includes: "Electric assisted bicycles", "Mopeds", "Motor Assisted scooters", "motorcycles", "motor-driven cycle", and "personal motorized mobility device" as defined in Utah State Code 41-6-1. "Motorized wheelchairs" are also included under this definition.

KEY: parks, off-highway vehicles

August 22, 2006

Notice of Continuation July 7, 2008

41-22-10

63-11-3

63-11-17

R651. Natural Resources, Parks and Recreation.**R651-602. Aircraft and Powerless Flight.****R651-602-1. Landing or Taking Off.**

The landing or taking off of aircraft within the park system other than at designated lakes, reservoirs or landing areas is prohibited.

R651-602-2. Air Delivery or Pickup.

Except in emergencies, the air delivery or pickup of any person or thing without advanced permission from the park manager is prohibited.

R651-602-3. Powerless Flight Launching and Landing.

The launching or landing of gliders, hot-air balloons, hang gliders, and other devices designed to carry persons or objects through the air in powerless flight is prohibited except by Special Use Permit (see R651-608).

R651-602-4. Lakes and Reservoirs Designated as Open.

The following lakes and reservoirs are designated as open to the landing of aircraft: (1) Deer Creek; (2) Jordanelle; (3) Rockport, (4) Starvation (5) Willard Bay.

R651-602-5. Aircraft Prohibited from Landing on Lakes or Reservoirs.

Except as outlined in R651-602-2, aircraft are prohibited from landing or taking off on "designated as open" lakes or reservoirs when any one of the following conditions exists. (1) On a Friday, Saturday, Sunday, or during a holiday period between May 1 to September 30; or (2) Anytime the aircraft cannot maintain a distance of at least 500 feet from any person, vessel, vehicle or structure during landing or takeoff.

R651-602-6. Aircraft on the Water Operation Requirements.

A person operating an aircraft on the water: (1) shall not approach within 500 feet of a marina, launch ramp, boat dock, vessel or a beach occupied by person(s), when using the aircraft's primary propulsion system(s); (2) shall comply with Federal Aviation Regulations, Section 91.115, Right-of-way rules: Water operations.

KEY: parks

April 1, 2003

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.**R651-603. Animals.****R651-603-1. Pets.**

(1) All pets are prohibited in park areas unless caged, or physically controlled on a six foot maximum leash, or confined to the inside of a vehicle.

(2) Pet owners are responsible for picking up and properly disposing of all fecal matter deposited by their pets/animals within the park area.

R651-603-2. Animal Exclusions.

All animals are prohibited from public buildings, bathing beaches and adjacent waters, eating places and any other trails or locations posted closed to pets within the park system, except for guide or service dogs as authorized by Section 26-30-2.

R651-603-3. Unattended Animal.

Leaving any animal unattended is prohibited except by permit.

R651-603-4. Dangerous Animals.

Vicious, dangerous, or noisy animals of any kind are prohibited within the park system.

R651-603-5. Wildlife.

Feeding, touching, teasing, molesting, or intentionally disturbing any wildlife is prohibited except as approved for authorized hunting and trapping activities (see R651-614).

R651-603-6. Hitching or Tying Animals.

Hitching or tying an animal to any tree, shrub or structure in a manner that may cause damage or block or restrict foot or vehicular traffic is prohibited.

R651-603-7. Horse Use on Trails.

Horses and other saddle or pack animals are prohibited on developed trails and routes not posted open for their use.

R651-603-8. Horse Use within a Park.

Horse and other saddle or pack animals are prohibited from all campgrounds, picnic areas and other areas of public gatherings except where trails and facilities are specifically designed and posted for such use.

KEY: parks

June 15, 2001

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.

R651-604. Audio Devices.

R651-604-1. Operation or Use of Audio Devices.

The operation or use of any audio or noise-producing devices in such a manner or at such a time so as to unreasonably disturb any person is prohibited.

R651-604-2. Operation or Use of a Public Address System.

The operation or use of a public address system or any other high volume audio devices without a permit is prohibited.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-605. Begging and Soliciting.

R651-605-1. Prohibition of Begging.

Begging is prohibited.

R651-605-2. Prohibition of Soliciting Except by Permit.

Soliciting of any type is prohibited except by authorized concessionaires or by permit.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-606. Camping.****R651-606-1. Permit Required for Camping in Undeveloped Areas.**

No person shall camp in undeveloped locations of a park area without proper permit.

R651-606-2. Reserved Campsites may not be Taken.

No person shall occupy or otherwise use a campsite when it is occupied or reserved for another person.

R651-606-3. Maximum Occupancy of Campsites.

Unless authorized by a park representative, individual campsites shall not be occupied by more than two vehicles and eight persons.

R651-606-4. Payment Required before Occupancy of Campsite.

No person shall occupy camping facilities prior to payment of required fees.

R651-606-5. Time-Limit in Campsite may not be Exceeded.

No person shall exceed the limitation on the length of time persons may camp within a park area as approved in the park system fee schedule (see R651-611).

R651-606-6. Use of Showers.

Showers may only be used by campers with camping or shower authorization permits and only in accordance with posted restrictions.

R651-606-7. Camping only in Designated Areas.

All persons shall park or camp only in areas designated for those purposes.

R651-606-8. Time by which Campsites shall be Vacated.

All persons shall vacate the campsite by 2:00 p.m. of the last day of the camp permit.

R651-606-9. Clean-up of Campsite Required.

All persons shall remove all personal property, debris and litter prior to departing the site.

R651-606-10. Quiet Hours.

No person shall operate or allow the operation of a generator, audio device; make or allow the making of unreasonable noises from 10:00 p.m. to 7:00 a.m., except in the following area(s): Coral Pink Sand Dunes State Park, which shall be from 10:00 p.m. to 9:00 a.m.

KEY: parks**August 21, 2006****Notice of Continuation July 7, 2008****63-11-17(8)**

R651. Natural Resources, Parks and Recreation.

R651-607. Disorderly Conduct.

R651-607-1. Applicability of the Utah Criminal Code.

Offenses against persons and property shall be handled through the Utah Criminal Code.

R651-607-2. Restricted Activities.

No person shall participate in a posted restricted activity.

KEY: parks

October 4, 1999

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-608. Events of Special Uses.****R651-608-1. Permit Requirements.**

A special assembly, exhibit, public speech, public demonstration, or special activity or use (in this Rule collectively called "event") shall be by special use permit ("permit").

(1) REQUESTS. The person or group desiring to conduct an event shall request a permit from the local park manager, region or the Division's main office at least 30 business days before the proposed event. Late requests may be accepted subject to the terms of subsection (4) below.

(2) REQUIREMENTS. The Division director or his designee shall have the discretion to grant or deny the request for permit. A permit may be granted only on the following requirements: (a) No event may substantially interrupt the safe and orderly operation of the park or facility; (b) No event may unduly interfere with proper fire, police, ambulance or other life-safety protection or service to areas where the activity will take place or areas contiguous thereto; (c) No event may be reasonably likely to cause injury to persons or property; (d) No event may be held for the primary purpose of advertising the goods, wares or merchandise of a particular business establishment or vendor; (e) No event may involve pornographic or obscene materials or performances, or materials harmful to minors, as those terms are used in the Utah criminal code or in applicable local ordinances; and (f) liability insurance will be required, co-insuring the Division.

(3) CONFLICTING REQUESTS.

(a) Considerations. When two or more persons, groups or organizations request to use a park or facility for events that conflict as to time, place, or purpose, the Division director or his designee shall evaluate: (i) the size, nature and purpose of each event; (ii) each event's historical or traditional use of the park or facility; (iii) the date and time each conflicting request was received by the Division; (iv) whether an event would require Division support services; (v) possible alternative places or times for the conflicting events; and (vi) other factors that would resolve the conflicts, protect the public safety, health, and welfare, or assist the Division in regulating the time, place, and manner of the events.

(b) Disposition. After obtaining the relevant information and weighing the relevant considerations stated in the immediately preceding paragraph, the Division director or his designee shall resolve the conflict (i) by the parties' agreement to modify the requests to avoid conflicts and accommodate the public interest; or (ii) if no voluntary agreement is reached, by ordering the time, place, and manner for each requested event; or (iii) by exercising his discretion to deny one or more or all of the requests.

(4) LATE REQUESTS. When a request for permit is not timely made under subsection (1), the request shall state the grounds for its untimeliness. If the Division director or his designee determines that the untimeliness should be excused because of exigency, unexpected circumstances, or other reasons, the request shall be processed.

(5) APPEALS. There shall be no right to administrative appeal of the decision granting or denying a request for permit.

R651-608-2. Events Prohibited without Permit.

Any person, defined as "an individual, partnership, corporation, association, governmental entity or public or private organization of any character other than an agency", or agency shall not engage, conduct, or participate in a commercial activity or scheduled event on state park property without a Special Use Permit, Cooperative Agreement or Concession Contract.

KEY: parks

March 6, 2001

Notice of Continuation July 7, 2008

63-11-17(1)(a)

R651. Natural Resources, Parks and Recreation.

R651-609. Explosives and Fireworks.

R651-609-1. Use or Possession in Parks Prohibited without Permit.

The use or possession of explosives, fireworks, or firecrackers, except by permit, is prohibited within the park system.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-610. Expulsion.

R651-610-1. Violation of Rules.

Any person or persons who are in violation of any rules promulgated under Section 63-11-17 may be expelled from the park area by a ranger or other law enforcement officer, and prohibited from returning for 48 hours.

KEY: parks, fees

December 2, 1999

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-612. Firearms, Traps and Other Weapons.****R651-612-1. Unlawful Discharge of Weapons or Firearms.**

The discharge of weapons or firearms, including air and gas powered types, and all other devices capable of launching a projectile which could immobilize, injure, or kill any person or animal or damage property are prohibited in the park system unless:

(1) The weapon or device is being used for the legal pursuit of wildlife as per R651-614.

(2) The use of the weapon or device is authorized by a Special Use Permit or an authorized event as per R651-608.

(3) The weapon or device is used in accordance with UCA 53-5-701 Concealed Weapons Act, or UCA 76-2-402, 76-2-403, or 76-2-405.

(4) The weapon or device is being used by authorized law enforcement officers in the performance of their official duties in accordance with UCA 76-2-402.

KEY: parks, firearms

March 10, 2008

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.

R651-613. Fires.

R651-613-1. Restrictions on Lighting and Maintaining Fires.

The lighting or maintaining of a fire is prohibited except:

- (1) In designated camping and picnicking areas when the fire is confined in a fireplace or grill provided for that purpose,
- (2) in other locations by permit, and
- (3) in stoves or lanterns using gasoline, propane, or similar fuels.

R651-613-2. Fires must be Extinguished when not in Use.

All fires shall be completely extinguished when not in use. Leaving a fire unattended is prohibited.

R651-613-3. Throwing or Dropping of Burning Material.

Throwing or dropping of a lighted cigarette or other burning material is prohibited.

R651-613-4. Posted Restrictions Prohibiting Smoking or Fires.

Smoking or lighting fires is prohibited in the park area when such restriction is posted.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-614. Fishing, Hunting and Trapping.****R651-614-1. Applicability of the Utah Fish and Game Code.**

Fishing, hunting and trapping shall be in accordance with the Utah Fish and Game Code, with the following provisions.

R651-614-2. Fishing near Public Areas.

Fishing from or within 100 feet of any public float designed for water sports, developed beaches, public loading docks, or boat ramps is prohibited.

R651-614-3. Ice Fishing.

Ice fishing is prohibited in areas posted closed by the park manager.

R651-614-4. Hunting Wildlife.

Hunting of any wildlife is prohibited within the boundaries of all park areas except those designated open as follows:

- (1)(a) Antelope Island State Park - By special permit only
- (b) Antelope Island permits to hunt bison shall be available, distributed and utilized consistent with the following statutes and rules of the Division of Wildlife Resources to the same extent as if the bison were considered wildlife: (1) Utah Code Sections 23-13-2; 23-19-1, 23-19-5; 23-19-6, 23-19-9(11), 23-19-11 and 23-20-27; (2) Utah Administrative Code Sections R657-5-4, R657-5-8 through 12, R657-5-14 and 15, R657-5-24 and 25, R657-5-27 and 28, R657-5-34, R657-5-37, R657-5-53, R657-5-62, and Rules R657-12, R657-23, R657-32, R657-42, and R657-50.
- (c) Subsection R651-614-4(1)(b) shall be applied retroactively only to the incorporation of Utah Administrative Code Sections R657-5-24, R657-5-25, R657-5-27, R657-5-34, and R657-5-37.
 - (2) Coral Pink Sand Dunes State Park - small game
 - (3) Deer Creek State Park - small game and waterfowl
 - (4) East Canyon State Park - small game
 - (5) Gunlock State Park - small game
 - (6) Huntington State Park - waterfowl
 - (7) Hyrum State Park - small game
 - (8) Jordanelle State Park - big and small game and waterfowl
 - (9) Minersville - waterfowl
 - (10) Quail Creek State Park - waterfowl
 - (11) Rockport State Park - waterfowl
 - (12) Scofield State Park - waterfowl
 - (13) Starvation State Park - big and small game
 - (14) Steinaker State Park - waterfowl, falconry between October 15 and April 14 annually.
 - (15) Pioneer Trail, Mormon Flat Unit - big and small game
 - (16) Wasatch Mountain State Park - big and small game
 - (17) Yuba State Park - small game

R651-614-5. Hunting with Firearms.

Hunting with rifles and handguns on park areas designated open is prohibited within one mile of all park area facilities, including, but not limited to buildings, camp/picnic sites, overlooks, golf courses, boat ramps and developed beaches. Shotguns and archery equipment are prohibited within one-quarter mile of above stated areas.

R651-614-6. Trapping.

All trapping on park areas is prohibited except when authorized and permitted by the park manager.

KEY: parks

October 2, 2003

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-615. Motor Vehicle Use.****R651-615-1. Traffic Rules and Regulations.**

The use and operation of motor vehicles in general shall be in accordance with the Utah Traffic requirements as found in Title 41, Chapter 6 Utah Code.

R651-615-2. Blocking and Restricting Normal Use.

Blocking, restricting or otherwise interfering with the normal use of any park facility with a vehicle or towed device is prohibited.

R651-615-3. Roadway and Parking Areas.

Operating or parking a motor vehicle or trailer except on roadways and parking areas developed for that use is prohibited.

R651-615-4. Entering and Leaving Park Site.

Operating a motor vehicle in a developed park area for any purpose other than entering or leaving the site is prohibited.

R651-615-5. Off Road Use.

The operation of vehicles off road is prohibited within the boundaries of all park areas except those with designated off-highway vehicle riding areas.

R651-615-6. Off-Highway Vehicles.

Operation of off-highway vehicles is prohibited on all park area roads unless authorized in accordance with the provisions of the Utah Off-Highway Vehicle Act.

R651-615-7. Motorized Transportation Devices.

Motorized Transportation Devices (MTD) that are powered by electric motors may be used for transportation to and from facilities and structures within the state parks.

KEY: parks, off-highway vehicles

July 19, 2004

Notice of Continuation July 7, 2008

63-11-17(2)(b)

41-22-10

63-11-17

R651. Natural Resources, Parks and Recreation.

R651-616. Organized Sports.

R651-616-1. Organized Sports only in Designated Locations.

Organizing or participating in ball games, horseshoes, or other similar activities in picnic or campground areas is prohibited except in designated locations.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-617. Permit Violation.****R651-617-1. Revocation or Suspension of Permit.**

A permit may be revoked or suspended for a time, from a minimum of seven (7) days to a maximum of the duration of the permit by the division director or individual designated by the division director if one or more of the following actions are found to have occurred, based on their severity: (1) false or fictitious statements or qualifications were provided to obtain the permit; (2) the terms or conditions of the permit were violated; or (3) the permit holder allowed the permit to be used by an unauthorized person.

KEY: parks**December 2, 1999****Notice of Continuation July 7, 2008****63-11-17(2)(b)**

R651. Natural Resources, Parks and Recreation.

R651-618. Picnicking.

R651-618-1. Restrictions on Picnicking.

Picnicking is permitted except:

(1) Inside visitor centers, museums, and other park buildings not designated for such use.

(2) Where prohibited and posted.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.**R651-619. Possession of Alcoholic Beverages or Controlled Substances.****R651-619-1. Possession of Alcohol and Controlled Substances.**

Offenses for the possession or use of any alcoholic beverage or controlled substance, shall be handled through Utah Code, Titles 32A, 41, 58, 73 and 76.

R651-619-2. Alcohol in Buildings.

There shall be no possession and/or consumption of any alcoholic beverage in the state park system visitor centers, museums and administrative offices, unless permission is expressly given, in writing, by the division director, or designee. Organizations dispensing such beverages are required to carry one million dollars (\$1,000,000) in insurance coverage.

KEY: parks

July 5, 2004

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.**R651-620. Protection of Resources Park System Property.****R651-620-1. Applicability of Criminal Code.**

Offenses against capital improvements, natural and cultural resources will normally be handled through the Utah Criminal Code.

R651-620-2. Trespass.

(1) A person may be found guilty of a class B misdemeanor, as stated in Utah Code Annotated, Section 63-11-17.3, if that person engages in activities within a park area without specific written authorization by the division. These activities include: (a) construction, or causing to construct, any structure, including buildings, fences water control devices, roads, utility lines or towers, or any other improvements; (b) removal, extraction, use, consumption, possession or destruction of any natural or cultural resource; (c) grazing of livestock, except as provided in Utah Code Annotated, Section 72-3-112. A cause of action for the trespass of livestock may be initiated in accordance with 78-12-26 (2); (d) use or occupation of park area property for more than 30 days after the cancellation or expiration of permit, lease, or concession agreement; or (e) any use or occupation in violation of division rules.

(2) The provisions of this section do not apply to division employees in the performance of their duties.

(3) Violations described in section (1) are subject to penalties as provided in Utah Code Annotated, Section 76-3-204 and Section 76-3-301.

R651-620-3. Tossing, Throwing, or Rolling of Rocks and other Materials.

The tossing, throwing, or rolling of rocks or other materials into valleys or canyons or down hills and mountains is prohibited.

R651-620-4. Firewood.

Collecting or cutting of firewood is prohibited without a permit.

R651-620-5. Glass Containers.

Use or possession of glass containers is prohibited in posted areas.

R651-620-6. Metal Detecting.

Metal detecting is prohibited without a permit.

KEY: parks, trespass

November 16, 2004

Notice of Continuation July 7, 2008

63-11-17

R651. Natural Resources, Parks and Recreation.

R651-621. Reports of Injury or Damage.

R651-621-1. Reporting of Incidents to Park Representative.

All incidents resulting in personal injury or damage to property, public or private, must be reported as soon as possible to a park representative.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-622. Rock Climbing.

R651-622-1. Permit Required for Technical Rock Climbing.

Technical rock climbing is prohibited without a permit.

R651-622-2. Installation of Hardware/Equipment.

Installation of new or the removal of existing, permanently installed technical rock climbing equipment or hardware is prohibited without a permit.

KEY: parks

October 4, 1999

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.

R651-623. Sale or Distribution of Printed Material.

R651-623-1. Permit Required.

The sale, posting, or distribution of printed matter is prohibited without a permit.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-624. Sanitation.

R651-624-1. Garbage and Rubbish.

Disposing of garbage and rubbish of any kind other than at points or places designated for the disposal of materials is prohibited.

R651-624-2. Trailer Refuse or Waste.

Draining or dumping refuse or wastes from any trailer or other vehicle except in places or receptacles provided for that use is prohibited.

R651-624-3. Cleaning and Washing at Hydrants.

Cleaning food or washing clothing or articles of household use at campground hydrants is prohibited.

R651-624-4. Fish Cleaning.

Cleaning fish at campground hydrants or any other facility not specifically designed for that purpose is prohibited. All fish entrails or other inedible fish parts shall be disposed of in an appropriate fish cleaning station or trash can.

KEY: parks

October 4, 1999

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.

R651-625. Shirts and Shoes.

R651-625-1. Shirts and Shoes Required in Museums, Visitor Centers and Administrative Offices.

Persons without shirts and/or shoes are prohibited from entering museums, visitor centers and administrative offices of the park system.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-626. Skating, Skateboards and Motorized Transportation Devices.

R651-626-1. Use of Roller Skates, Inline Skates, Motorized Transportation Devices (MTD), and Skateboards.

The recreational use of roller skates, inline skates, motorized transportation devices (MTD), and skateboards is prohibited except in locations designated and posted for that activity by the park manager.

KEY: parks

July 5, 2004

Notice of Continuation July 7, 2008

63-11-17(2)(b)

R651. Natural Resources, Parks and Recreation.

R651-627. Swimming.

R651-627-1. Prohibited Swimming Areas.

Where posted, swimming is prohibited to promote safety, in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-2. Scuba Diving.

Scuba diving shall only be participated in when in accordance with the Utah Water Safety Act, 73-18b-1. (Also see R651-801)

R651-627-3. Public Health Closures.

Swimming is prohibited when a public health closure has been posted by the park manager or other public health agency.

KEY: parks

December 2, 1999

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-628. Trails and Walks.

R651-628-1. Bicycles and Motor Vehicles.

Bicycling, rollerblading, roller skating, skateboarding, or operating motor vehicles on any trail or walk not specifically designated and posted for that purpose is prohibited.

R651-628-2. Interference with Normal Use of Trails and Walks.

Blocking, restricting, or otherwise interfering with the normal use of any trail is prohibited.

R651-628-3. Must Stay on Walks and Designated Trails.

Persons are required to stay on walks and designated trails in posted areas.

KEY: parks

October 4, 1999

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-629. Unattended Property.

R651-629-1. Personal Property.

Unclaimed personal property shall be handled in accordance with Title 77, Chapters 24 and 24a.

R651-629-2. Impounded Property.

Whenever property interferes with the safe or orderly operation of the park, the property may be impounded.

R651-629-3. Lost and Found Articles.

All lost and found articles shall be deposited by the finder at the park area office.

R651-629-4. Impound of Vehicle.

The impound of a vehicle shall be in compliance with Title 41, Chapter 1a.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-631. Winter Sports.

R651-631-1. Permitted Areas.

Skiing, sledding, tobogganing, snowshoeing, skating, and other similar winter sports activities are allowed except where posted closed or upon roads and parking areas open to highway vehicle use.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R651. Natural Resources, Parks and Recreation.

R651-632. Enforcement.

R651-632-1. Authorized Law Enforcement Officers.

Any law enforcement officer authorized under Title 77, Chapter 1a may enforce the rules promulgated under this chapter.

KEY: parks

1989

63-11-17(2)(b)

Notice of Continuation July 7, 2008

R655. Natural Resources, Water Rights.**R655-14. Administrative Procedures for Enforcement Proceedings Before the Division of Water Rights.****R655-14-1. Authority.**

(1) These rules establish procedures for enforcement adjudicative proceedings which may be commenced under Section 73-2-25. Under Subsection 73-2-1(4)(g), the State Engineer, as the Director of the Utah Division of Water Rights, is required to make rules regarding enforcement orders and the imposition of fines and penalties.

(2) The State Engineer's powers and duties include acting on behalf of the State of Utah to administer, as the agency head of the Division of Water Rights, the distribution and use of all surface and ground waters within the state in accordance with statutory authority, including but not limited to Sections 73-2-1, 73-2-1.2, and 73-2-25.

R655-14-2. Application and Preamble.

(1) These rules are applicable statewide to the use of the waters of the state. Additional rules may be promulgated to address enforcement for specific hydrologic areas.

(2) The Division may issue an Initial Order for any violation of the Water and Irrigation Code as set forth in Subsection 73-2-25(2)(a).

(3) Following the issuance of an Initial Order, the respondent may contest the Initial Order in a proceeding before the State Engineer or the appointed Presiding Officer. Enforcement adjudicative proceedings are not governed by the Utah Administrative Procedures Act as provided under Section 63-46b-1 and are not governed by Rule R655-6 regarding informal proceedings before the Division of Water Rights.

(4) These rules shall be liberally construed to permit the Division to effectuate the purposes of Utah law.

R655-14-3. Purpose.

(1) These rules are intended to:

(a) Assure the protection of Utah's water and the public welfare by promoting compliance and deterring noncompliance with the statutes, rules, regulations, permits, licenses and orders administered and issued under the Division's authority by removing any economic benefit realized as a direct or indirect result of a violation; and

(b) Assure that the State Engineer assesses and imposes administrative fines and penalties lawfully, fairly, and consistently, which fines and penalties reflect:

(i) The nature and gravity of the violation and the potential for harm to Utah's water and the public welfare by the violation;

(ii) The length of time which the violation was repeated or continued; and

(iii) The additional costs which are actually expended by the Division during the course of the investigation and subsequent enforcement.

(c) Clarify the Division's authority to enforce the laws it administers under the State Engineer's supervision, and the rules, regulations, permits, and orders adopted pursuant to appropriate authority.

(2) The three elements of the statutorily provided penalties are intended to achieve different aims of equity and public policy. To achieve these aims, the following classes of penalties have been established by statute:

(a) Administrative fines are intended to remove the financial incentive of the violation by removing the economic benefit as well as imposing a punitive measure.

(b) Replacement of water is intended to make whole the resource and impacted water users, as far as this is possible, by requiring respondents to leave an amount of water undiverted or undiminished in the resource for use by others. The allowance of up to 200% replacement indicates the penalty can incorporate a punitive element, as appropriate.

(c) Reimbursement of enforcement costs is intended to make whole the state by requiring a violator to replace the public funds expended to achieve compliance with the law.

R655-14-4. Definitions.

(1) Terms used in this rule are defined in Section 73-3-24.

(2) In addition,

(a) "Administrative Penalty" means a monetary fine or water replacement ordered by the Presiding Officer to be paid or accomplished by the respondent in response to a violation of, or a failure to comply with, a law administered by the State Engineer, or any rule, regulation, license, permit or order adopted pursuant to the State Engineer's authority.

(b) "Cease and Desist Order" (CDO) means a written order issued by the State Engineer or the Enforcement Engineer requiring a respondent to cease and desist violations and/or directing that positive steps be taken to mitigate any harm or damage arising from the violation, including a notice of administrative penalties to which a respondent may be subject. CDO's are further described in Section R655-14-11. A CDO constitutes an Initial Order (IO), whether issued alone or in conjunction with a Notice of Violation (NOV).

(c) "Consent Order" means an order issued by the Presiding Officer reflecting a stipulated and voluntary agreement between the parties concerning the resolution of an enforcement adjudicative proceeding. A Consent Order constitutes a Final Judgment and Order.

(d) "Default Order" means an order issued by the Presiding Officer after a respondent fails to participate or continue to participate in an enforcement proceeding. A Default Order constitutes a Final Judgment and Order.

(e) "Distribution Order" means a written order from the State Engineer that includes any or all of the following:

(i) An interpretation of the water rights on a river system or other water source and procedures for the regulation and distribution of water according to those water rights;

(ii) A requirement of specific action or actions on the part of a water right owner or a group of water right owners to ensure that water is diverted, measured, stored, or used according to the water rights involved and that the diversion, storage, or use does not infringe on the rights of other water right owners;

(iii) A description of the hydrologic limitations of a river system or other water source and a plan based on the water rights of record designed to manage and maximize beneficial use of water while protecting the sustainability of the water source;

(iv) A requirement that reports be submitted to the Division as provided in Section 73-5-8.

(v) A regulation tag issued by the Division or by a Water Commissioner according to Section 73-5-3 and as defined in Section R655-15.

(f) "Division" means the Division of Water Rights.

(g) "Economic Benefit" means the benefit actually or potentially realized and/or a cost actually or potentially avoided by a violator as a result of unlawful activity defined as a violation in an IO.

(h) "Enforcement Costs" means a monetary sum ordered by the Presiding Officer to be paid by a respondent for any expense incurred by the State Engineer in investigating and stopping a violation of, or a failure to comply as defined herein. Enforcement costs are further defined in this rule at Subsection R655-14-12(6). Collection of said costs is authorized at Subsection 73-2-26(1)(a)(iii).

(i) "Enforcement Engineer" means the State Engineer or an authorized delegate who may commence and prosecute an enforcement action pursuant to Subsection 73-2-25(2)(a).

(j) "Filed" means timely submitted to the Division pursuant to Subsection R655-14-8(3).

(k) "Files" means information maintained in the Division's public records, which may include both paper and electronic information.

(l) "Final Judgment and Order" means a final decision issued by the Presiding Officer on the whole or a part of an enforcement adjudicative proceeding. This definition includes "Consent Orders" and "Default Orders."

(m) "Initial Administrative Penalty" means an administrative fine, a requirement to replace water unlawfully taken, and/or the enforcement costs required to be repaid as these are described and set forth in the Initial Order (IO) as required at Subsection 73-2-25(2)(b)(ii). These penalties do not include accrued penalties for violations continuing past the date of the IO.

(n) "Initial Order" (IO) means a Notice of Violation and/or a Cease and Desist Order.

(o) "Issued" as it applies to an IO or a Final Judgment and Order means the document has been executed by an authorized delegate of the State Engineer (in the case of an IO) or by the Presiding Officer (in other cases) and deposited in the mail.

(p) "Knowing" or "Knowingly" as used in Section 73-2-26, means the same as the definition contained in Section 76-2-103. A person engages in conduct knowingly, or with knowledge with respect to his conduct or to circumstances surrounding his conduct when he is aware of the nature of his conduct or the existing circumstances. A person acts knowingly, or with knowledge, with respect to a result of his conduct when he is aware that his conduct is reasonably certain to cause the result.

(q) "License" means the express grant of permission or authority by the State Engineer to carry on an activity or to perform an act, which, without such permission or authority, would otherwise be a violation of State law, rule or regulation.

(r) "Location" means the current residential or business address of a party as recorded in the Division's files. If a current residential address is not available for an individual, "location" means an employment or business address if known, or nonresidential mailing address such as a Post Office Box or Rural Route, at which a party whose location information is being sought receives mail.

(s) "Mitigation" means compensation acceptable to the Division for injury caused by a stream channel or dam safety violation.

(t) "Noncompliance" or "Nonconformance" or "Failure to Comply" or "Violation" each means any act or failure to act which constitutes or results in:

(i) Engaging in an activity prohibited by, or not in compliance with, any law administered by the State Engineer or any rule, license, permit or order adopted or granted pursuant to the State Engineer's authority;

(ii) Engaging in an activity without a necessary permit or approval that is required by law or regulation;

(iii) The failure to perform, or the failure to perform in a timely fashion, anything required by a law administered by the State Engineer or by a rule, license, permit or order adopted pursuant to the State Engineer's authority.

(u) "Notice of Violation" (NOV) means a written notice issued by the Enforcement Engineer that informs a respondent of Water and Irrigation Code violations. Notice of Violation is further described in Section R655-14-11. A NOV constitutes an Initial Order (IO), whether issued alone or in conjunction with a Cease and Desist Order (CDO).

(v) "Participate" means, in an enforcement proceeding that was commenced by an IO, to:

(i) Present relevant information to the Presiding Officer within the time period prescribed by statute or rule or order of the Presiding Officer for submitting relevant information or requesting a hearing; and/or

(ii) Attend a preliminary conference or hearing if a

preliminary conference or hearing is scheduled and a notice is properly issued.

(w) "Party" means the State Engineer, an authorized delegate of the State Engineer, and/or the respondent(s).

(x) "Permit" means an authorization, license, or equivalent control document issued by the State Engineer to implement the requirements of any federally delegated program or Utah law administered or enforced by the State Engineer.

(y) "Person" means an individual, trust, firm, joint stock company, corporation (including a quasi-governmental corporation), partnership, association, syndicate, municipality, municipal or state agency, fire district, club, non-profit agency or any subdivision, commission, department bureau, agency, department or political subdivision of State or Federal Government (including quasi-governmental corporation) or of any interstate body and any agent or employee thereof.

(z) "Post Initial Order Penalty Adjustments" means those adjustments, in the form of increases or decreases, made by the Presiding Officer to the initial administrative penalties assessed in the IO in consideration of information pertaining to the violation.

(aa) "Presiding Officer" means the State Engineer or an authorized delegate of the State Engineer who conducts an enforcement adjudicative proceeding.

(ab) "Record" means the official collection of all written and electronic materials produced in an enforcement proceeding, including but not limited to the IO, pleadings, motions, exhibits, orders and testimony produced during the adjudicative proceedings, as well as the files of the Division as defined herein.

(ac) "Respondent" means any person against whom the Enforcement Engineer commences an enforcement action by issuing an IO.

(ad) "Requirement" means any law administered by the State Engineer, or any rule, regulation, permit, license or order issued or granted pursuant to the State Engineer's authority.

(ae) "State Engineer" is the Director and agency head of the Division of Water Rights in whom ultimate legal authority is vested by Sections 73-2-1 and 73-2-1.2.

(af) "Unknowingly" or "Not Knowing" means the converse of the definition of "Knowingly" contained in Section 76-2-103. A person engages in conduct unknowingly, or without knowledge with respect to his conduct or to circumstances surrounding his conduct when he is unaware of the nature of his conduct or the existing circumstances. A person acts unknowingly, or without knowledge, with respect to a result of his conduct when he is unaware that his conduct is reasonably certain to cause the result.

(ag) "Water Commissioner" or "Commissioner" means a person appointed to distribute water within a water distribution system pursuant to Section 73-5-1 and Section R655-15.

(ah) "Well" means an open or cased excavation or borehole for diverting, using, or monitoring underground water made by any construction method.

(ai) "Well driller" means a person with a license to engage in well drilling for compensation or otherwise.

(aj) "Well drilling" means the act of drilling, constructing, repairing, renovating, deepening, cleaning, developing, or abandoning a well.

R655-14-5. Other Authorities.

(1) Nothing in these rules shall limit the State Engineer's authority to take alternative or additional actions relating to the administration, appropriation, adjudication and distribution of the waters of Utah as provided by Utah law.

R655-14-6. Designation of Presiding Officers.

(1) The following persons may be designated Presiding Officers in adjudicative proceedings:

- (a) Assistant State Engineers;
- (b) Deputy State Engineers; or
- (c) Other qualified persons designated by the State Engineer.

R655-14-7. Service of Notice and Orders.

(1) Notices, orders, written decisions, or any other documents for which service is required or permitted to be made by Section 73-2-25 shall be served upon the respondent at the respondent's location using certified mail or methods described in Rule 5 of the Utah Rules of Civil Procedure.

R655-14-8. Computation of Time.

(1) Computation of any time period referred to in these rules shall begin with the first day following the act that initiates the running of the time period. The last day of the time period computed is included unless it is a Saturday, Sunday, or legal holiday or any other day on which the Division is closed, in which event the period shall run until the end of the business hours of the following business day. When the time period is less than seven (7) days, intervening days when the Division is closed shall be excluded in the computation.

(2) The Presiding Officer, for good cause shown, may extend any time limit contained in these rules, unless precluded by statute. All requests for extensions of time shall be made by motion.

(3) Documents required or permitted to be filed under these rules shall be filed with the Division, to the attention of the Presiding Officer or Enforcement Engineer, as may be required, within the time limits for such filing as set by the Enforcement Engineer, the Presiding Officer, or other provision of law. Papers filed in the following manner shall be deemed filed as set forth:

(a) Papers hand delivered to the Division during regular business hours shall be deemed filed on the date of hand-delivery. Papers delivered by hand at times other than during regular business hours shall be deemed filed on the next regular business day when stamped received by the Division.

(b) Papers deposited in the U.S. mail shall be deemed filed on the date stamped received by the Division. In the event that no stamp by the Division appears, papers shall be deemed filed on the postmarked date.

(c) Papers transmitted by facsimile, telecopier or other electronic transmission shall not be accepted for filing unless permitted in writing by the Presiding Officer, the Enforcement Engineer or by this rule.

R655-14-9. Filings Generally.

(1) Papers filed with the Division shall state the State Engineer Agency Action (SEAA) number, the title of the proceeding, and the name of the respondent on whose behalf the filing is made.

(2) Papers filed with the Division shall be signed and dated by the respondent on whose behalf the filing is made or by the respondent's authorized representative. The signature constitutes certification that the respondent:

- (a) Read the document;
- (b) Knows the content thereof;
- (c) To the best of the respondent's knowledge, represents that the statements therein are true;
- (d) Does not interpose the papers for delay; and
- (e) If the respondent's signature does not appear on the paper, authorized a representative with full power and authority to sign the paper.

(3) All papers, except those submittals and documents that are kept in a larger format during the ordinary course of business, shall be submitted on an 8.5 x 11-inch paper. All papers shall be legibly hand printed or typewritten.

(4) The Division may provide forms to be used by the

parties.

(5) The original of all papers shall be filed with the Division with such number of additional copies as the Division may reasonably require.

(6) Simultaneously with the filing of any and all papers with the Division, the party filing such papers shall send a copy to all other parties, or their authorized representative to the proceedings, by hand delivery, or U.S. Mail, postage prepaid, properly addressed.

R655-14-10. Motions.

(1) A party may submit a request to the Presiding Officer for any order or action not inconsistent with Utah law or these rules. Such a request shall be called a motion. The types of motions made shall be those that are allowed under these Rules and the Utah Rules of Civil Procedure.

(2) Motions may be made in writing at any time before or after the commencement of a hearing, or they may be made orally during a hearing or a preliminary conference. Each motion shall set forth the grounds for the desired order or action and, if submitted in writing, state whether oral argument is requested. A written supporting memorandum, specifying the legal basis and support of the party's position shall accompany all motions.

R655-14-11. Options for Adjudicative Enforcement.

(1) The State Engineer may pursue any combination of the following administrative and judicial enforcement actions depending upon the circumstances and gravity of each case.

(a) Notice of Violation: a formal notice of a suspected violation issued in accordance with Section 73-2-25 which:

(i) Cites the law, rule, regulation, permit and/or order allegedly violated;

(ii) States the facts that form the basis for the State Engineer's belief that a violation has occurred;

(iii) States the administrative fine, enforcement costs, and/or other penalty to which the respondent may be subject;

(iv) Specifies a reasonable deadline or deadlines by which the respondent:

(A) Shall comply with the requirements described in the Notice of Violation, and/or

(B) Shall pay the administrative fine and enforcement costs, and/or

(C) Shall submit a written plan or proposal setting forth how and when the respondent proposes to replace water taken without right.

(v) Informs the respondent:

(A) Of the right to file a timely written request for a hearing on the alleged violation, the administrative penalties defined, or both;

(B) That the respondent must file said written request for a hearing with Division within seven (7) days after service of the Notice of Violation;

(C) That said written request shall strictly comply with R655-14-16;

(D) That said notice shall become the basis for a Final Judgment and Order of the Presiding Officer upon the respondent's election to waive participation or failure to timely respond or otherwise participate in the proceeding, and

(E) That the Enforcement Engineer may treat each day's violation as a separate violation in describing the Initial Administrative Penalty under Subsection 73-2-25 (2)(b)(ii); that is, the administrative penalty continues to accrue each day from the time the violation begins until compliance is achieved.

(vi) Identifies the individual to whom correspondence and inquiries regarding the Notice of Violation should be directed;

(vii) States to whom and the date by which the administrative fine and enforcement costs shall be paid if the respondent elects to waive or fails to request an adjudicative

hearing in a timely manner and elects to pay the fine and costs; and

(viii) States the State Engineer's authority to pursue further administrative or judicial enforcement action.

(b) Cease and Desist Order (CDO): an immediate compliance order issued pursuant to Section 73-2-25 either upon discovery of a suspected violation of the Water and Irrigation Code or in combination with a Notice of Violation, which:

(i) Cites the law, rule, license, permit, notice and/or order allegedly violated;

(ii) Describes the act or course of conduct that is prohibited by the Cease and Desist Order;

(iii) Orders the respondent to immediately cease the prohibited act or prohibited course of conduct;

(iv) States any action deemed necessary by the Enforcement Engineer to confirm compliance and assure continued compliance;

(v) Takes effect immediately upon the date issued or within such time as specified by the Enforcement Engineer in the CDO; and

(vi) States the administrative penalties to which the respondent may be subject for any violation of the CDO.

(c) Court Action

(i) Civil: direct recourse to a court of competent jurisdiction either in addition to or in lieu of administrative action where:

(A) It is necessary to enforce a Final Judgment and Order and seek civil and/or administrative penalties

(B) An imminent threat to the public health, safety, welfare or environment exists which warrants injunctive or other emergency relief; or

(C) A pattern of continuous, significant violations exists such that administrative enforcement action alone is unlikely to achieve compliance; or

(D) The court is the most convenient or appropriate forum for resolution of the dispute.

(ii) Criminal: referral to the County Prosecutor or the Attorney General's Office for prosecution or criminal investigation where:

(A) The alleged act or failure to act may be defined as a criminal offense by state law;

(B) Enforcement is beyond the jurisdiction or investigative capability of the State Engineer; or

(C) Criminal sanctions may be appropriate.

(d) Miscellaneous - other enforcement options may be pursued to achieve compliance. Additional options include, but are not limited to:

(i) Joint actions with, or referrals to, other federal, state or local agencies;

(ii) Direct legal or equitable actions in state or federal court; and/or

(iii) Denial, suspension or revocation of state-granted licenses, approvals permits or certifications.

(2) Unless otherwise stated, all notices, orders and judgments are effective upon the date issued.

(3) Combinations of enforcement actions are not mutually exclusive and may be concurrent and/or cumulative.

(4) An IO may be incorporated into a Default Order if the respondent fails to participate as defined herein.

R655-14-12. Administrative Penalties and Administrative Costs.

(1) Pursuant to Sections 73-2-1 and 73-2-25 and these rules, the Enforcement Engineer shall assess the initial administrative penalties, which may include an administrative fine, a requirement to replace water and the reimbursement of enforcement costs to which the respondent may be subject for any violation as set forth in Subsection 73-2-25(2)(a).

(2) No penalty shall exceed the maximum penalty allowed by Subsection 73-2-26(1), as may be amended.

(3) Each day a violation is repeated, continued or remains in place, constitutes a separate violation.

(4) The penalty imposed shall begin on the first day the violation occurred, and may continue to accrue through and including the day the Notice of Violation and/or Cease and Desist Order is issued, or the Final Judgment and Order is issued, or until compliance is achieved.

(5) The amount of the penalty shall be calculated based on:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(6) Enforcement costs, interest, late payment charges, costs of compliance inspections, and collection costs may be assessed in addition to the administrative fine. These include:

(a) Enforcement costs: Costs for time spent by Division staff, supervisors, the Presiding Officer, and personnel of the Attorney General's Office, at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(b) Late payment charges: Costs accrued at the monthly percentage rate assessed by the Utah Department of Administrative Services, Office of Debt Collections.

(c) Compliance inspection costs: Time spent by Division staff at the full cost of each employee's hourly rate, including salary, benefits, overhead and other directly related costs.

(d) Collection costs: Actual collection costs.

(7) The State Engineer may report the total amount of administrative fines and/or enforcement costs assessed to consumer reporting agencies and pursue collection as provided by Utah law.

(8) Any monies collected under Section 73-2-26 and these rules shall be deposited into the General Fund.

R655-14-13. Replacement of Water.

(1) In addition to administrative fines and enforcement costs, the Enforcement Engineer may impose and the Presiding Officer may order the respondent to replace up to 200 percent of water unlawfully taken in accordance with Section 73-2-26.

(2) The Presiding Officer may order actual replacement of water after:

(a) A respondent fails to request judicial review of a Final Judgment and Order issued under Section 73-2-25; or

(b) Completion of judicial review, including any appeals.

(3) Pursuant to Section 73-2-26, and before imposing or ordering replacement of water, the Enforcement Engineer and the Presiding Officer shall consider the following factors:

(a) The value or quantity of water unlawfully taken, including the cost or difficulty of replacing the water;

(b) The gravity of the violation, including the economic injury or impact to others;

(c) Whether the respondent attempted to comply with the State Engineer's orders; and

(d) The respondent's economic benefit from the violation.

(4) The Enforcement Engineer may require and the Presiding Officer may order the respondent to submit a plan to replace water, which shall be submitted in writing and contain the following information:

(a) The name and mailing address of the respondent or persons submitting the plan;

(b) The State Engineer Agency Action (SEAA) number assigned to the IO;

(c) Identification of the water right(s) and property for

which the water replacement plan is proposed;

(d) A description of the water replacement plan; and

(e) Any information that assists the Enforcement Engineer in evaluating whether the proposed water replacement plan is acceptable.

(5) The factors the Enforcement Engineer or Presiding Officer may consider to determine if the plan is acceptable include, but are not limited to:

(a) Whether the plan provides for the respondent to forgo use of a vested water right owned or leased by the respondent until water is replaced to the extent required in the IO or ordered in the Final Judgment and Order;

(b) The reliability of the source of replacement water over the term in which it is proposed to be used under the plan; and

(c) Whether the plan provides for monitoring and adjustment as necessary to protect vested water rights.

(6) As provided in Section 73-2-26, water replaced shall be taken from water to which the respondent would be entitled during the replacement period.

(7) In accordance with Subsection 73-2-26(5)(a), or any other statutory authority, the Division may record any order requiring water replacement in the office of the county recorder where the place of use or water right is located. Any subsequent transferee of such property shall be responsible for complying with the requirements of said order.

R655-14-14. Procedures For Determining Administrative Penalties, Enforcement Costs and Water Replacement.

(1) An administrative fine shall not exceed the maximum amounts established by statute at Subsection 73-2-26 (1), as such may be amended.

(2) For violations per Subsections 73-2-25(2)(a)(i) through (vii), the following procedures shall be employed:

(a) Administrative Fines: This penalty shall be based primarily on the actual economic benefit estimated to result or potentially to result from the violation. The economic benefit may come in the form of a direct economic benefit as income derived directly from the unlawful activity or it may come in the form of avoided costs that would otherwise be incurred in order to comply with a specific statute, rule, notice or order from the State Engineer. The administrative fine assessment procedure used (direct economic benefit or avoided costs) will be that which produces the greater fine. In order to implement the punitive intent of this penalty, a multiplier is to be calculated and applied to the estimated actual direct economic benefit or avoided costs.

(i) "Direct Economic Benefit" Initial Administrative Fine Calculations. The initial administrative fine shall be calculated in the following manner:

(A) The daily economic benefit is equal to the gross income that is or could potentially be realized from the violation (without regard for production costs, taxes, etc.) divided by the number of days of violation. For water right violations, the daily economic benefit is calculated using the gross income through a full period of beneficial use, divided by the number of days in the period of beneficial use.

(B) The daily administrative fine is equal to the product of the daily economic benefit and the multiplier to be calculated as described in paragraph (iii) below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of four times the direct economic benefit or the statutory maximum fine, whichever is less.

(ii) The multiplier for penalties based on direct economic benefit shall be calculated utilizing the following statutory

considerations. (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are accommodated in the calculations of the economic "benefit" and "injury.")

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others;

(C) The length of time over which the violation has occurred; and

(D) The violator's efforts to comply.

(iii) The penalty multiplier is the sum of the points calculated using Table 1:

TABLE 1

DIRECT ECONOMIC BENEFIT PENALTY MULTIPLIER	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than \$15,000	1.00
\$10,000 to \$15,000	0.75
Less than \$10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Length of violation	
Three (3) or more years of violation	1.00
More than one (1), but less than three (3) years of violation	0.75
One (1) year or less of violation	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(iv) "Avoided Cost Economic Benefit" Initial Administrative Fine Calculation: In some cases, including but not limited to violations under Subsections 73-2-25 (2)(a) (iii) through (vii), an economic benefit may result from an avoided cost of compliance with a notice or order from the State Engineer, or from failure to obtain a necessary approval, permit or license. In the case of a failure to comply with a prior notice or order, the daily administrative fine commences with the day following the compliance date in the notice or order. In the event of a failure to obtain a necessary approval, permit or license, the period of violation is deemed to begin on the first day the unauthorized activity is commenced. The economic benefit and daily administrative fine for an "avoided cost economic benefit" shall be calculated in the following manner:

(A) The total realized economic benefit is equal to the highest calculated avoided costs of failing to implement specific actions required by a statute, rule, notice or order from the State Engineer.

(B) The daily administrative fine is equal to the product of \$20 or 5% of the total realized economic benefit, whichever is greater, and the penalty multiplier to be calculated as described in paragraph (vi), below.

(C) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation preceding the date of the IO, but shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(D) The total initial administrative fine will have a maximum value of three times the economic benefit or the statutory maximum fine, whichever is less.

(v) The statutory considerations applicable to producing the multiplier for an avoided cost economic benefit are: (Statutorily required considerations relative to the quantity of water taken and the gravity and impact of the violation are

accommodated in calculations of the economic "benefit" and "injury.").

(A) Whether the violation was committed knowingly or unknowingly;

(B) The economic injury to others; and

(C) The violator's efforts to comply.

(vi) The penalty multiplier is the sum of the points resulting from Table 2:

TABLE 2

AVOIDED COST ECONOMIC BENEFIT PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Economic injury to others	
Greater than \$15,000	1.00
\$10,000 to \$15,000	0.75
Less than \$10,000 or injury is not measurable or there is no evidence others suffered economic injury	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited but ineffective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator fully complied prior to issuance of Initial Order	0.00

(b) Replacement of Water: This penalty will be initially calculated as the product of 100% of the amount unlawfully taken and the penalty multiplier previously calculated, but not to exceed 200% of that unlawfully taken. If replacement of water unlawfully taken is deemed to be infeasible by the Enforcement Engineer or the Presiding Officer, this penalty will not be further considered.

(c) Reimbursement of Enforcement Costs: This penalty will be initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the IO.

(3) For violations related to unlawful natural stream channel alteration or dam safety regulations per Subsections 73-2-25(1)(a)(vi) and (vii), the following procedures shall be employed:

(a) Daily Administrative Fine: All enforcement activities for unlawful natural stream alteration or dam safety violations must statutorily result from violation of a prior notice or order. Statute provides for a daily administrative fine with the day following the compliance date in the notice/order being counted as the first day of violation. The calculated daily administrative fine would apply to violations continuing beyond the compliance date set forth in the notice or order. The economic benefit and daily administrative fine shall be calculated in the following manner:

(i) For stream alteration and dam safety violations, there may be a direct economic benefit, or there may be an avoided cost economic benefit deriving from:

(A) Initiating an activity without the benefit of proper permitting and/or,

(B) Failing to implement specific actions required by a notice, order or permit from the State Engineer.

(ii) The daily administrative fine is equal to the product of \$20 or 5% of the total realized economic benefit, whichever is greater, and the multiplier to be calculated as described in paragraph (iii), below.

(iii) The penalty multiplier is calculated as the sum of the points from Table 3 or Table 4, as may be appropriate:

TABLE 3

STREAM ALTERATION PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Natural stream environment harmed to significant levels not readily reversible by mitigation efforts	1.00
Natural stream environment harmed to moderate levels partially reversible by mitigation efforts	0.75
Natural stream environment harmed to minor levels readily reversible by mitigation efforts	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made no reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

TABLE 4

DAM SAFETY PENALTY MULTIPLIER

CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.00
Unknowing	0.00
Gravity of violation	
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) Related to building, enlarging or substantially altering same without prior approval or authorization; OR	
2) Addressing an existing unsafe condition	1.00
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam:	
1) Addressing a developing unsafe condition OR	
2) Requiring monitoring or critical dam performance indicators; OR	
Failure to prepare and file acceptable required operational documents, OR	
Failure to comply with a notice or order for a low-hazard dam related to building, enlarging or substantially altering same without prior authorization	0.75
Failure to comply with a notice or order for a high-hazard or moderate-hazard dam related to routine operation or maintenance activities, OR	
Failure to comply with a notice or order for a low-hazard dam to address an existing or developing unsafe condition	0.50
Violator's efforts to comply prior to Initial Order	
Violator has made no efforts to comply	1.00
Violator has made limited reasonable or effective efforts to comply	0.75
Violator has made reasonable and partially effective efforts to comply	0.50
Violator achieved full compliance prior to issuance of Initial Order	0.00

(iv) The total administrative fine shall not exceed the product of the highest calculated total realized economic benefit and the penalty multiplier.

(b) Reimbursement of Enforcement Costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(3) For violations under Subsection 73-2-25(2)(a)(iii) related to failure to submit a report required by Section 73-3-25, the following procedures shall be employed:

(a) The daily administrative fine is equal to \$5.00.

(b) The number of days of continuing violation commences 90 days after the day on which the well driller license lapses.

(c) The initial administrative fine is equal to the product of the daily administrative fine and the number of days of continuing violation to the date the IO is issued.

(d) The total administrative fine shall not exceed the product of the daily administrative fine and the number of days of continuing violation.

(e) Reimbursement of enforcement costs is initially based

on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(4) For violations under Subsection 73-2-25(2)(a)(ix) related to engaging in well drilling without a license required by Section 73-3-25, the following procedures shall be employed:

(a) The direct economic benefit is equal to the gross income that is or could potentially be realized (without regard for production costs, taxes, etc.) from engaging in well drilling (as defined herein) without a license.

(b) The total initial administrative fine is equal to the product of the direct economic benefit resulting from the violation and the penalty multiplier described in paragraph (c) below.

(c) The penalty multiplier is calculated as the sum of the points from Table 5.

TABLE 5

WELL DRILLING PENALTY MULTIPLIER	
CONSIDERATION/ CRITERIA . . .	MULTIPLIER POINTS
Knowing or unknowing violation	
Knowing	1.50
Unknowing	1.00
Gravity of Violation	
New well construction	1.00
Deepening a well	0.80
Renovating a well	0.60
Abandoning a well	0.40
Cleaning/developing a well	0.20

(d) The total administrative fine shall not exceed the product of the direct economic benefit and the penalty multiplier.

(e) Reimbursement of enforcement costs is initially based on a standard requiring 100% reimbursement of the State Engineer's enforcement costs to the date of the Initial Order.

(5) Post-Initial Order penalty adjustments: Subsequent to issuance of the IO, the Presiding Officer may make adjustments to the initial administrative fine; the requirement for replacement of water unlawfully taken; requirements pertaining to violations of stream channel alteration or dam safety regulations; and/or the requirement for reimbursement of enforcement costs. Such adjustments may be based on one or more of the following considerations:

(a) Errors or Omissions in Calculation of an Initial Administrative Penalty: If shown by acceptable evidence or testimony that any fact used in calculation of the economic benefit, of the quantity of water unlawfully taken, or of the penalty multiplier was in error, or that a significant fact or group of facts was omitted from consideration, the Presiding Officer shall recalculate the initial administrative penalties taking consideration of the corrected or additional fact(s).

(b) Reduction in Penalty Multiplier: The penalty multiplier used in calculating the Initial Administrative Penalties may be reduced according to Table 6 on the basis of the respondent's efforts to comply after receiving the IO.

TABLE 6

PENALTY MULTIPLIER REDUCTION	
CONSIDERATION / CRITERIA	MULTIPLIER POINTS
Respondent's efforts to comply with the Initial Order	
Respondent has made extraordinary efforts to successfully achieve full and prompt compliance with the IO.	1.00
Respondent has made efforts to successfully achieve full and prompt compliance with the IO, but these efforts are not extraordinary	0.50
Respondent has made efforts that achieve full compliance with the IO, but the efforts were neither extraordinary nor prompt	0.25
Respondent has made no efforts to comply or has made efforts that fail to achieve full	

compliance with the IO 0.00

If the Presiding Officer determines that the penalty multiplier should be reduced according to the table above, the appropriate number of points will be subtracted from the penalty multiplier used in calculating the initial administrative penalty and the penalty will be re-calculated with the new multiplier.

(c) Failure to take reasonable and effective measures to achieve full and prompt compliance with the requirements of the IO will allow the daily administrative fines to continue to accrue as provided in rule at Subsection R655-14-12(4) until full compliance is achieved.

(d) Adjustments to recovery of enforcement costs:
 (i) If shown by acceptable evidence or testimony that any expense incurred by the State Engineer and assessed for reimbursement resulted from activities not pertinent to the violation, the Presiding Officer may reduce that portion of the reimbursement requirement accordingly.

(ii) Pursuit of an enforcement action after issuance of the IO will continue to require the expenditure of varying amounts of staff time and may require acquisition and analysis of special data or information. Such costs may be added to the initial reimbursement requirement, specifically including all costs incurred that are unique to the enforcement action under consideration.

(e) Mitigating Factors: Other factors which the Presiding Officer may consider in amendment of initial penalties for incorporation into a Final Order or Consent Order may include, as appropriate:

(i) Ability to pay: This factor will be considered only if raised by a respondent and only if the respondent provides all necessary information to evaluate the claim. The burden to demonstrate inability to pay rests solely on the respondent. The Presiding Officer shall disregard this factor if a respondent fails to provide sufficient or persuasive financial information. If it is determined that a respondent cannot afford the full monetary penalties prescribed by this rule, or if it is determined that payment of all or a portion of the monetary penalties will preclude the respondent from achieving compliance or from carrying out remedial measures which are deemed more important than the deterrent effect of the monetary penalties, the following options may be considered by the Presiding Officer:

(A) A delayed payment schedule with full payment of monetary penalties to be made at a date not exceeding 180 days from the date the Final Judgment and Order is issued; or

(B) A direct reduction of the monetary penalties, which reduction is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice.

(C) A portion of the monetary penalties may be suspended with conditions as determined by the Presiding Officer, which suspension is deemed by the Presiding Officer to be consistent with achieving the purposes of the enforcement action and the aims of equity and justice. Failure by a respondent to adhere to the conditions of the suspension may result in an Order of reinstatement of any part of the suspended monetary penalties, which will be due and payable immediately upon reinstatement.

R655-14-15. Procedures for Conducting Adjudicative Enforcement Proceedings.

(1) The procedures for conducting adjudicative enforcement proceedings are as follows:

(a) In proceedings initiated by an IO, the Presiding Officer shall issue a default order unless the respondent does one of the following within fourteen (14) days of the date the IO is issued:

(i) Satisfies all requirements of the IO, including but not limited to ceasing the violation(s), full payment of all the administrative fines, reimbursement of the State Engineer's enforcement costs in full, and submission of any required water replacement plan; or,

(ii) Files with the Division a timely and proper written response to the IO but waives a hearing and submits the case upon the record. Submission of a case without a hearing does not relieve the respondent from the necessity of providing the facts supporting the respondent's burdens, allegations or defenses; or

(iii) Files with the Division a timely and proper written response to the IO, having timely filed a request for a hearing as provided in the IO and in Section R655-14-16.

(b) Within a reasonable time after the close of an enforcement adjudicative proceeding, the Presiding Officer shall issue a written and signed Final Judgment and Order, including but not limited to:

(i) A statement of law and jurisdiction;

(ii) A statement of facts;

(iii) An identification of the confirmed violation(s);

(iv) An order setting forth actions required of the respondent(s);

(v) A notice of the option to request reconsideration and the right to petition for judicial review, except as such are waived in a Consent Order;

(vi) The time limits for requesting reconsideration or filing a petition for judicial review, except as such are waived in a Consent Order; and

(vii) Other information the Presiding Officer deems necessary or appropriate.

(c) The Presiding Officer's Final Judgment and Order shall be based on the record, as defined in this rule, or, in the case of a Consent Order, on the stipulation accepted by the parties and the Presiding Officer.

(d) A copy of the Presiding Officer's Final Judgment and Order shall be promptly mailed to each of the parties.

R655-14-16. Request for Hearing.

(1) Regardless of any other provision of the general laws to the contrary, all requests for a hearing shall be in writing and shall be filed with the Division within seven (7) calendar days of the date the IO was issued.

(2) The request for a hearing shall state clearly and concisely the specific facts that are in dispute, the supporting facts, the relief sought, the State Engineer Agency Action (SEAA) number, and any additional information required by applicable statutes and rules.

(3) The Presiding Officer may, upon the Presiding Officer's own initiative or upon the motion of any party, order any party to file a response or other pleading, and further permit either party to amend its pleadings in a manner just to all parties.

(4) The Presiding Officer shall, if it is determined a hearing is warranted, give all parties at least three (3) days notice of the date, time and place for the hearing. The Presiding Officer may grant requests for continuances for good cause shown.

(5) Any party may, by motion, request that a hearing be held at some place other than that designated by the Presiding Officer, due to disability or infirmity of any party or witness, or where justice and equity would be best served.

R655-14-17. General Requirements for Hearings.

(1) A hearing before a Presiding Officer is permitted in an enforcement adjudicative proceeding if:

(a) The proceeding was commenced by an IO; and

(b) The respondent files a timely request for hearing that meets the requirements of Section R655-14-16; and

(c) The respondent raises a genuine issue of material fact; or

(d) The Presiding Officer determines that a hearing is required to serve the interests of equity or justice.

(2) No genuine issue of material fact exists if:

(a) The evidence presented to the Presiding Officer by the

Enforcement Engineer and by the respondent is sufficient to establish the violation of the respondent under applicable law; and

(b) No evidence presented by the respondent conflicts with or substantially counters the evidence the Enforcement Engineer relied on when issuing the IO.

(3) The Presiding Officer may make a decision without holding a hearing if:

(a) Presentation of testimony or oral argument would not advance the Presiding Officer's understanding of the issues involved;

(b) Delay would cause serious injury to the public health and welfare;

(c) Disposition without a hearing would best serve the public interest.

(4) If no hearing is held, the Presiding Officer may issue a Final Judgment and Order in reliance upon the record, as defined in this rule, or may order a preliminary conference to supplement or clarify the record.

(5) A respondent at any time may withdraw the respondent's request for a hearing. The withdrawal shall be filed with the Division, in writing, signed by the respondent or an authorized representative, and is deemed final upon the date filed.

R655-14-18. Preliminary Conference.

(1) The Presiding Officer may require the parties to appear for a preliminary conference prior to granting a request for a hearing or prior to the scheduled commencement of a hearing or at any time before issuing a Final Judgment and Order.

(2) The purpose of a preliminary conference is to consider any or all of the following:

(a) The simplification or clarification of the issues;

(b) The possibility of obtaining stipulations, admissions, agreements on documents, understandings on matters already of record, or similar agreements which shall avoid unnecessary proof;

(c) The limitation of the number of witnesses or avoidance of similar cumulative evidence, if the case is to be heard;

(d) The possibility of agreement disposing of all or any of the issues in dispute; or

(e) Such other matters as may aid in the efficient and equitable disposition of the adjudicative enforcement proceeding.

(2) If a request for hearing has been timely and properly filed and has not been denied, all parties shall prepare and exchange the following information at the initial preliminary conference:

(a) Names and addresses of prospective witnesses including proposed areas of expertise for expert witnesses;

(b) A brief summary of proposed testimony;

(c) A time estimate of each witness' direct testimony;

(d) Curricula vitae (resumes) of all prospective expert witnesses.

(3) The scheduling of a preliminary conference shall be solely within the discretion of the Presiding Officer.

(4) The Presiding Officer shall give all parties at least three (3) days notice of the preliminary conference.

(5) The notice shall include the date, time and place of the preliminary conference.

R655-14-19. Telephonic or Electronic Hearings and Preliminary Conferences.

(1) The Presiding Officer may conduct hearings or preliminary conferences by telephone or other reliable electronic technology.

R655-14-20. Procedures and Standards for Orders Resulting from Service of an Initial Order.

(1) Consent Order:

(a) If the respondent substantially agrees with or does not contest the statements of fact in the IO, or if the parties agree to specific amendments to the statements of fact in the IO, the parties may enter into a Consent Order by stipulating to the facts and either or both of the following:

- (i) Negotiated administrative penalties;
- (ii) Negotiated replacement of water; or
- (iii) Negotiated reimbursement of enforcement costs.

(b) A Consent Order based on that stipulation, shall be prepared by the Enforcement Engineer for execution by the parties. The executed Consent Order shall be reviewed by the Presiding Officer and, if found to be acceptable, will be signed and issued by the Presiding Officer.

(c) A Consent Order issued by the Presiding Officer is not subject to reconsideration or judicial review.

(2) Final Judgment and Order Without Hearing: If the respondent does not request a hearing or is not granted a request for a hearing, participates by attending a preliminary conference or otherwise presents relevant information to the Presiding Officer, but is unable or unwilling to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based on the record, as defined in this rule.

(3) Final Judgment and Order After Hearing: If the respondent timely and properly requests a hearing, the hearing request is granted, the respondent participates by attending all scheduled preliminary conferences, and/or by attending the hearing, but is unwilling or unable to negotiate a stipulated Consent Order, the Presiding Officer shall issue a Final Judgment and Order based upon the record, as defined in this rule.

(4) Default Order: The Presiding Officer may issue a Default Order if the respondent fails to participate as follows:

- (a) The respondent does not timely request a hearing and fails to respond to the IO; or
- (b) After proper notice the respondent fails to attend a preliminary conference scheduled by the Presiding Officer; or
- (c) After proper notice, the respondent fails to attend a hearing scheduled by the Presiding Officer.

(5) A respondent who fails to participate pursuant to an IO waives any right to request reconsideration of the Final Judgment and Order per Section R655-14-25, but may petition for judicial review per Section R655-14-29.

R655-14-21. Conduct of Hearings.

(1) All parties, authorized representatives, witnesses and other persons present at the hearing shall conduct themselves in a manner consistent with the standards and decorum commonly observed in Utah courts. Where such decorum is not observed, the Presiding Officer may take appropriate action including adjournment, if necessary.

(2) The Presiding Officer shall conduct the hearing, make all decisions regarding admission or exclusion of evidence or any other procedural matters, and have an oath or affirmation administered to all witnesses.

R655-14-22. Rules of Evidence in Hearings.

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

(2) A party may call witnesses and present oral, documentary, and other evidence.

(3) A party may comment on the issues and conduct cross-examination of any witness as may be required for a full and true disclosure of all facts relevant to any issue designated for hearing, and as may affect the disposition of any interest which permits the person participating to be a party.

(4) A witness' testimony shall be under oath or affirmation.

(5) Any evidence may be presented by affidavit rather than

by oral testimony, subject to the right of any party to call and examine or cross-examine the affiant.

(6) Relevant evidence shall be admitted.

(7) The Presiding Officer's decision may not be based solely on hearsay.

(8) Official notice may be taken of all facts of which judicial notice may be taken in Utah courts.

(9) All parties shall have access to public information contained in the Division's files and to all materials and information gathered in the investigation, to the extent permitted by law.

(10) No evidence shall be admitted after completion of a hearing or after a case is submitted on the record, unless otherwise ordered by the Presiding Officer.

(11) Intervention is prohibited.

(12) A respondent appearing before the Presiding Officer for the purpose of a hearing may be represented by a licensed attorney. The Enforcement Engineer shall present evidence before a Presiding Officer supporting the State Engineer's claim. At the State Engineer's discretion, a representative from the office of the Attorney General may also present supporting evidence.

R655-14-23. Transcript of Hearing.

(1) Testimony and argument at the hearing shall be either recorded electronically or stenographically. The Division shall make copies of electronic recordings available to any party, upon written request. The fee charged for this service shall be equal to the actual costs of providing the copy. The Division is not responsible to supply any party with a transcript of a hearing.

(2) If any party shall cause to be produced a transcript of a hearing, a copy of said transcript shall be filed with the Division and provided to all other parties. By order of the Presiding Officer and with the consent of all parties, such written transcript may be deemed an official transcript.

(3) Corrections to an official transcript may be made only to conform it to the evidence presented at the hearing. Transcript corrections, agreed to by opposing parties, may be incorporated into the record, if and when approved by the Presiding Officer, at any time during the hearing, or after the close of the adjudicative proceeding. The Presiding Officer may call for the submission of proposed corrections and may determine the disposition thereof at appropriate times during the course of the proceeding.

R655-14-24. Consent Order.

(1) At any time prior to the Presiding Officer issuing a Final Judgment and Order, the parties may attempt to settle a dispute by stipulating to a Consent Order.

(2) Every Consent Order shall contain, in addition to an appropriate order:

- (a) A statement of facts accepted by the parties;
- (b) A waiver of further procedural steps before the Presiding Officer and of the right to judicial review; and
- (c) A statement that the stipulation is enforceable as an order of the State Engineer in accordance with procedures prescribed by law.

(3) The Consent Order may contain a statement that signing the Consent Order is for settlement purposes only and does not constitute an admission by any party that the law or rules have been violated as alleged in the IO.

(4) When issued by the Presiding Officer, a Consent Order constitutes a Final Judgment and Order, effective on the date issued.

R655-14-25. Reconsideration.

(1) Within 14 days after the Presiding Officer issues a Final Judgment and Order, any party may file a written request

for reconsideration stating the specific grounds upon which relief is requested.

(2) Unless otherwise provided by statute, the filing of a request for reconsideration is not a prerequisite for seeking judicial review of the order.

(3) The request for reconsideration shall be filed with the Division to the attention of the Presiding Officer and one copy shall be mailed to each party by the party filing the request.

(4) The Presiding Officer may issue a written order granting or denying the request for reconsideration. It is not required that the written order explain the grounds for the Presiding Officer's decision.

(5) If the Presiding Officer does not issue an order granting a request for reconsideration within 14 days after the date it is filed with the Division, the request shall be considered denied.

(6) A Final Judgment and Order in the form of a Consent Order or a Default Order is not subject to a request for reconsideration under this rule.

R655-14-26. Setting Aside a Final Judgment and Order.

(1) On the motion of any party or on a motion by the Presiding Officer, the Presiding Officer may set aside a Final Judgment and Order on any reasonable grounds, including but not limited to the following:

- (a) The respondent was not properly served with an IO;
- (b) The order has been replaced by a judicial order that covers the same violation and time period;
- (c) A rule or policy was not followed when the Final Judgment and Order was issued;
- (d) Mistake, inadvertence, excusable neglect;
- (e) Newly discovered evidence which by due diligence could not have been discovered before the Presiding officer issued the Final Judgment and Order; or
- (f) Fraud, misrepresentation or other misconduct of an adverse party;

(2) A motion to set aside a final order shall be made in a reasonable time and not more than three (3) months after the Final Judgment and Order was issued.

(3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to set aside a final order by issuing a notice to all parties, including therewith a copy of the motion.

(4) Any party opposing a motion to set aside a final order may submit information within the time period to be established by the Presiding Officer's notice of the motion.

(5) After consideration of the motion to set aside an order and any information received from the parties, the Presiding Officer shall issue an order granting or denying the motion, and provide a copy of the order to all parties.

R655-14-27. Amending Administrative Orders.

(1) On the motion of any party or of the Presiding Officer, the Presiding Officer may amend an IO or Final Judgment and Order for reasonable cause shown, including but not limited to the following:

- (a) A clerical mistake made in the preparation of the order; or
- (b) The time periods and alleged violation(s) covered in the order overlap the time periods and alleged violation(s) in another order for the same respondents.

(2) A motion by any party to amend an order shall be made in a reasonable time and, if to amend a Final Judgment and Order, not more than three (3) months after the Final Judgment and Order was issued.

(3) The Presiding Officer shall notify the parties of the receipt and consideration of a motion to amend an order by issuing a notice. The notice shall include a copy of the motion.

(4) Any party opposing a motion to amend an order may

submit information within the time period to be established by the Presiding Officer's notice of the motion.

(5) After considering a motion to amend an order and any relevant information received from the parties, the Presiding Officer shall advise the parties of his determination. If the Presiding Officer determines that the order shall be amended, the Presiding Officer shall issue the amended order to all parties.

R655-14-28. Disqualification of Presiding Officers.

(1) A Presiding Officer shall disqualify himself from performing the functions of the Presiding Officer regarding any matter in which he, his spouse, or a person within the third degree of relationship to either of them or the spouse of such person:

(a) Is a party to the proceeding, or an officer, director, or trustee of a party;

(b) Has acted as an attorney in the proceeding or served as an attorney for, or otherwise represented, a party concerning the matter in controversy;

(c) Knows that he has a financial interest, either individually or as a fiduciary, in the subject matter in controversy or in a party to the proceeding;

(d) Knows that he has any other interest that could be substantially affected by the outcome of the proceeding; or

(e) Is likely to be a material witness in the proceeding.

(2) A Presiding Officer is also subject to disqualification under principles of due process and administrative law.

(3) These requirements are in addition to any requirements under the Utah Public Officers' and Employees' Ethics Act, Section 67-16-1 et seq.

(4) 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 State Engineer.

R655-14-29. Judicial Review.

(1) Pursuant to Section 73-2-25, a Final Judgment and Order may be reviewed by trial de novo by the district court:

- (a) In Salt Lake County; or
- (b) In the county where the violation occurred.

(2) A respondent shall file a petition for judicial review of a Final Judgment and Order within 20 days from the day on which the order was issued, or if a request for reconsideration has been filed and denied, within 20 days of the date of denial of the request for reconsideration.

(3) The Presiding Officer may grant a stay of an order or other temporary remedy during the pendency of the judicial review on the Presiding Officer's own motion, or upon the motion of a party. The procedures for notice, for consideration of motions, and for issuing a determination shall be as set forth herein for a motion to set aside a Final Judgment and Order.

KEY: water rights, enforcement, administrative penalties July 8, 2008

73-2-1(4)(g)
73-2-25
73-2-26
73-3-25

R671. Pardons (Board of), Administration.**R671-509. Progress Violation Reports.****R671-509-1. Progress Violation Reports.**

A parole agent or other representative of the Department of Corrections shall submit to the Board a parole progress report when an incident, positive or negative, occurs that constitutes cause to modify the conditions of, or revoke, parole.

Examples of incidents which shall be reported to the Board via a parole progress Report are:

- a. Conviction of any infraction, misdemeanor or felony.
- b. Significant incidents or infractions of the general or specific conditions of parole.
- c. An incident which results in the parole supervisor placing the parolee in jail on a parole hold, arrest, detainment, or other conditions or incidents which result in the parolee being denied liberty.

All suspected parole violations shall be investigated and an incident report along with a recommended course of action submitted to the Board within a reasonable period of time. The report shall advise the Board of a parolee's adjustment and provide for modification of parole agreement conditions if necessary. Police reports, court orders, and waivers of personal appearance from parolees shall be attached when applicable.

KEY: parole, incident

January 1, 1999

77-27-11

Notice of Continuation July 3, 2008

R671. Pardons (Board of), Administration.**R671-510. Evidence for Issuance of Warrants.****R671-510-1. Evidence for Issuance of Warrants.**

Warrants shall be issued only upon a showing that there is probable cause to believe that a parole violation has occurred.

A certified Warrant Request shall be submitted by the parole agent setting forth reasons to believe that the named parolee committed specific parole violations. The request may be accompanied by supporting documentation such as police reports, incident reports, and judgment and commitment orders. Upon approval of the request by the Board, a Warrant of Arrest shall be issued to arrest, detain, and return to actual custody the parolee named therein.

R671-510-2. Warrant Request.

Warrant requests shall include:

- a. the name of the parolee, prison number date of birth, and offender number;
- b. the nature of the allegations that justify possible revocation of parole;
- c. the elements substantiating probable cause for each allegation which should include how, when, where, and what occurred;
- d. the condition of the parole agreement that the parolee is alleged to have violated, along with the date and approximate location where the violation occurred;
- e. the name, signature, and telephone number and/or pager of the parole officer and supervisor;
- f. the fax cover sheet will include the phone number or numbers where the reporting agent can be contacted if needed.

R671-510-3. Background Information.

The agent will also give the Board background information about the parolee, including overall status, adjustment to parole, and any other information requested in the warrant request form, which the Board shall promulgate. The background information shall accompany the warrant request if it can be completed in time. If it cannot be completed in time, the agent shall send it to the Board, and the parolee, within seven (7) days after issuance of the warrant. Once the parolee is detained on the Board warrant, the agent will track the case and notify the Board of updates. No less than ten days prior to the hearing the agent will send updated allegations and recommendations and any other information needed to ensure that full information regarding allegations and general parole performance is in the file prior to the hearing.

**KEY: warrants, parole, probable cause
November 19, 2003
Notice of Continuation July 3, 2008**

77-27-11

R671. Pardons (Board of), Administration.

R671-512. Execution of the Warrant.

R671-512-1. Execution of the Warrant.

When the agent executes the warrant, or as soon thereafter as possible, the agent shall provide the parolee copies of the warrant and the warrant request. At the same time, the agent shall also provide the parolee with the Notice Regarding Parole Allegations, the Challenge to Probable Cause Determination, and the Affidavit of Waiver and Plea of Guilt as published by the Board.

KEY: parole, warrant

November 19, 2003

Notice of Continuation July 3, 2008

77-27-11

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77-27-30

R671. Pardons (Board of), Administration.**R671-514. Waiver and Pleas of Guilt.****R671-514-1. Waiver and Pleas of Guilt.**

After executing the warrant, the agent shall tell the parolee of the opportunity to plead guilty to any or all of the allegations against him and that such a plea waives the right to a revocation and evidentiary hearing on that allegation.

R671-514-2. Guilty Pleas.

If the parolee wishes to plead guilty, the agent shall provide a copy of the Affidavit of Waiver and Plea of Guilt. If the parolee is functionally illiterate, the agent shall explain the contents of the affidavit and waiver. If the agent believes the parolee is unable to understand the affidavit and waiver and appreciate the consequences of signing it for any other reason, the agent shall promptly inform the Board, which may assign counsel to the parolee or take any other action that will assist the parolee to understand his rights.

R671-514-3. Multiple Pleas.

A parolee may plead guilty to some of the allegations and plead not guilty to others. The Board may decide to dismiss the allegations to which the parolee pled not guilty and make a disposition based solely on the pleas of guilt. If the Board chooses to make a disposition based solely on pleas of guilt, it need not hold either an evidentiary or parole revocation hearing. However, the Board may schedule a special appearance hearing, or parole rehearing, to ask the parolee questions or listen to victim testimony if doing so would assist it in making an appropriate disposition.

R671-514-4. Entry of Pleas at Anytime.

A parolee may enter a plea of guilt at anytime. If the parolee pleads guilty at the revocation or evidentiary hearing, the hearing officer shall explain to the parolee the rights he is surrendering and receive an admission and plea on the record.

R671-514-5. Acceptance of Pleas.

If the parolee pleads guilty to all the allegations, the Board may accept the plea(s) and take any action it considers appropriate for disposition. The Board need not hold a parole revocation or evidentiary hearing. However, the Board may schedule a special appearance hearing, or parole rehearing, to ask the parolee questions or listen to victim testimony if doing so would assist it in making an appropriate disposition.

KEY: parole, allegation, plea**January 1, 1999****Notice of Continuation July 3, 2008**

77-27-9

77-27-11

R671. Pardons (Board of), Administration.**R671-515. Timeliness of Parole Revocation Hearings.****R671-515-1. Timeliness of Parole Revocation Hearings.**

A Parole Revocation Hearing will be conducted by a hearing officer within 30 days after detention unless the parolee expressly waives the hearing in writing. For good cause, the Board may continue the hearing beyond 30 days.

R671-515-2. Detained in Another State.

If a parolee is detained in another state on a Utah Board warrant or on a new offense, a parole revocation hearing should be conducted within thirty (30) days from the parolee's return to the State of Utah. When the only hold on a parolee is a Utah Board warrant, then the parolee must be returned as soon as is practical after affording the parolee all rights.

R671-515-3. New Offense.

When the parolee is convicted of a new offense of which the parole office had knowledge, and the parolee has not been detained on a Board warrant during the pendency of court proceedings, the parole revocation process should be commenced within ninety (90) days from the time of sentencing on the new offense.

R671-515-4. Exceed Time Period for Good Cause.

The Board may for good cause upon a motion by the parolee or the Department of Corrections, or upon its own motion, exceed the time periods established in subsection (2) or (3). The time limitations in these rules are directory, not mandatory. A motion to dismiss a revocation based on failure to meet time limits will be granted only if the failure has substantially prejudiced the parolee's defense.

KEY: parole, timeliness, good cause

January 1, 1999

Notice of Continuation July 3, 2008

76-3-202

R671. Pardons (Board of), Administration.

R671-516. Parole Revocation Hearings.

R671-516-1. Allegations.

At the hearing, the hearing officer shall inform the parolee of the allegations against him and take his plea on the record.

R671-516-2. All Guilty Pleas.

If the parolee pleads guilty to all the allegations, the hearing officer shall proceed directly to disposition. The parolee shall present any reasons for mitigation. If present, the parole agent or representative of the Department of Corrections may discuss reasons for aggravation or mitigation and recommend a disposition.

R671-516-3. Not Guilty Pleas.

If the parolee pleads not guilty to any allegation, the Board shall either schedule an evidentiary hearing on the allegation or dismiss it as soon as practical. See also Utah Admin. Code R671-514, Waiver and Pleas of Guilt.

R671-516-4. Insufficient Evidence.

If the hearing officer believes there is insufficient evidence to justify continued detention and an evidentiary hearing, the matter shall be promptly routed to a majority of the Board. If the majority agrees there is insufficient evidence to justify detention and an evidentiary hearing, the warrant shall be withdrawn and the parolee released.

KEY: parole, revocation, hearings

November 19, 2003

Notice of Continuation July 3, 2008

77-27-5

77-27-9

77-27-11

R708. Public Safety, Driver License.**R708-10. Classified License System.****R708-10-1. Authority.**

This rule is authorized by Section 53-3-401 et seq.

R708-10-2. Specifications for Utah License Classifications.

Class A Commercial Driver - (must be at least 18 years of age). Every person operating any combination of vehicles over 26,000 lbs. GVWR (Gross Vehicle Weight Rating) where the towed unit is more than 10,000 lbs. GVWR.

Class B Commercial Driver - (must be at least 18 years of age). Every person operating a straight truck or bus (single vehicle) more than 26,000 lbs. GVWR or any combination of vehicles over 26,000 lbs. GVWR where the towed unit is less than 10,001 lbs. GVWR.

Class C operator - (must be at least 21 years of age). Every person operating a vehicle or combination of vehicles less than 26,001 GVWR which transports amounts of hazardous materials requiring placarding or which transports more than 15 occupants including the driver, or which is used as a school bus.

Class D operator - (must be at least 16 years of age). Every person operating vehicles not defined above except motorcycles.

R708-10-3. Endorsements.

H = Hazardous materials

M = Motorcycle.

N = Tank vehicle.

P = Passengers.

S = School bus. (includes P)

T = Double or triple trailers.

X = Hazardous material and tank combination.

Z = Taxis.

R708-10-4. Restrictions.

A = None.

B = Corrective lenses.

C = Mechanical aid.

D = Prosthetic aid.

E = Automatic transmission.

F = Outside mirror.

G = Daylight only.

I = Limit - other.

J = Other.

K = Restricted to intrastate operation of commercial vehicles.

L = Restricted to vehicles not equipped with air brakes.

O = 90 cc or less motorcycle.

U = a 3 wheel cycle.

V = POSTED 40 mph or less.

W = medical.

2 = 249cc or less motorcycle.

3 = 649cc or less motorcycle.

4 = Street legal ATV only.

KEY: classified license, licensing

July 8, 2008

53-3-401 et seq.

Notice of Continuation August 25, 2004

R708. Public Safety, Driver License.**R708-16. Pedestrian Vehicle Rule.****R708-16-1. Authority.**

- (1) This rule is authorized by Section 41-6a-1011.

R708-16-2. Purpose.

(1) To promote and regulate safety in the use of a pedestrian vehicle, for both the individual using the pedestrian vehicle, and any person or property around, or about, the area being used by a pedestrian vehicle. Specific conditions may be required prior to giving authorization to operate a pedestrian vehicle.

(2) To require a person to apply for authority to operate a pedestrian vehicle for any such vehicle with an excess of .5 brake horsepower capable of developing a speed of more than 8 mph and being used in an area other than a sidewalk or places where pedestrians are allowed.

(3) To review on an individual basis each application for authorization to operate a pedestrian vehicle according to need of the physically disabled person and pursuant to and in accordance with applicable rules adopted by the commissioner for the Department of Public Safety.

R708-16-3. Application and Requirements for Authorization to Operate a Pedestrian Vehicle.

(1) Application for authorization to operate a pedestrian vehicle shall be made at any field office of Driver License Division and shall require the following:

- (a) Name, age and D.O.B., sex, address, description of disability.
- (b) Type of pedestrian vehicle to be used must comply with the requirements specified in Section 41-62-1011.
- (c) Statement of intended use of the pedestrian vehicle. Intended use should not create an undue safety hazard.
- (d) A functional ability evaluation and a medical opinion that physical disability would not affect the safe operation of the pedestrian vehicle.
- (e) All applicants must sign a waiver accepting all responsibility for being allowed to operate a pedestrian vehicle.
- (f) Any physically disabled person, under the age of 18, must have parental or guardian approval and sign a waiver accepting responsibility for being allowed to operate a pedestrian vehicle.
- (g) Each individual making application for use of a pedestrian vehicle must demonstrate his/her ability to safely operate the pedestrian vehicle.

(2) Authorization to operate a pedestrian vehicle shall be in the form of a certificate issued by the department.

(3) Operation of pedestrian vehicles must comply with all pedestrian, bicycle, or vehicle traffic laws as applicable to the type of pedestrian vehicle used. This includes lighting requirements if used during hours of darkness.

(4) The department may inspect intended routes and uses of vehicles and apply restrictions on use of pedestrian vehicles as may be necessary for the preservation of public safety.

(5) Authorization to operate a pedestrian vehicle must be reviewed every five years.

R708-16-4. Special Requirements for Operation of a Pedestrian Vehicle.

(1) Passengers are prohibited on pedestrian vehicles except that one passenger, as designated by the department and indicated on the pedestrian vehicle authorization document, may be allowed if inclusion of the passenger does not create a negative effect on the safe operation of the pedestrian vehicle, and if the pedestrian vehicle is designed to accommodate a passenger.

(2) Every pedestrian vehicle must display a Standard International "Handicapped" emblem inset on a standard slow

moving vehicle designation.

(3) The department may require other markings or equipment as may be determined on an individual basis.

R708-16-5. Fee.

(1) The department may charge a \$13 fee to cover administrative costs of issuing a permit to operate a pedestrian vehicle.

(2) All fees collected for permits shall remain in the department as a dedicated credit.

R708-16-6. Denial, Suspension, and Revocation of Authorization to Operate a Pedestrian Vehicle.

(1) Authorization to operate a pedestrian vehicle may be denied, suspended or revoked when, in the opinion of the department, it may not be in the best interest of public safety to issue or continue such authorization.

R708-16-7. Adjudicative Proceedings.

(1) All adjudicative proceedings including but not limited to the application for and denial, suspension or revocation of authorization to operate a pedestrian vehicle, shall be governed by the adjudicative proceedings set forth in the rule identified as R708-17. The adjudicative proceedings set forth in R708-17 are hereby incorporated into this rule by this reference.

KEY: traffic regulations**July 8, 2008****Notice of Continuation March 23, 2006****41-6a-1011**

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. The rider will be restricted based on the cc size of the motorcycle tested on. The instructor shall write the engine size in cc format on the certificate.

(5) Upon successful completion of the class from an approved school, the division may waive the two month motorcycle learner permit holding period for riders under the age of 19.

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 driver 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

July 11, 2008

53-3-903

Notice of Continuation August 1, 2008

R710. Public Safety, Fire Marshal.**R710-10. Rules Pursuant to Fire Service Training, Education, and Certification.****R710-10-1. Title, Authority, and Adoption of Codes.**

1.1 These rules shall be known as the "Rules Pursuant to Fire Service Training, Education, and Certification, and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for fire service training, education and certification by establishing a Fire Service Education Administrator, a Fire Education Program Coordinator, the Fire Service Standards and Training Council, the Fire Service Certification Council, the Utah Fire and Rescue Academy, and standards for those agencies conducting non-affiliated fire service training.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 National Fire Protection Association (NFPA), NFPA 1403, Standard on Live Fire Training Evolutions, 2002 edition.

R710-10-2. Definitions.

2.1 "Academy" means Utah Fire and Rescue Academy.

2.2 "Academy Director" means the Director of the Utah Fire and Rescue Academy.

2.3 "Administrator" means Fire Service Education Administrator.

2.4 "Board" means Utah Fire Prevention Board.

2.5 "Career Firefighter" means one whose primary employment is directly related to the fire service.

2.6 "Certification Council" means the Fire Service Certification Council.

2.7 "Certification System" means the Utah Fire Service Certification System.

2.8 "Coordinator" means Fire Service Education Program Coordinator.

2.9 "EMT" means Emergency Medical Technician.

2.10 "Non-Affiliated" means an individual who is not a member of an organized fire department.

2.11 "Plan" means Fire Academy Strategic Plan.

2.12 "RCA" means Recruit Candidate Academy.

2.13 "SFM" means State Fire Marshal or authorized deputy.

2.14 "Standards Council" means Fire Service Standards and Training Council.

2.15 "UCA" means Utah Code Annotated, 1953.

2.16 "Volunteer/Part-Paid Firefighter" means one whose primary employment is not directly related to the fire service.

R710-10-3. Fire Service Education Administrator.

3.1 There is created by the Board a Fire Service Education Administrator for the State of Utah. This Administrator shall be the State Fire Marshal.

3.2 The Administrator shall oversee statewide fire service education of all personnel receiving training monies from the Fire Academy Support Account.

3.2.1 The Administrator shall oversee fire service education in fire suppression, fire prevention, fire administration, operations, hazardous materials, rescue, fire investigation, and public fire education in the State of Utah.

3.3 The Administrator shall dedicate sufficient time and efforts to ensure that those monies dedicated from the Fire Academy Support Account are expended in the best interests of all personnel receiving fire service education.

3.4 The Administrator shall ensure equitable monies are expended in fire service education to volunteer, career, and prospective fire service personnel.

3.5 The Administrator shall as directed by the Board, solicit the legislature for funding to ensure that fire service personnel receive sufficient monies to receive the education necessary to prevent loss of life or property.

3.6 The Administrator shall oversee the Fire Department Assistance Grant program by completing the following:

3.6.1 Insure that a broad based selection committee is impaneled each year.

3.6.2 Compile for presentation to the Board the proposed grants.

3.6.3 Receive the Board's approval before issuing the grants.

3.7 The Administrator shall if necessary, establish proposed changes to fire service education statewide, insuring personnel receive the most proficient and professional training available, insure completion of agreements and contracts, and insure that payments on agreements and contracts are completed expeditiously.

3.8 The Administrator shall report to the Board at each regularly scheduled Board meeting the current status of fire service education statewide. The Administrator shall present any proposed changes in fire service education to the Board, and receive direction and approval from the Board, before making those changes.

R710-10-4. Fire Service Education Program Coordinator.

4.1 The Fire Service Education Program Coordinator shall assist the Administrator in statewide fire service education.

4.2 The Coordinator shall conduct fire service education evaluations, budget reviews, performance audits, and oversee the effectiveness of fire service education statewide.

4.3 The Coordinator shall ensure that there is an established Utah Fire Service Strategic Training Plan for fire service education statewide. The Coordinator shall work with the Academy Director to update the Strategic Plan and keep it current to the needs of the fire service.

4.4 The Coordinator shall report findings of audits, budgetary reviews, training contracts or agreements, evaluation of training standards, and any other necessary items of interest with regard to fire service education to the Administrator.

4.5 The Coordinator shall ensure that contracts are established each year for training and education of fire personnel that meets the needs of those involved in fire service education statewide.

4.6 The Coordinator shall be the staff assistant to the Fire Service Standards and Training Council and shall present agenda items to the Council Chair that need resolution or review. As the staff assistant to the Training Council, the coordinator shall ensure that appointed members attend, encourage that the decisions made further the interests of fire service education statewide, and ensure that the Board is kept informed of the Training Council's decisions.

R710-10-5. Fire Service Standards and Training Council.

5.1 There is created by the Board, the Fire Service Standards and Training Council, whose duties are to provide direction to the Board and Academy in matters relating to fire service standards, training, and certification.

5.2 The Standards Council shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve four year terms, and shall consist of the following members:

5.2.1 Representative from the Utah State Fire Chiefs Association.

5.2.2 Representative from the Utah State Firemen's Association.

5.2.3 Representative from the Fire Marshal's Association of Utah.

5.2.4 Specialist in hazardous materials representing the

Hazardous Materials Institute.

5.2.5 Fire/arson investigator representing the Utah Chapter of the International Association of Arson Investigators.

5.2.6 Specialist in wildland fire suppression and prevention from the Utah State Division of Forestry, Fire and State Lands.

5.2.7 Representative from the International Association of Firefighters.

5.2.8 Representative from the Utah Fire Service Certification Council.

5.2.9 Representative from the fire service that is an Advanced Life Support (ALS) provider to represent Emergency Medical Services.

5.2.10 Representative from the Utah Fire Training Officers Association.

5.3 The Standards Council shall meet quarterly and may hold other meetings as necessary for proper transaction of business. A majority of the Standards Council members shall be present to constitute a quorum.

5.4 The Standards 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 the calendar year. If voted upon by the council, the vice chair will become the chair the next succeeding calendar year.

5.5 If a Standards Council member has two or more unexcused absences during a 12 month period, from regularly scheduled Standards Council meetings, it is considered grounds for dismissal pending review by the Board. The Coordinator shall submit the name of the Standards Council member to the Board for status review.

5.6 A member of the Standards Council may have a representative of their respective organization sit in proxy of that member, if submitted and approved by the Coordinator prior to the meeting.

5.7 The Chair or Vice Chair of the Standards Council shall report to the Board the activities of the Standards Council at regularly scheduled Board meetings. The Coordinator may report to the Board the activities of the Standards Council in the absence of the Chair or Vice Chair.

5.8 The Standards 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.

5.9 One-half of the members of the Standards Council shall be reappointed or replaced by the Board every two years.

R710-10-6. Utah Fire Service Certification Council.

6.1 There is created by the Board, the Utah Fire Service Certification Council, whose duties are to oversee fire service certification in the State of Utah.

6.2 The Certification Council shall be made up of 12 members, appointed by the Academy Director, approved by the Board, and each member shall serve three year terms.

6.3 The Certification Council shall be made up of users of the certification system and comprise both paid and volunteer fire personnel, members with special expertise, and members from various geographical locations in the state.

6.4 The purpose of the Certification Council is to provide direction on all aspects of certification, and shall report the activities of the Certification Council to the Fire Service Standards and Training Council.

6.5 Functioning of the Certification Council with regard to certification, re-certification, testing, meeting procedures, examinations, suspension, denial, annulment, revocation, appeals, and reciprocity, shall be conducted as specified in the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual.

6.6 A copy of the Utah Fire Service Voluntary Certification Program, Policy and Procedures Manual, shall be kept on file at the State Fire Marshal's Office and the Utah Fire and Rescue Academy.

R710-10-7. Utah Fire and Rescue Academy.

7.1 The primary fire service training school shall be known as the Utah Fire and Rescue Academy.

7.2 The Director of the Utah Fire and Rescue Academy shall report to the Administrator the activities of the Academy with regard to completion of the agreed academy contract.

7.3 The Academy Director may recommend to the Administrator or Coordinator new or expanded standards regarding fire suppression, fire prevention, public fire education, safety, certification, and any other items of necessary interest about the Academy.

7.4 The Academy shall receive approval from the Administrator, after being presented to the Standards and Training Council, any substantial changes in Academy training programs that vary from the agreed contract.

7.5 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those career, volunteer/part-paid, and non-affiliated students attending the Academy in the following categories:

7.5.1 Those who have received certification during the previous contract period at each certification level.

7.5.2 Those who have received an academic degree in any Fire Science category in the previous contract period.

7.5.3 Those who have completed other Academy classes during the previous contract period.

7.6 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical comparison of the categories required in Section 7.5, comparing attendance in the previous contract period.

7.7 The Academy Director shall provide to the Coordinator by October 1st of each year, in accepted budgeting practices, the following:

7.7.1 A cost analysis of classes to include the total spent for each class title, the average cost per class, the number of classes delivered, the number of participants per class title, and the cost per participant for each class title provided by the Academy.

7.7.2 A budget summary comparing amounts budgeted to actual expenditures for each budget code funded by the contract.

7.8 The Academy Director shall provide to the Coordinator by October 1st of each year, a numerical summary of those students attending Academy courses in the following categories:

7.8.1 Non-affiliated personnel enrolled in college courses.

7.8.2 Career fire service personnel enrolled in college credit courses.

7.8.3 Volunteer and part-paid fire service personnel enrolled in college credit courses.

7.8.4 Non-affiliated personnel enrolled in non-credit continuing education courses.

7.8.5 Career fire service personnel enrolled in non-credit continuing education courses.

7.8.6 Volunteer and part-paid fire service personnel enrolled in non-credit continuing education courses.

7.9 The Academy Director shall present to the Coordinator by January of each year, proposals to be incorporated in the Academy contract for the next fiscal year.

R710-10-8. Non-Affiliated Fire Service Training.

8.1 Those training organizations that desire to offer certification through the Certification System for non-affiliated personnel must receive approval in writing from the Standards Council and the Academy Director.

8.2 Before approval is granted, the training organization

requesting approval shall demonstrate the following:

8.2.1 Complete a written application requesting approval to conduct the training course.

8.2.2 Designate an approved course coordinator to oversee the course delivery and insure the course meets each of the applicable objectives.

8.2.3 Insure that qualified instructors are used to teach each subject.

8.2.4 Insure sufficient student to instructor ratios for all subjects or skills to be taught to include those designated high hazard.

8.2.5 Demonstrate that sufficient equipment and facilities will be provided to meet the training requirements of the course being taught.

8.2.6 Maintain course documentation as required through the Certification System to insure that all elements of the necessary training is completed.

8.2.7 Follow the accepted requirements of the Certification System for requesting testing and certification.

8.3 As required in Section 8.2.2 of these rules, the designated course coordinator shall meet the following requirements:

8.3.1 Be currently certified at the certification level as established by the Standards Council.

8.3.2 Insure that all assigned instructors meet the requirements as required in Section 8.4 of these rules.

8.3.3 Insure that the course syllabus and practical skills guide meet the requirements of the Certification System.

8.3.4 Insure that the requirements of Sections 8.2.4, 8.2.5, 8.2.6, and 8.2.7 of these rules are met.

8.4 As required in Section 8.2.3 of these rules, qualified instructors shall meet the following requirements:

8.4.1 Must be currently certified at the certification level as established by the Standards Council.

8.4.2 If the instructor is not certified, instructor qualification can be satisfied by special knowledge, experience or establishment of expertise.

8.5 An Introduction to Emergency Services class shall be completed by the non-affiliated student wishing to receive an RCA within the time period stated in 8.7 of these rules. The Introduction to Emergency Services class may be waived if the applicant can demonstrate to the Academy sufficient competency or prior experience in the fire service to make the class unwarranted.

8.6 Non-affiliated training providers shall follow the curriculum outline that is taught at the Academy in the Recruit Candidate Academy (RCA) program in order to award students an RCA Certificate of Completion.

8.7 An RCA Certificate of Completion may be issued to the non-affiliated student by the Academy upon successful completion of the following within a 24 month period:

8.7.1 Introduction to Emergency Services class or accepted waiver.

8.7.2 EMT Basic Course.

8.7.3 Completion of an accredited RCA.

R710-10-9. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-10-10. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-10-11. Adjudicative Proceedings.

11.1 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.

11.2 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

11.3 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63-46b-3.

11.4 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

11.5 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).

11.6 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.

11.7 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63-46b-15.

**KEY: fire training
July 23, 2008**

53-7-204

R805. Regents (Board of), University of Utah, Administration.**R805-1. Operating Regulations for Bicycles, Skateboards and Scooters.****R805-1-1. Purpose.**

To set forth the regulations that govern the operation and use of bicycles, skateboards and scooters on the campus of, or on other property owned, operated or controlled by, the University of Utah.

R805-1-2. Definitions.

A. Bicycle: every device propelled by human power upon which any person may ride having two tandem wheels either of which is more than 12 inches in diameter and also includes any device generally recognized as a bicycle, although equipped with more than one front or rear wheel.

B. Skateboard: every non-motorized device consisting of two or more wheels affixed to a platform or footboard upon which a rider stands and which does not have steering capability similar to that of a bicycle and does not have brakes which operate on or upon the wheels of the skateboard. It also includes every device generally recognized as a skateboard.

C. Scooter: every non-motorized device consisting of two or more wheels affixed to a platform or footboard upon which a rider stands and which has a handle or other mechanism at the front for holding or guiding the device. It also includes every device generally recognized as a scooter. It does not include such devices if they have steering capability similar to a bicycle and also have brakes that operate on or upon the wheels of the device. It does not include mopeds, whether operated with or without motor power. For the purpose of these regulations mopeds and motorcycles are considered motor vehicles.

R805-1-3. Policy.**A. Bicycles**

1. Every person operating a bicycle shall exercise due care and reasonable caution to prevent injury to others, to himself, or to property.

2. Every person operating a bicycle shall yield the right of way to pedestrians at all times.

3. No person operating a bicycle shall exceed a reasonable and proper speed under the circumstances then and there existing and in no event shall any person operate a bicycle at a speed greater than 10 miles per hour upon any sidewalk or pedestrian pathway except as part of a university approved competition or function.

4. Bicycles shall not be ridden upon any stairway, wall, bench, or other structure or facility or on or over shrubbery or flower beds. Bicycles shall not be ridden within any building.

5. Unless otherwise provided by regulations or traffic signs, bicycles may only be ridden upon roadways and sidewalks, except that where a bicycle path has been provided adjacent to a roadway or sidewalk, bicycle operators shall use such bicycle path.

6. No person riding a bicycle shall attach the same in any manner to any moving vehicle, except that this shall not prohibit the attaching to a bicycle of a bicycle trailer or semitrailer specifically designed for such attachment.

7. Bicycles shall not be ridden two or more abreast on any sidewalk or pedestrian walkway, except as part of a university approved competition or function.

8. No person shall ride a bicycle upon or along a sidewalk, pedestrian walkway, or across a roadway where the riding of bicycles is prohibited by official traffic control devices or signs, except as part of a university approved competition or function.

9. No bicycle shall be used to carry more persons at one time than the number for which it is designed and equipped, except that adult rider may carry a child securely attached to his/her person in a backpack or sling or in a child carrier

securely attached to the bicycle.

10. No person riding a bicycle shall carry any package, bundle, or other article which prevents the operator from using at least one hand on the handle bars.

11. Every bicycle shall be equipped with such brakes, reflectors and other safety devices at such times as is required by State law for operating a bicycle on streets or highways.

12. Bicycles shall not be parked on or at handicap ramps, handicap entrances or other facilities designated for handicapped traffic or in such a manner as to impede the free and clear use of such facilities.

13. Bicycles shall not be parked in the public areas of any building, including but not limited to hallways, stairwells, and classrooms. Bicycles shall not be parked at or near any building entrance or exit in such a manner as to impede the free and clear use of such areas.

14. Bicycles shall not be parked at or attached to any fire hydrant, standpipe, building service equipment or other safety device.

15. State traffic laws pertaining to bicycles are in full force and effect on the campus of, or on other property owned, operated or controlled by, the University of Utah.

B. Skateboards and Scooters

1. Every person riding a skateboard or scooter shall exercise due care and reasonable caution to prevent injury to others, to himself, or to property.

2. Every person riding a skateboard or scooter shall yield the right of way to pedestrians at all times.

3. No person riding a skateboard or scooter shall exceed a reasonable and proper speed under the circumstances then and there existing and in no event shall any person riding a skateboard or scooter exceed a speed of 10 miles per hour upon any sidewalk or pedestrian pathway except as part of a university approved competition or function.

4. Skateboards and scooters shall not be ridden upon any stairway, wall, bench, or other structure or facility or on or over any landscaped area, including, but not limited to, grass areas, shrubbery, or flower beds. Skateboards and scooters shall not be ridden within any building.

5. Unless otherwise provided by regulations or traffic signs, skateboards and scooters may only be ridden upon pedestrian sidewalks. Skateboards and scooters shall not be ridden upon any sidewalk where there is a posted sign prohibiting such activity. Except as part of a university approved competition or function, skateboards and scooters shall not be ridden upon any parking lot.

6. Skateboard and scooter riders shall not engage in obstacle riding or other acts or maneuvers which endanger the rider or others.

7. The appropriate bodies may adopt policies concerning the riding of skateboards and scooters in university student apartment areas.

8. Operators of those devices which are excluded from the skateboard or scooter category in these regulations because they have steering capability similar to a bicycle and because they have brakes which operate on or upon the wheels of the device shall comply with the regulations herein for bicycles.

9. Any state laws pertaining to skateboards and scooters are in full force and effect on the campus of, or on other property owned, operated or controlled by, the University of Utah.

C. Sanctions

1. These regulations may be enforced against university students, university staff and university faculty by violation notices which may be processed and settled through the parking citation and appeals procedures and offices.

2. Payment of violation notice fees shall be within seven working days. After that additional fees or penalties may be invoked. It is the responsibility of the recipient of the violation

notices to promptly settle them.

3. Unsettled violation notice fees may be withheld from the paychecks of faculty and staff.

4. Registration holds may be placed against delinquent student violators; student registration may be canceled in any instance where a student circumvents the system and registers without clearing delinquent violation notices; transcripts of credits may be withheld for students leaving the university with delinquent violation notices.

5. Chronic or flagrant student violators may be referred to the Student Behavior Committee for appropriate disciplinary action.

6. Alternative violation notices may be issued to persons not affiliated as student, staff or faculty with the university and will be handled the same as alternative parking violation notices.

7. Violation notices for violations of these regulations may be appealed to the Parking Appeals Office under the same rules, including time limitations, as parking violation notices.

8. Adverse ruling of the Parking Appeals Officer may be appealed to the Campus Parking Citation Appeals Committee under the same rules, including time limitations, as parking violation notices.

9. Bicycles, scooters or skateboards parked or placed in prohibited areas may be impounded, or otherwise secured. Bicycles, scooters or skateboards parked or placed in areas where they constitute a hazard to others may be removed and impounded.

10. In appropriate cases, including but not limited to chronic or flagrant violations of these regulations, university affiliated persons or non-university affiliated persons may be prohibited from bringing onto the campus bicycles, scooters or skateboards.

11. In appropriate cases, including but not limited to chronic or flagrant violations of these regulations, nonuniversity affiliated persons may be prohibited entry upon the campus.

KEY: bicycles, pedestrian, safety, speed limits

1989

Notice of Continuation July 11, 2008

53B-2-106

53B-3-101

76-8-701 et seq.

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

Notice of Continuation July 17, 2008

63G-2-204(2)

63A-12-104

63G-3-201

R986. Workforce Services, Employment Development.**R986-200. Family Employment Program.****R986-200-201. Authority for Family Employment Program (FEP) and Family Employment Program Two Parent (FEPTP) and Other Applicable Rules.**

(1) The Department provides services to eligible families under FEP and FEPTP under the authority granted in the Employment Support Act, UCA 35A-3-301 et seq. Funding is provided by the federal government through Temporary Aid to Needy Families (TANF) as authorized by PRWORA.

(2) Rule R986-100 applies to FEP and FEPTP unless expressly noted otherwise.

R986-200-202. Family Employment Program (FEP).

(1) The goal of FEP is to increase family income through employment, and where appropriate, child support and/or disability payments.

(2) FEP is for families with no more than one able bodied parent in the household. If the family has two able bodied parents in the household, the family is not eligible for FEP but may be eligible for FEPTP. Able bodied means capable of earning at least \$500 per month in the Utah labor market.

(3) If a household has at least one incapacitated parent, the parent claiming incapacity must verify that incapacity in one of the following ways:

- (a) receipt of disability benefits from SSA;
- (b) 100% disabled by VA; or
- (c) by submitting a written statement from:
 - (i) a licensed medical doctor;
 - (ii) a doctor of osteopathy;
 - (iii) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(iv) a licensed Advanced Practice Registered Nurse; or
 (v) a licensed Physician's Assistant.
 (d) the written statement in paragraph (c) of this subsection must be based on a current physical examination of the parent, not just a review of parent's medical records.

(4) Incapacity means not capable of earning \$500 per month. The incapacity must be expected to last 30 days or longer.

(5) An applicant or parent must cooperate in the obtaining of a second opinion regarding incapacity if requested by the Department. Only the costs associated with a second opinion requested by the Department will be paid for by the Department. The Department will not pay the costs associated with obtaining a second opinion if the parent requests the second opinion.

(6) An incapacitated parent is included in the FEP household assistance unit and the parent's income and assets are counted toward establishing eligibility unless the parent is a SSI recipient. If the parent is a SSI recipient, that parent is not included in the household and none of the income or assets of the SSI recipient is counted.

(7) An incapacitated parent who is included in the household must still negotiate, sign and agree to participate in an employment plan. If the incapacity is such that employment is not feasible now or in the future, participation may be limited to cooperating with ORS and filing for any assistance or benefits to which the parent may be entitled. If it is believed the incapacity might not be permanent, the parent will also be required to seek assistance in overcoming the incapacity.

R986-200-203. Citizenship and Alienage Requirements.

(1) All persons in the household assistance unit who are included in the financial assistance payment, including children, must be a citizen of the United States or meet alienage criteria.

(2) An alien is not eligible for financial assistance unless the alien meets the definition of qualified alien. A qualified alien is an alien:

- (a) who is paroled into the United States under section

212(d)(5) of the INA for at least one year;

(b) who is admitted as a refugee under section 207 of the INA;

(c) who is granted asylum under section 208 of the INA;

(d) who is a Cuban or Haitian entrant in accordance with the requirements of 45 CFR Part 401;

(e) who is an Amerasian from Vietnam and was admitted to the United States as an immigrant pursuant to Public Law 100-202 and Public Law 100-461;

(f) whose deportation is being withheld under sections 243(h) or 241(b)(3) of the INA;

(g) who is lawfully admitted for permanent residence under the INA,

(h) who is granted conditional entry pursuant to section 203(a)(7) of the INA;

(i) who meets the definition of certain battered aliens under Section 8 U.S.C. 1641(c); or

(j) who is a certified victim of trafficking.

(3) All aliens granted lawful temporary or permanent resident status under Sections 210, 302, or 303 of the Immigration Reform and Control Act of 1986, are disqualified from receiving financial assistance for a period of five years from the date lawful temporary resident status is granted.

(4) Aliens are required to provide proof, in the form of documentation issued by the United States Citizenship and Immigration Services (USCIS), of immigration status. Victims of trafficking can provide proof from the Office of Refugee Resettlement.

R986-200-204. Eligibility Requirements.

(1) To be eligible for financial assistance under the FEP or FEPTP a household assistance unit must include:

(a) a pregnant woman when it has been medically verified that she is in the third calendar month prior to the expected month of delivery, or later, and who, if the child were born and living with her in the month of payment, would be eligible. The unborn child is not included in the financial assistance payment; or

(b) at least one minor dependent child who is a citizen or meets the alienage criteria. All minor children age 6 to 16 must attend school, or be exempt under 53A-11-102, to be included in the household assistance unit for a financial assistance payment for that child.

(i) A minor child is defined as being under the age of 18 years and not emancipated by marriage or by court order; or

(ii) an unemancipated child, at least 18 years old but under 19 years old, with no high school diploma or its equivalent, who is a full-time student in a secondary school, or in the equivalent level of vocational or technical training, and the school has verified a reasonable expectation the 18 year old will complete the program before reaching age 19.

(2) Households must meet other eligibility requirements of income, assets, and participation in addition to the eligibility requirements found in R986-100.

(3) Persons who are fleeing to avoid prosecution of a felony are ineligible for financial assistance.

(4) All clients who are required to complete a negotiated employment plan as provided in R986-200-206 must attend a FEP orientation meeting and sign a FEP Agreement within 30 days of submitting his or her application for assistance. Attendance at the orientation meeting can only be excused for reasonable cause as defined in R986-200-212(8). The application for assistance will not be complete until the client has attended the meeting.

R986-200-205. How to Determine Who Is Included in the Household Assistance Unit.

The amount of financial assistance for an eligible household is based on the size of the household assistance unit

and the income and assets of all people in the household assistance unit.

(1) The income and assets of the following individuals living in the same household must be counted in determining eligibility of the household assistance unit:

(a) all natural parents, adoptive parents and stepparents, unless expressly excluded in this section, who are related to and residing in the same household as an eligible dependent child. Natural parentage is determined as follows:

(i) A woman is the natural parent if her name appears on the birth record of the child.

(ii) For a man to be determined to be the natural parent, that relationship must be established or acknowledged or his name must appear on the birth record. If the parents have a solemnized marriage at the time of birth, relationship is established and can only be rebutted by a DNA test;

(b) household members who would otherwise be included but who are absent solely by reason of employment, school or training, or who will return home to live within 30 days;

(c) all minor siblings, half-siblings, and adopted siblings living in the same household as an eligible dependent child; and

(d) all spouses living in the household.

(2) The following individuals in the household are not counted in determining the household size for determining payment amount nor are the assets or income of the individuals counted in determining household eligibility:

(a) a recipient of SSI benefits. If the SSI recipient is the parent and is receiving FEP assistance for the child(ren) residing in the household, the SSI parent must cooperate with establishing paternity and child support enforcement for the household to be eligible. If the only dependent child is a SSI recipient, the parent or specified relative may receive a FEP assistance payment which does not include that child, provided the parent or specified relative is not on SSI and can meet all other requirements;

(b) a child during any month in which a foster care maintenance payment is being provided to meet the child's needs. If the only dependent child in the household is receiving a foster care maintenance payment, the parent or specified relative may still receive a FEP assistance payment which does not include the child, provided all other eligibility, income and asset requirements are met;

(c) an absent household member who is expected to be gone from the household for 180 days or more unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included.

(3) The household assistance unit can choose whether to include or exclude the following individuals living in the household. If included, all income and assets of that person are counted:

(a) all absent household members who are expected to be temporarily absent from the home for more than 30 but not more than 180 consecutive days unless the absence is due to employment, school or training. If the absence is due to employment, school or training the household member must be included;

(b) Native American children, or deaf or blind children, who are temporarily absent while in boarding school, even if the temporary absence is expected to last more than 180 days;

(c) an adopted child who receives a federal, state or local government special needs adoption payment. If the adopted child receiving this type of payment is the only dependent child in the household and excluded, the parent(s) or specified relative may still receive a FEP or FEPTP assistance payment which does not include the child, provided all other eligibility requirements are met. If the household chooses to include the adopted child in the household assistance unit under this paragraph, the special needs adoption payment is counted as

income;

(d) former stepchildren who have no blood relationship to a dependent child in the household;

(e) a specified relative. If a household requests that a specified relative be included in the household assistance unit, only one specified relative can be included in the financial assistance payment regardless of how many specified relatives are living in the household. The income and assets of all household members are counted according to the provisions of R986-200-241.

(4) In situations where there are children in the home for which there is court order regarding custody of the children, the Department will determine if the children should be included in the household assistance unit based on the actual living arrangements of the children and not on the custody order. If the child lives in the home 50% or more of the time, the child must be included in the household assistance unit and duty of support completed. It is not an option to exclude the child. This is true even if the court awarded custody to the other parent or the court ordered joint custody. If the child lives in the household less than 50% of the time, the child cannot be included in the household. It is not an option to include the child. This is true even if the parent applying for financial assistance has been awarded custody by the court or the court ordered joint custody. If financial assistance is allowed, a joint custody order might be modified by the court under the provisions of 30-3-10.2(4) and 30-3-10.4.

(5) The income and assets of the following individuals are counted in determining eligibility even though the individual is not included in the assistance payment:

(a) a household member who has been disqualified from the receipt of assistance because of an IPV, (fraud determination);

(b) a household member who does not meet the citizenship and alienage requirements; or

(c) a minor child who is not in school full time or participating in self sufficiency activities.

R986-200-206. Participation Requirements.

(1) Payment of any and all financial assistance is contingent upon all parents in the household, including adoptive and stepparents, participating, to the maximum extent possible, in:

(a) assessment and evaluation;

(b) the completion of a negotiated employment plan; and

(c) assisting ORS in good faith to:

(i) establish the paternity of all minor children; and

(ii) establish and enforce child support obligations.

(d) obtaining any and all other sources of income. If any household member is or appears to be eligible for unemployment, SSA, Workers Compensation, VA, or any other benefits or forms of assistance, the Department will refer the individual to the appropriate agency and the individual must apply for and pursue obtaining those benefits. If an individual refuses to apply for and pursue these benefits or assistance, the individual is ineligible for financial assistance. Pursuing these benefits includes cooperating fully and providing all the necessary documentation to insure receipt of benefits. If the individual is already receiving assistance from the Department and it is found he or she is not cooperating fully to obtain benefits from another source, the individual will be considered to not be participating in his or her employment plan. If the individual is otherwise eligible for FEP or FEPTP, financial assistance will be provided until eligibility for other benefits or assistance has been determined. If an individual's application for SSA benefits is denied, the individual must fully cooperate in prosecuting an appeal of that SSA denial at least to the Social Security ALJ level.

(2) Parents who have been determined to be ineligible to

be included in the financial assistance payment are still required to participate.

(3) Children at least 16 years old but under 18 years old, unless they are in school full-time or in school part-time and working less than 100 hours per month are required to participate.

R986-200-207. Participation in Child Support Enforcement.

(1) Receipt of child support is an important element in increasing a family's income.

(2) Every natural, legal or adoptive parent has a duty to support his or her children and stepchildren even if the children do not live in the parental home.

(3) A parent's duty to support continues until the child:

(a) reaches age 18;

(b) is 18 years old and enrolled in high school during the normal and expected year of graduation;

(c) is emancipated by marriage or court order;

(d) is a member of the armed forces of the United States; or

(e) is self supporting.

(4) A client receiving financial assistance automatically assigns to the state any and all rights to child support for all children who are included in the household assistance unit while receiving financial assistance. The assignment of rights occurs even if the client claims or establishes "good cause or other exception" for refusal to cooperate. The assignment of rights to support, cooperation in establishing paternity, and establishing and enforcing child support is a condition of eligibility for the receipt of financial assistance.

(5) For each child included in the financial assistance payment, the client must also assign any and all rights to alimony or spousal support from the noncustodial parent while the client receives public assistance.

(6) The client must cooperate with the Department and ORS in establishing and enforcing the spousal and child support obligation from any and all natural, legal, or adoptive non-custodial parents.

(7) If a parent is absent from the home, the client must identify and help locate the non-custodial parent.

(8) If a child is conceived or born during a marriage, the husband is considered the legal father, even if the wife states he is not the natural father.

(9) If the child is born out of wedlock, the client must also cooperate in the establishment of paternity.

(10) ORS is solely responsible for determining if the client is cooperating in identifying the noncustodial parent and with child support establishment and enforcement efforts for the purposes of receipt of financial assistance. The Department cannot review, modify, or reject a decision made by ORS.

(11) Unless good cause is shown, financial assistance will terminate if a parent or specified relative does not cooperate with ORS in establishing paternity or enforcing child support obligations.

(12) Upon notification from ORS that the client is not cooperating, the Department will commence reconciliation procedures as outlined in R986-200-212. If the client continues to refuse to cooperate with ORS at the end of the reconciliation process, financial assistance will be terminated.

(13) Termination of financial assistance for non-cooperation is immediate, without a reduction period outlined in R986-200-212, if:

(a) the client is a specified relative who is not included in the household assistance unit;

(b) the client is a parent receiving SSI benefits; or

(c) the client is participating in FEPTP.

(14) Once the financial assistance has been terminated due to the client's failure to cooperate with child support enforcement, the client must then reapply for financial

assistance. This time, the client must cooperate with child support collection prior to receiving any financial assistance.

(15) A specified relative, illegal alien, SSI recipient, or disqualified parent in a household receiving FEP assistance must assign rights to support of any kind and cooperate with all establishment and enforcement efforts even if the parent or relative is not included in the financial assistance payment.

R986-200-208. Good Cause for Not Cooperating With ORS.

(1) The Department is responsible for determining if the client has good cause or other exception for not cooperating with ORS.

(2) To establish good cause for not cooperating, the client must file a written request for a good cause determination and provide proof of good cause within 20 days of the request.

(3) A client has the right to request a good cause determination at any time, even if ORS or court proceedings have begun.

(4) Good cause for not cooperating with ORS can be shown if one of following circumstances exists:

(a) The child, for whom support is sought, was conceived as a result of incest or rape. To prove good cause under this paragraph, the client must provide:

(i) birth certificates;

(ii) medical records;

(iii) Department records;

(iv) records from another state or federal agency;

(v) court records; or

(vi) law enforcement records.

(b) Legal proceedings for the adoption of the child are pending before a court. Proof is established if the client provides copies of documents filed in a court of competent jurisdiction.

(c) A public or licensed private social agency is helping the client resolve the issue of whether to keep or relinquish the child for adoption and the discussions between the agency and client have not gone on for more than three months. The client is required to provide written notice from the agency concerned.

(d) The client's cooperation in establishing paternity or securing support is reasonably expected to result in physical or emotional harm to the child or to the parent or specified relative. If harm to the parent or specified relative is claimed, it must be significant enough to reduce that individual's capacity to adequately care for the child.

(i) Physical or emotional harm is considered to exist when it results in, or is likely to result in, an impairment that has a substantial effect on the individual's ability to perform daily life activities.

(ii) The source of physical or emotional harm may be from individuals other than the noncustodial parent.

(iii) The client must provide proof that the individual is likely to inflict such harm or has done so in the past. Proof must be from an independent source such as:

(A) medical records or written statements from a mental health professional evidencing a history of abuse or current health concern. The record or statement must contain a diagnosis and prognosis where appropriate;

(B) court records;

(C) records from the Department or other state or federal agency; or

(D) law enforcement records.

(5) If a claim of good cause is denied because the client is unable to provide proof as required under Subsection (4) (a) or (d) the client can request a hearing and present other evidence of good cause at the hearing. If the ALJ finds that evidence credible and convincing, the ALJ can make a finding of good cause under Subsections (4) (a) or (d) based on the evidence presented by the client at the hearing. A finding of good cause by the ALJ can be based solely on the sworn testimony of the

client.

(6) When the claim of good cause for not cooperating is based in whole or in part on anticipated physical or emotional harm, the Department must consider:

- (a) the client's present emotional health and history;
- (b) the intensity and probable duration of the resulting impairment;
- (c) the degree of cooperation required; and
- (d) the extent of involvement of the child in the action to be taken by ORS.

(7) The Department recognizes no other exceptions, apart from those recognized by ORS, to the requirement that a client cooperate in good faith with ORS in the establishment of paternity and establishment and enforcement of child support.

(8) If the client has exercised his or her right to an agency review or adjudicative proceeding under Utah Administrative Procedures Act on the question of non-cooperation as determined by ORS, the Department will not review, modify, or reverse the decision of ORS on the question of non-cooperation. If the client did not have an opportunity for a review with ORS, the Department will refer the request for review to ORS for determination.

(9) Once a request for a good cause determination has been made, all collection efforts by ORS will be suspended until the Department has made a decision on good cause.

(10) A client has the right to appeal a Department decision on good cause to an ALJ by following the procedures for appeal found in R986-100.

(11) If a parent requests a hearing on the basis of good cause for not cooperating, the resulting decision cannot change or modify the determination made by ORS on the question of good faith.

(12) Even if the client establishes good cause not to cooperate with ORS, if the Department supervisor determines that support enforcement can safely proceed without the client's cooperation, ORS may elect to do so. Before proceeding without the client's cooperation, ORS will give the client advance notice that it intends to commence enforcement proceedings and give the client an opportunity to object. The client must file his or her objections with ORS within 10 days.

(13) A determination that a client has good cause for non-cooperation may be reviewed and reversed by the Department upon a finding of new, or newly discovered evidence, or a change in circumstances.

R986-200-209. Participation in Obtaining an Assessment.

(1) Within 20 business days of the date the application for financial assistance has been completed and approved, the client will be assigned to an employment counselor and must complete an assessment.

(2) The assessment evaluates a client's needs and is used to develop an employment plan.

(3) Completion of the assessment requires that the client provide information about:

- (a) family circumstances including health, needs of the children, support systems, and relationships;
- (b) personal needs or potential barriers to employment;
- (c) education;
- (d) work history;
- (e) skills;
- (f) financial resources and needs; and
- (g) any other information relevant to the client's ability to become self-sufficient.

(4) The client may be required to participate in testing or completion of other assessment tools and may be referred to another person within the Department, another agency, or to a company or individual under contract with the Department to complete testing, assessment, and evaluation.

R986-200-210. Requirements of an Employment Plan.

(1) Within 15 business days of completion of the assessment, the following individuals in the household assistance unit are required to sign and make a good faith effort to participate to the maximum extent possible in a negotiated employment plan:

(a) All parents, including parents whose income and assets are included in determining eligibility of the household but have been determined to be ineligible or disqualified from being included in the financial assistance payment.

(b) Dependent minor children who are at least 16 years old, who are not parents, unless they are full-time students or are employed an average of 30 hours a week or more.

(2) The goal of the employment plan is obtaining marketable employment and it must contain the soonest possible target date for entry into employment consistent with the employability of the individual.

(3) An employment plan consists of activities designed to help an individual become employed. For each activity there will be:

- (a) an expected outcome;
- (b) an anticipated completion date;
- (c) the number of participation hours agreed upon per week; and
- (d) a definition of what will constitute satisfactory progress for the activity.

(4) Each activity must be directed toward the goal of increasing the household's income.

(5) Activities may require that the client:

(a) obtain immediate employment. If so, the parent client shall:

- (i) promptly register for work and commence a search for employment for a specified number of hours each week; and
- (ii) regularly submit a report to the Department on:
 - (A) how much time was spent in job search activities;
 - (B) the number of job applications completed;
 - (C) the interviews attended;
 - (D) the offers of employment extended; and
 - (E) other related information required by the Department.

(b) participate in an educational program to obtain a high school diploma or its equivalent, if the parent client does not have a high school diploma;

(c) obtain education or training necessary to obtain employment;

(d) obtain medical, mental health, or substance abuse treatment;

(e) resolve transportation and child care needs;

(f) relocate from a rural area which would require a round trip commute in excess of two hours in order to find employment;

(g) resolve any other barriers identified as preventing or limiting the ability of the client to obtain employment, and/or

(h) participate in rehabilitative services as prescribed by the State Office of Rehabilitation.

(6) The client must meet the performance expectations of, and provide verification for, each eligible activity in the employment plan in order to stay eligible for financial assistance. A list of what will be considered acceptable documentation is available at each employment center.

(7) The client must cooperate with the Department's efforts to monitor and evaluate the client's activities and progress under the employment plan, which includes providing the Department with a release of information, if necessary to facilitate the Department's monitoring of compliance.

(8) Where available, supportive services will be provided as needed for each activity.

(9) The client agrees, as part of the employment plan, to cooperate with other agencies, or with individuals or companies under contract with the Department, as outlined in the

employment plan.

(10) An employment plan may, at the discretion of the Department, be amended to reflect new information or changed circumstances.

(11) The number of hours of participation in subsection (3)(c) of this section will not be lower than 30 hours per week. All 30 hours must be in eligible activities. 20 of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the number of hours of participation in subsection (3)(c) of this section is a minimum of 20 hours per week and all of those 20 hours must be in priority activities.

(12) In the event a client has barriers which prevent the client from 30 hours of participation per week, or 20 hours in priority activities, a lower number of hours of participation can be approved if:

(a) the Department identifies and documents the barriers which prevent the client from full participation; and

(b) the client agrees to participate to the maximum extent possible to resolve the barriers which prevent the client from participating.

R986-200-211. Education and Training As Part of an Employment Plan.

(1) A parent client's participation in education or training beyond that required to obtain a high school diploma or its equivalent is limited to the lesser of:

(a) 24 months which need not be continuous; or

(b) the completion of the education and training requirements of the employment plan.

(2) Post high school education or training will only be approved if all of the following are met:

(a) The client can demonstrate that the education or training would substantially increase the income level that the client would be able to achieve without the education and training, and would offset the loss of income the household incurs while the education or training is being completed.

(b) The client does not already have a degree or skills training certificate in a currently marketable occupation.

(c) An assessment specific to the client's education and training aptitude has been completed showing the client has the ability to be successful in the education or training.

(d) The mental and physical health of the client indicates the education or training could be completed successfully and the client could perform the job once the schooling is completed.

(e) The specific employment goal that requires the education or training is marketable in the area where the client resides or the client has agreed to relocate for the purpose of employment once the education/training is completed.

(f) The client, when determined appropriate, is willing to complete the education/training as quickly as possible, such as attending school full time which may include attending school during the summer.

(g) The client can realistically complete the requirements of the education or training program within the required time frames or time limits of the financial assistance program, including the 36-month lifetime limit for FEP and FEPTP, for which the client is eligible.

(3) A parent client may participate in education or training for up to six months beyond the 24-month limit if:

(a) the parent client is employed for 80 or more hours per month during each month of the extension;

(b) circumstances beyond the control of the client prevented completion within 24 months; and

(c) the Department director or designee determines that extending the 24-month limit is prudent because other employment, education, or training options do not enable the

family to meet the objective of the program.

(4) A parent client with a high school diploma or equivalent who has received 24 months of education or training while receiving financial assistance must participate a minimum of 30 hours per week in eligible activities. Twenty of those 30 hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. If the client has a child in the household under the age of six, the minimum number of hours of participation under this subsection is 20 hours per week and all of those 20 hours must be in priority activities.

(5) Graduate work can never be approved or supported as part of an employment plan.

R986-200-212. Reconciling Disputes and Termination of Financial Assistance for Failure to Comply.

If a client who is required to participate in an employment plan consistently fails, without reasonable cause, to show good faith in complying with the employment plan, the Department will terminate all or part of the financial assistance. This will apply if the Department is notified that the client has failed to cooperate with ORS as provided in R986-200-207. A termination for the reasons mentioned in this paragraph will occur only after the Department attempts reconciliation through the following process:

(1) The employment counselor will attempt to discuss compliance with the client and explore solutions. If compliance is not resolved the counselor will move to the second phase.

(2) In the second phase, the employment counselor will request a meeting with the client, the employment counselor, the counselor's supervisor and any other Department or allied entity representatives, if appropriate, who might assist in encouraging participation. If the client does not attend the meeting, the meeting will be held in the client's absence. A formal meeting with the client is not required for a third or subsequent occurrence. If a resolution cannot be reached, one of the following will occur:

(a) for the first occurrence, the client's financial assistance payment will be reduced by \$100 for one month. The reduction will occur in the month following the month the determination was made. If the client does not participate during the \$100 reduction month, financial assistance will be terminated beginning the month following the \$100 reduction month.

(b) for the second occurrence, the client's financial assistance payment will be terminated and the client will be ineligible for financial assistance for one month. If the client re-applies during the one month termination period, the new application will be denied for non-participation. If the client re-applies after the one month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(c) for the third and subsequent occurrences the client's financial assistance will be terminated beginning with the month following the determination by the employment counselor that the client is not participating. The client will be ineligible for financial assistance for two months and if the client re-applies during the two month period, the new application will be denied for non-participation. If the client re-applies after the two month termination period, the client must successfully complete a two week trial participation period before financial assistance will be approved.

(3) A client must demonstrate a genuine willingness to participate during the two week trial period.

(4) The occurrences are life-time occurrences and it does not matter how much time elapses between occurrences. If a client's assistance was reduced as provided in (2)(a) of this section three years ago, for example, the next occurrence will be treated as a second occurrence.

(5) The two week trial period may be waived only if the

client has cured all previous participation issues prior to re-application.

(6) The provisions of this section apply to clients who are eligible for and receiving financial assistance during an extension period as provided in R986-200-218.

(7) A child age 16-18 who is not a parent and who is not participating will be removed from the financial assistance grant on the first and all subsequent occurrences. The financial assistance will continue for other household members provided they are participating. If the child successfully completes a two week trial period, the child will be added back on to the financial assistance grant.

(8) Reasonable cause under this section means the client was prevented from participating through no fault of his or her own or failed to participate for reasons that are reasonable and compelling.

(9) Reasonable cause can also be established, as provided in 45 CFR 261.56, by a client who is a single custodial parent caring for a child under age six who refuses to engage in required work because he or she is unable to obtain needed child care because appropriate and affordable child care arrangements are not available within a reasonable distance from the home or work site.

(10) If a client is also receiving food stamps and the client's is disqualified for non-participation under this section, the client will also be subject to the food stamp sanctions found in 7CFR 273.7(f)(2) unless the client meets an exemption under food stamp regulations.

R986-200-213. Financial Assistance for a Minor Parent.

(1) Financial assistance may be provided to a single minor parent who resides in a place of residence maintained by a parent, legal guardian, or other adult relative of the single minor parent, unless the minor parent is exempt.

(2) The single minor parent may be exempt when:

(a) The minor parent has no living parent or legal guardian whose whereabouts is known;

(b) No living parent or legal guardian of the minor parent allows the minor parent to live in his or her home;

(c) The minor parent lived apart from his or her own parent or legal guardian for a period of at least one year before either the birth of the dependent child or the parent's having made application for FEP and the minor parent was self supporting during this same period of time; or

(d) The physical or emotional health or safety of the minor parent or dependent child would be jeopardized if they resided in the same residence with the minor parent's parent or legal guardian. A referral will be made to DCFS if allegations are made under this paragraph.

(3) Prior to authorizing financial assistance, the Department must approve the living arrangement of all single minor parents exempt under section (2) above. Approval of the living arrangement is not a certification or guarantee of the safety, quality, or condition of the living arrangements of the single minor parent.

(4) All minor parents regardless of the living arrangement must participate in education for parenting and life skills in infant and child wellness programs operated by the Department of Health and, for not less than 20 hours per week:

(a) attend high school or an alternative to high school, if the minor parent does not have a high school diploma;

(b) participate in education and training; and/or

(c) participate in employment.

(5) If a single minor parent resides with a parent, the Department shall include the income of the parent of the single minor parent in determining the single minor parent's eligibility for financial assistance.

(6) If a single minor parent resides with a parent who is receiving financial assistance, the single minor parent is

included in the parent's household assistance unit.

(7) If a single minor parent receives financial assistance but does not reside with a parent, the Department shall seek an order requiring that the parent of the single minor parent financially support the single minor parent.

R986-200-214. Assistance for Specified Relatives.

(1) Specified relatives include:

(a) grandparents;

(b) brothers and sisters;

(c) stepbrothers and stepsisters;

(d) aunts and uncles;

(e) first cousins;

(f) first cousins once removed;

(g) nephews and nieces;

(h) people of prior generations as designated by the prefix grand, great, great-great, or great-great-great;

(i) brothers and sisters by legal adoption;

(j) the spouse of any person listed above;

(k) the former spouse of any person listed above;

(l) individuals who can prove they met one of the above mentioned relationships via a blood relationship even though the legal relationship has been terminated; and

(m) former stepparents.

(2) The Department shall require compliance with Section 30-1-4.5

(3) A specified relative may apply for financial assistance for the child. If the child is otherwise eligible, the FEP rules apply with the following exceptions:

(a) The child must have a blood or a legal relationship to the specified relative even if the legal relationship has been terminated,

(b) Both parents must be absent from the home where the child lives. This is true even for a parent who has had his or her parental rights terminated;

(c) The child must be currently living with, and not just visiting, the specified relative;

(d) The parents' obligation to financially support their child will be enforced and the specified relative must cooperate with child support enforcement; and

(e) If the parent(s) state they are willing to support the child if the child would return to live with the parent(s), the child is ineligible unless there is a court order removing the child from the parent(s)' home.

(4) If the specified relative is currently receiving FEP or FEPTP, the child must be included in that household assistance unit.

(5) The income and resources of the specified relative are not counted unless the specified relative requests inclusion in the household assistance unit.

(6) If the specified relative is not currently receiving FEP or FEPTP, and the specified relative does not want to be included in the financial assistance payment, the specified relative shall be paid, on behalf of the child, the full standard financial assistance payment for one person. The size of the financial assistance payment shall be increased accordingly for each additional eligible child in the household assistance unit excluding the dependent child(ren) of the specified relative. Since the specified relative is not included in the household assistance unit, the income and assets of the specified relative, or the relative's spouse, are not counted.

(7) The specified relative may request to be included in the household assistance unit. If the specified relative is included in the household assistance unit, the household must meet all FEP eligibility requirements including participation requirements and asset limits.

(8) Income eligibility for a specified relative who wants to be included in the household assistance unit is calculated according to R986-200-241.

R986-200-215. Family Employment Program Two Parent Household (FEPTP).

(1) FEPTP is for households otherwise eligible for FEP but with two able-bodied parents in the household.

(2) Families may only participate in this program for seven months out of any 13-month period. Months of participation count toward the 36-month time limit in Sections 35A-3-306 and R986-200-217.

(3) Both parents must participate in eligible activities for a combined total of 60 hours per week, as defined in the employment plan. At least 50 of those hours must be in priority activities. A list of approved priority and eligible activities is available at each employment center. Parents in a FEPTP household who are refugees are not restricted to those activities on the approved priority or eligible activities list for the first three months of FEPTP eligibility but the parents are still required to participate for a combined total of 60 hours per week.

(4) Both parents are required to participate every week as defined in the employment plan, unless the parent can establish reasonable cause for not participating. Reasonable cause is defined in rule R986-200-212(8).

(5) Payment is made twice per month and only after proof of participation. Payment is based on the number of hours of participation by both parents. The amount of assistance is equal to the FEP payment for the household size prorated based on the number of hours which the parents participated up to a maximum of 60 hours of participation per week. In no event can the financial assistance payment per month for a FEPTP household be more than for the same size household participating in FEP.

(6) If it is determined by the employment counselor that either one of the parents has failed to participate to the maximum extent possible assistance for the entire household unit will terminate immediately.

(7) Because payment is made after performance, advance notice is not required to terminate or reduce assistance payments for households participating in FEPTP. However, if the client requests a hearing within ten days of the termination, payment of financial assistance based on participation of both parents in eligible activities can continue during the hearing process as provided in R986-100-134.

(8) The parents must meet all other requirements of FEP including but not limited to, income and asset limits, cooperation with ORS if there are legally responsible persons outside of the household assistance unit, signing a participation agreement and employment plan and applying for all other assistance or benefits to which they might be entitled.

R986-200-216. Diversion.

(1) Diversion is a one-time financial assistance payment provided to help a client avoid receiving extended cash assistance.

(2) In determining whether a client should receive diversion assistance, the Department will consider the following:

- (a) the applicant's employment history;
- (b) the likelihood that the applicant will obtain immediate full-time employment;
- (c) the applicant's housing stability; and
- (d) the applicant's child care needs, if applicable.

(3) To be eligible for diversion the applicant must:

(a) have a need for financial assistance to pay for housing or substantial and unforeseen expenses or work related expenses which cannot be met with current or anticipated resources;

(b) show that within the diversion period, the applicant will be employed or have other specific means of self support, and

(c) meet all eligibility criteria for a FEP financial assistance payment except the applicant does not need to

cooperate with ORS in obtaining support. If the client is applying for other assistance such as medical or child care, the client will have to follow the eligibility rules for that type of assistance which may require cooperation with ORS.

(4) If the Department and the client agree diversion is appropriate, the client must sign a diversion agreement listing conditions, expectations and participation requirements.

(5) The diversion payment may not exceed three times the monthly financial assistance payment for the household size. All income expected to be received during the three-month period including wages and child support must be considered when negotiating the appropriate diversion payment amount.

(6) Child support will belong to the client during the three-month period, whether received by the client directly or collected by ORS. ORS will not use the child support to offset or reimburse the diversion payment.

(7) The client must agree to have the financial assistance portion of the application for assistance denied.

(8) If a diversion payment is made and the client later decides to reapply for financial assistance within three months of the date of the original application, the initial application date will be used and the amount of the diversion payment previously issued will be prorated over the three months and subtracted from the payment(s) to which the household unit is eligible.

(9) Diversion assistance is not available to clients participating in FEPTP. This is because FEPTP is based on performance and payment can only be made after performance.

R986-200-217. Time Limits.

(1) Except as provided in R986-200-218 and in Section 35A-3-306, a family cannot receive financial assistance under the FEP or FEPTP for more than 36 months.

(2) The following months count toward the 36-month time limit regardless of whether the financial assistance payment was made in this or any other state:

(a) each month when a parent client received financial assistance beginning with the month of January, 1997;

(b) each month beginning with January, 1997, where a parent resided in the household, the parent's income and assets were counted in determining the household's eligibility, but the parent was disqualified from being included in the financial payment. Disqualification occurs when a parent has been determined to have committed fraud in the receipt of public assistance or when the parent is an ineligible alien; and

(c) each month when financial assistance was reduced or a partial financial assistance payment was received beginning with the month of January, 1997.

(3) Months which do not count toward the 36 month time limit are:

(a) months where both parents were absent from the home and dependent children were cared for by a specified relative who elected to be excluded from the household unit;

(b) months where the client received financial assistance as a minor child and was not the head of a household or married to the head of a household;

(c) months during which the parent lived in Indian country, as defined in Title 18, Section 1151, United States Code 1999, or an Alaskan Native village, if the most reliable data available with respect to the month, or a period including the month, indicate that at least 50% of the adults living in Indian country or in the village were not employed;

(d) months when a parent resided in the home but were excluded from the household assistance unit. A parent is excluded when they receive SSI benefits;

(e) the first diversion period in any 12 month period of time is not counted toward the 36 month time limit. A second and all subsequent diversion periods within 12 months will count as one month toward the 36 month time limit. If a client

has already used 36 months of financial assistance, the client is not eligible for diversion assistance unless the client meets one of the extension criteria in R986-200-218 in addition to all other eligibility criteria of diversion assistance; or

(f) months when a parent client received transitional assistance.

R986-200-218. Exceptions to the Time Limit.

Exceptions to the time limit may be allowed for up to 20% of the average monthly number of families receiving financial assistance from FEP and FEPTP during the previous Federal fiscal year for the following reasons:

(1) A hardship under Section 35A-3-306 is determined to exist when a parent:

(a) is determined to be medically unable to work. The client must provide proof of inability to work in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) receipt of VA Disability benefits based on the parent being 100% disabled;

(iii) placement on the Division of Services to People with Disabilities' waiting list. Being on the waiting list indicates the person has met the criteria for a disability; or

(iv) is currently receiving Temporary Total or Permanent Total disability Workers' Compensation benefits;

(v) a medical statement completed by a medical doctor, a licensed Advanced Practice Registered Nurse, a licensed Physician's Assistant, or a doctor of osteopathy, stating the parent has a medical condition supported by medical evidence, which prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. The statement must be completed by a professional skilled in both the diagnosis and treatment of the condition; or

(vi) a statement completed by a licensed clinical social worker, licensed psychologist, licensed Mental Health Therapist as defined in UCA Section 58-60-102, or psychiatrist stating that the parent has been diagnosed with a mental health condition that prevents the parent from engaging in work activities capable of generating income of at least \$500 a month. Substance abuse is considered the same as mental health condition;

(b) is under age 19 through the month of their nineteenth birthday;

(c) is currently engaged in an approved full-time job preparation, educational or training activity which the parent was expected to complete within the 36 month time limit but completion within the 36 months was not possible through no fault of the parent. Additionally, if the parent has previously received, beginning with the month of January 1997, 24 months of financial assistance while attending educational or training activities, good cause for additional months must be shown and approved;

(d) was without fault and a delay in the delivery of services provided by the Department occurred. The delay must have had an adverse effect on the parent causing a hardship and preventing the parent from obtaining employment. An extension under this section cannot be granted for more than the length of the delay;

(e) moved to Utah after exhausting 36 months of assistance in another state or states and the parent did not receive supportive services in that state or states as required under the provisions of PRWORA. To be eligible for an extension under this section, the failure to receive supportive services must have occurred through no fault of the parent and must contribute to the parent's inability to work. An extension under this section can never be for longer than the delay in services;

(f) completed an educational or training program at the 36th month and needs additional time to obtain employment;

(g) is unable to work because the parent is required in the

home to meet the medical needs of a dependent. Dependent for the purposes of this paragraph means a person who the parent claims as a dependent on his or her income tax filing. Proof, consisting of a medical statement from a health care professional listed in subparagraph (1)(a)(v) or (vi) of this section is required unless the dependent is on the Travis C Medicaid waiver program. The medical statement must include all of the following:

(i) the diagnosis of the dependent's condition,

(ii) the recommended treatment needed or being received for the condition,

(iii) the length of time the parent will be required in the home to care for the dependent, and

(iv) whether the parent is required to be in the home full-time or part-time; or

(h) is currently receiving assistance under one of the exceptions in this section and needs additional time to obtain employment. A client can only receive assistance for one month under this subparagraph. If the Department determines that granting an exception under this subparagraph adversely impacts its federally mandated participation rate requirements or might otherwise jeopardize its funding, the one month exception will not be granted.

(2) Additional months of financial assistance may be provided if the family includes an individual who has been battered or subjected to extreme cruelty which is a barrier to employment and the implementation of the time limit would make it more difficult to escape the situation. Battered or subjected to extreme cruelty means:

(a) physical acts which resulted in, or threatened to result in, physical injury to the individual;

(b) sexual abuse;

(c) sexual activity involving a dependent child;

(d) threats of, or attempts at, physical or sexual abuse;

(e) mental abuse which includes stalking and harassment;

or

(f) neglect or deprivation of medical care.

(3) An exception to the time limit can be granted for a maximum of an additional 24 months if:

(a) during the previous two months, the parent client was employed for no less than 20 hours per week. The employment can consist of self-employment if the parent's net income from that self-employment is at or above minimum wage; and

(b) If, at the end of the 24-month extension, the parent client qualifies for an extension under Sections (1) or (2) of this rule, an additional extension can be granted under the provisions of those sections.

(4) All clients receiving an extension must continue to participate, to the maximum extent possible, in an employment plan. This includes cooperating with ORS in the collection, establishment, and enforcement of child support and the establishment of paternity, if necessary.

(5) If a household filing unit contains more than one parent, and one parent has received at least 36 months of assistance as a parent, then the entire filing unit is ineligible unless both parents meet one of the exceptions listed above. Both parents need not meet the same exception.

(6) A family in which the only parent or both parents are ineligible aliens cannot be granted an extension under Section (3) above or for any of the reasons in Subsections (1)(c), (d), (e) or (f). This is because ineligible aliens are not legally able to work and supportive services for work, education and training purposes are inappropriate.

(7) A client who is no longer eligible for financial assistance may be eligible for other kinds of public assistance including food stamps, Child Care Assistance and medical coverage. The client must follow the appropriate application process to determine eligibility for assistance from those other programs.

(8) Exceptions are subject to a review at least once every six months.

R986-200-219. Emergency Assistance (EA) for Needy Families With Dependent Children.

(1) EA is provided in an effort to prevent homelessness. It is a payment which is limited to use for utilities and rent or mortgage.

(2) To be eligible for EA the family must meet all other FEP requirements except:

(a) the client need only meet the "gross income" test. Gross income which is available to the client must be equal to or less than 185% of the standard needs budget for the client's filing unit; and

(b) the client is not required to enter into an employment plan or cooperate with ORS in obtaining support.

(3) The client must be homeless, in danger of becoming homeless or having the utilities at the home cut off due to a crisis situation beyond the client's control. The client must show that:

(a) The family is facing eviction or foreclosure because of past due rent or mortgage payments or unpaid utility bills which result from the crisis;

(b) A one-time EA payment will enable the family to obtain or maintain housing or prevent the utility shut off while they overcome the temporary crisis;

(c) Assistance with one month's rent or mortgage payment is enough to prevent the eviction, foreclosure or termination of utilities;

(d) The client has the ability to resolve past due payments and pay future months' rent or mortgage payments and utility bills after resolution of the crisis; and

(e) The client has exhausted all other resources.

(4) Emergency assistance is available for only 30 consecutive days during a year to any client or that client's household. If, for example, a client receives an EA payment of \$450 for rent on April 1 and requests an additional EA payment of \$300 for utilities on or before April 30 of that same year, the request for an EA payment for utilities will be considered. If the request for an additional payment for utilities is made after April 30, it cannot be considered for payment. The client will not be eligible for another EA payment until April 1 of the following year. A year is defined as 365 days following the initial date of payment of EA.

(5) Payments will not exceed \$450 per family for one month's rent payment or \$700 per family for one month's mortgage payment, and \$300 for one month's utilities payment.

R986-200-220. Mentors.

(1) The Department will recruit and train volunteers to serve as mentors for parent clients. The Department may elect to contract for the recruitment and training of the volunteers.

(2) A mentor may advocate on behalf of a parent client and help a parent client:

- (a) develop life skills;
- (b) implement an employment plan; or
- (c) obtain services and support from:
 - (i) the volunteer mentor;
 - (ii) the Department; or
 - (iii) civic organizations.

R986-200-230. Assets Counted in Determining Eligibility.

(1) All available assets, unless exempt, are counted in determining eligibility. An asset is available when the applicant or client owns it and has the ability and the legal right to sell it or dispose of it. An item is never counted as both income and an asset in the same month.

(2) The value of an asset is determined by its equity value. Equity value is the current market value less any debts still

owing on the asset. Current market value is the asset's selling price on the open market as set by current standards of appraisal.

(3) Both real and personal property are considered assets. Real property is an item that is fixed, permanent, or immovable. This includes land, houses, buildings, mobile homes and trailer homes. Personal property is any item other than real property.

(4) If an asset is potentially available, but a legal impediment to making it available exists, it is exempt until it can be made available. The applicant or client must take appropriate steps to make the asset available unless:

(a) Reasonable action would not be successful in making the asset available; or

(b) The probable cost of making the asset available exceeds its value.

(5) The value of countable real and personal property cannot exceed \$2,000.

(6) If the household assets are below the limits on the first day of the month the household is eligible for the remainder of the month.

R986-200-231. Assets That Are Not Counted (Exempt) for Eligibility Purposes.

The following are not counted as an asset when determining eligibility for financial assistance:

(1) the home in which the family lives, and its contents, unless any single item of personal property has a value over \$1,000, then only that item is counted toward the \$2,000 limit. If the family owns more than one home, only the primary residence is exempt and the equity value of the other home is counted;

(2) the value of the lot on which the home stands is exempt if it does not exceed the average size of residential lots for the community in which it is located. The value of the property in excess of an average size lot is counted if marketable;

(3) water rights attached to the home property are exempt;

(4) motorized vehicles;

(5) with the exception of real property, the value of income producing property necessary for employment;

(6) the value of any reasonable assistance received for post-secondary education;

(7) bona fide loans, including reverse equity loans;

(8) per capita payments or any asset purchased with per capita payments made to tribal members by the Secretary of the Interior or the tribe;

(9) maintenance items essential to day-to-day living;

(10) life estates;

(11) an irrevocable trust where neither the corpus nor income can be used for basic living expenses;

(12) for refugees, as defined under R986-300-303(1), assets that remain in the refugee's country of origin are not counted;

(13) one burial plot per member of the household. A burial plot is a burial space and any item related to repositories used for the remains of the deceased. This includes caskets, concrete vaults, urns, crypts, grave markers, etc. If the individual owns a grave site, the value of which includes opening and closing, the opening and closing is also exempt;

(14) a burial/funeral fund up to a maximum of \$1,500 per member of the household;

(a) The value of any irrevocable burial trust is subtracted from the \$1,500 burial/funeral fund exemption. If the irrevocable burial trust is valued at \$1,500 or more, it reduces the burial/funeral fund exemption to zero.

(b) After deducting any irrevocable burial trust, if there is still a balance in the burial/funeral fund exemption amount, the remaining exemption is reduced by the cash value of any burial contract, funeral plan, or funds set aside for burial up to a

maximum of \$1,500. Any amount over \$1,500 is considered an asset;

(15) any interest which is accrued on an exempt burial contract, funeral plan, or funds set aside for burial is exempt as income or assets. If an individual removes the principal or interest and uses the money for a purpose other than the individual's burial expenses, the amount withdrawn is countable income; and

(16) any other property exempt under federal law.

R986-200-232. Considerations in Evaluating Real Property.

(1) Any nonexempt real property that an applicant or client is making a bona fide effort to sell is exempt for a nine-month period provided the applicant or client agrees to repay, from the proceeds of the sale, the amount of financial and/or child care assistance received. Bona fide effort to sell means placing the property up for sale at a price no greater than the current market value. Additionally, to qualify for this exemption, the applicant or client must assign, to the state of Utah, a lien against the real property under consideration. If the property is not sold during the period of time the client was receiving financial and/or child care assistance or if the client loses eligibility for any reason during the nine-month period, the lien will not be released until repayment of all financial and/or child care assistance is made.

(2) Payments received on a sales contract for the sale of an exempt home are not counted if the entire proceeds are committed to replacement of the property sold within 30 days of receipt and the purchase is completed within 90 days. If more than 90 days is needed to complete the actual purchase, one 90-day extension may be granted. Proceeds are defined as all payments made on the principal of the contract. Proceeds do not include interest earned on the principal which is counted as income.

R986-200-233. Considerations in Evaluating Household Assets.

(1) The assets of a disqualified household member are counted.

(2) The assets of a ward that are controlled by a legal guardian are considered available to the ward.

(3) The assets of an ineligible child are exempt.

(4) When an ineligible alien is a parent, the assets of that alien parent are counted in determining eligibility for other family members.

(5) Certain aliens who have been legally admitted to the United States for permanent residence must have the income and assets of their sponsors considered in determining eligibility for financial assistance under applicable federal authority in accordance with R986-200-243.

R986-200-234. Income Counted in Determining Eligibility.

(1) The amount of financial assistance is based on the household's monthly income and size.

(2) Household income means the payment or receipt of countable income from any source to any member counted in the household assistance unit including:

(a) children; and

(b) people who are disqualified from being counted because of a prior determination of fraud (IPV) or because they are an ineligible alien.

(3) The income of SSI recipients is not counted.

(4) Countable income is gross income, whether earned or unearned, less allowable exclusions listed in section R986-200-239.

(5) Money is not counted as income and an asset in the same month.

(6) If an individual has elected to have a voluntary reduction or deduction taken from an entitlement to earned or unearned income, the voluntary reduction or deduction is

counted as gross income. Voluntary reductions include insurance premiums, savings, and garnishments to pay an owed obligation.

R986-200-235. Unearned Income.

(1) Unearned income is income received by an individual for which the individual performs no service.

(2) Countable unearned income includes:

(a) pensions and annuities such as Railroad Retirement, Social Security, VA, Civil Service;

(b) disability benefits such as sick pay and workers' compensation payments unless considered as earned income;

(c) unemployment insurance;

(d) strike or union benefits;

(e) VA allotment;

(f) income from the GI Bill;

(g) assigned support retained in violation of statute is counted when a request to do so has been generated by ORS;

(h) payments received from trusts made for basic living expenses;

(i) payments of interest from stocks, bonds, savings, loans, insurance, a sales contract, or mortgage. This applies even if the payments are from the sale of an exempt home. Payments made for the down payment or principal are counted as assets;

(j) inheritances;

(k) life insurance benefits;

(l) payments from an insurance company or other source for personal injury, interest, or destroyed, lost or stolen property unless the money is used to replace that property;

(m) cash contributions from any source including family, a church or other charitable organization;

(n) rental income if the rental property is managed by another individual or company for the owner. Income from rental property managed by someone in the household assistance unit is considered earned income;

(o) financial assistance payments received from another state or the Department from another type of financial assistance program including a diversion payment; and

(p) payments from Job Corps and Americorps living allowances.

(3) Unearned income which is not counted (exempt):

(a) cash gifts for special occasions which do not exceed \$30 per quarter for each person in the household assistance unit. The gift can be divided equally among all members of the household assistance unit;

(b) bona fide loans, including reverse equity loans on an exempt property. A bona fide loan means a loan which has been contracted in good faith without fraud or deceit and genuinely endorsed in writing for repayment;

(c) the value of food stamps, food donated from any source, and the value of vouchers issued under the Women Infants and Children program;

(d) any per capita payments made to individual tribal members by either the secretary of interior or the tribe are excluded. Income to tribal members derived from privately owned land is not exempt;

(e) any payments made to household members that are declared exempt under federal law;

(f) the value of governmental rent and housing subsidies, federal relocation assistance, or EA issued by the Department;

(g) money from a trust fund to provide for or reimburse the household for a specific item NOT related to basic living expenses. This includes medical expenses and educational expenses. Money from a trust fund to provide for or reimburse a household member for basic living expenses is counted;

(h) travel and training allowances and reimbursements if they are directly related to training, education, work, or volunteer activities;

(i) all unearned income in-kind. In-kind means something,

such as goods or commodities, other than money;

(j) thirty dollars of the income received from rental income unless greater expenses can be proven. Expenses in excess of \$30 can be allowed for:

- (i) taxes;
- (ii) attorney fees expended to make the rental income available;
- (iii) upkeep and repair costs necessary to maintain the current value of the property; and
- (iv) interest paid on a loan or mortgage made for upkeep or repair. Payment on the principal of the loan or mortgage cannot be excluded;

(k) if meals are provided to a roomer/boarder, the value of a one-person food stamp allotment for each roomer/boarder;

(l) payments for energy assistance including H.E.A.T payments, assistance given by a supplier of home energy, and in-kind assistance given by a private non-profit agency;

(m) federal and state income tax refunds and earned income tax credit payments;

(n) payments made by the Department to reimburse the client for education or work expenses, or a CC subsidy;

(o) income of an SSI recipient. Neither the payment from SSI nor any other income, including earned income, of an SSI recipient is included;

(p) payments from a person living in the household who is not included in the household assistance unit, as defined in R986-200-205, when the payment is intended and used for that person's share of the living expenses;

(q) educational assistance and college work study except Veterans Education Assistance intended for family members of the student, living stipends and money earned from an assistantship program is counted as income; and

(r) for a refugee, as defined in R986-300-303(1), any grant or assistance, whether cash or in-kind, received directly or indirectly under the Reception and Placement Programs of Department of State or Department of Justice.

R986-200-236. Earned Income.

(1) All earned income is counted when it is received even if it is an advance on wages, salaries or commissions.

(2) Countable earned income includes:

(a) wages, except Americorps*Vista living allowances are not counted;

(b) salaries;

(c) commissions;

(d) tips;

(e) sick pay which is paid by the employer;

(f) temporary disability insurance or temporary workers' compensation payments which are employer funded and made to an individual who remains employed during recuperation from a temporary illness or injury pending the employee's return to the job;

(g) rental income only if managerial duties are performed by the owner to receive the income. The number of hours spent performing those duties is not a factor. If the property is managed by someone other than the individual, the income is counted as unearned income;

(h) net income from self-employment less allowable expenses, including income over a period of time for which settlement is made at one given time. The periodic payment is annualized prospectively. Examples include the sale of farm crops, livestock, and poultry. A client may deduct actual, allowable expenses, or may opt to deduct 40% of the gross income from self-employment to determine net income;

(i) training incentive payments and work allowances; and

(j) earned income of dependent children.

(3) Income that is not counted as earned income:

(a) income for an SSI recipient;

(b) reimbursements from an employer for any bona fide

work expense;

(c) allowances from an employer for travel and training if the allowance is directly related to the travel or training and identifiable and separate from other countable income; or

(d) Earned Income Tax Credit (EITC) payments.

R986-200-237. Lump Sum Payments.

(1) Lump sum payments are one-time windfalls or retroactive payments of earned or unearned income. Lump sums include but are not limited to, inheritances, insurance settlements, awards, winnings, gifts, and severance pay, including when a client cashes out vacation, holiday, and sick pay. They also include lump sum payments from Social Security, VA, UI, Worker's Compensation, and other one-time payments. Payments from SSA that are paid out in installments are not considered lump sum payments but as income, even if paid less often than monthly.

(2) The following lump sum payments are not counted as income or assets:

(a) any kind of lump sum payment of excluded earned or unearned income. If the income would have been excluded, the lump sum payment is also excluded. This includes SSI payments and any EITC; and

(b) insurance settlements for destroyed exempt property when used to replace that property.

(3) The net lump sum payment is counted as income for the month it is received. Any amount remaining after the end of that month is considered an asset.

(4) The net lump sum is the portion of the lump sum that is remaining after deducting:

(a) legal fees expended in the effort to make the lump sum available;

(b) payments for past medical bills if the lump sum was intended to cover those expenses; and

(c) funeral or burial expenses, if the lump sum was intended to cover funeral or burial expenses.

(5) A lump sum paid to an SSI recipient is not counted as income or an asset except for those recipients receiving financial assistance from GA or WTE.

R986-200-238. How to Calculate Income.

(1) To determine if a client is eligible for, and the amount of, a financial assistance payment, the Department estimates the anticipated income, assets and household size for each month in the certification period.

(2) The methods used for estimating income are:

(a) income averaging or annualizing which means using a history of past income that is representative of future income and averaging it to determine anticipated future monthly income. It may be necessary to evaluate the history of past income for a full year or more; and

(b) income anticipating which means using current facts such as rate of pay and hourly wage to anticipate future monthly income when no reliable history is available.

(3) Monthly income is calculated by multiplying the average weekly income by 4.3 weeks. If a client is paid every two weeks, the income for those two weeks is multiplied by 2.15 weeks to determine monthly income.

(4) The Department's estimate of income, when based on the best available information at the time it was made, will be determined to be an accurate reflection of the client's income. If it is later determined the actual income was different than the estimate, no adjustment will be made. If the client notifies the Department of a change in circumstances affecting income, the estimated income can be adjusted prospectively but not retrospectively.

R986-200-239. How to Determine the Amount of the Financial Assistance Payment.

(1) Once the household's size and income have been determined, the gross countable income must be less than or equal to 185% of the Standard Needs Budget (SNB) for the size of the household. This is referred to as the "gross test".

(2) If the gross countable income is less than or equal to 185% of the SNB, the following deductions are allowed:

(a) a work expense allowance of \$100 for each person in the household unit who is employed;

(b) fifty percent of the remaining earned income after deducting the work expense allowance as provided in paragraph (a) of this subsection, if the individual has received a financial assistance payment from the Department for one or more of the immediately preceding four months; and

(c) after deducting the amounts in paragraphs (a) and (b) of this subsection, if appropriate, the following deductions can be made:

(i) a dependent care deduction as described in subsection (3) of this section; and

(ii) child support paid by a household member if legally owed to someone not included in the household.

(3) The amount of the dependant care deduction is set by the Department and based on the number of hours worked by the parent and the age of the dependant needing care. It can only be deducted if the dependant care:

(a) is paid for the care of a child or adult member of the household assistance unit, or a child or adult who would be a member of the household assistance unit except that this person receives SSI. An adult's need for care must be verified by a doctor; and

(b) is not subsidized, in whole or in part, by a CC payment from the Department; and

(c) is not paid to an individual who is in the household assistance unit.

(4) After deducting the amounts allowed under paragraph (2) above, the resulting net income must be less than 100% of SNB for size of the household assistance unit. If the net income is equal to or greater than the SNB, the household is not eligible.

(5) If the net income is less than 100% of the SNB the following amounts are deducted:

(a) Fifty percent of earned countable income for all employed household assistance unit members if the household was not eligible for the 50% deduction under paragraph (2)(b) above; and/or

(b) All of the earned income of all children in the household assistance unit, if not previously deducted, who are:

(i) in school or training full-time, or

(ii) in part-time education or training if they are employed less than 100 hours per month. "Part-time education or training" means enrolled for at least one-half the number of hours or periods considered by the institution to be customary to complete the course of study within the minimum time period. If no schedule is set by the school, the course of study must be no less than an average of two class periods or two hours per day, whichever is less.

(6) The resulting net countable income is compared to the full financial assistance payment for the household size. If the net countable income is more than the financial assistance payment, the household is not eligible. If it is less, the net countable income is deducted from the financial assistance payment and the household is paid the difference.

(7) The amount of the standard financial assistance payment is set by the State Legislature and available at all Department offices.

R986-200-240. Additional Payments Available Under Certain Circumstances.

(1) Each parent eligible for financial assistance in the FEP or FEPTP programs who takes part in at least one enhanced

participation activity may be eligible to receive \$60 each month in addition to the standard financial assistance payment. Enhanced participation activities are limited to:

(a) work experience sites of at least 20 hours a week and other eligible activities that together total 30 hours per week;

(b) full-time attendance in an education or employment training program; or

(c) employment of 20 hours or more a week and other eligible activities that together total 30 hours per week.

(2) An additional payment of \$15 per month for a pregnant woman in the third month prior to the expected month of delivery. Eligibility for the allowance begins in the month the woman provides medical proof that she is in the third month prior to the expected month of delivery. The pregnancy allowance ends at the end of the month the pregnancy ends.

(3) A limited number of funds are available to individuals for work and training expenses. The funds can only be used to alleviate circumstances which impede the individual's ability to begin or continue employment, job search, training, or education. The payment of these funds is completely discretionary by the Department. The individual does not need to meet any eligibility requirements to request or receive these funds.

(4) Limited funds are available, up to a maximum of \$300, to pay for burial costs if the individual is not entitled to a burial paid for by the county.

(5) A Department Regional Director or designee may approve assistance, as funding allows, for the emergency needs of a non-resident who is transient, temporarily stranded in Utah, and who does not intend to stay in Utah.

(6) A limited number of funds are available for enhanced payments to parents who are eligible for financial assistance in the FEP program and who participate in the HS/GED Pilot Program. The payment of these funds is completely discretionary by the Department and may differ from region to region.

R986-200-241. Income Eligibility Calculation for a Specified Relative Who Wants to be Included in the Assistance Payment.

(1) The income calculation for a specified relative who wants to be included in the financial assistance payment is as follows:

(a) All earned and unearned countable income is counted, as determined by FEP rules, for the specified relative and his or her spouse, less the following allowable deductions:

(i) one hundred dollars for each employed person in the household. This deduction is only allowed for the specified relative and/or spouse and not anyone else in the household even if working; and

(ii) the child care expenses paid by the specified relative and necessary for employment up to the maximum allowable deduction as set by the Department.

(2) The household size is determined by counting the specified relative, his or her spouse if living in the home, and their dependent children living in the home who are not in the household assistance unit.

(3) If the income less deductions exceeds 100% of the SNB for a household of that size, the specified relative cannot be included in the financial assistance payment. If the income is less than 100% of the SNB, the total household income is divided by the household size calculated under subsection (2) of this section. This amount is deemed available to the specified relative as countable unearned income. If that amount is less than the maximum financial assistance payment for the household assistance unit size, the specified relative may be included in the financial assistance payment.

R986-200-242. Income Calculation for a Minor Parent

Living with His or Her Parent or Stepparent.

(1) All earned and unearned countable income of all parents, including stepparents living in the home, is counted when determining the eligibility of a minor parent residing in the home of the parent(s).

(2) From that income, the following deductions are allowed:

(a) one hundred dollars from income earned by each parent or stepparent living in the home, and

(b) an amount equal to 100% of the SNB for a group with the following members:

(i) the parents or stepparents living in the home;

(ii) any other person in the home who is not included in the financial assistance payment of the minor parent and who is a dependent of the parents or stepparents;

(c) amounts paid by the parents or stepparents living in the home to individuals not living at home but who could be claimed as dependents for Federal income tax purposes; and

(d) alimony and child support paid to someone outside the home by the parents or stepparents living in the home.

(3) The resulting amount is counted as unearned income to the minor parent.

(4) If a minor parent lives in a household already receiving financial assistance, the child of the minor parent is included in the larger household assistance unit.

R986-200-243. Counting the Income of Sponsors of Eligible Aliens.

(1) Certain aliens who have been legally admitted into the United States for permanent residence must have a portion of the earned and unearned countable income of their sponsors counted as unearned income in determining eligibility and financial assistance payment amounts for the alien.

(2) The following aliens are not subject to having the income of their sponsor counted:

(a) paroled or admitted into the United States as a refugee or asylee;

(b) granted political asylum;

(c) admitted as a Cuban or Haitian entrant;

(d) other conditional or paroled entrants;

(e) not sponsored or who have sponsors that are organizations or institutions;

(f) sponsored by persons who receive public assistance or SSI;

(g) permanent resident aliens who were admitted as refugees and have been in the United States for eight months or less.

(3) Except as provided in subsection (7) of this section, the income of the sponsor of an alien who applies for financial assistance after April 1, 1983 and who has been legally admitted into the United States for permanent residence must be counted for five years after the entry date into the United States. The entry date is the date the alien was admitted for permanent residence. The time spent, if any, in the United States other than as a permanent resident is not considered as part of the five year period.

(4) The amount of income deemed available for the alien is calculated by:

(a) deducting 20% from the total earned income of the sponsor and the sponsor's spouse up to a maximum of \$175 per month; then,

(b) adding to that figure all of the monthly unearned countable income of the sponsor and the sponsor's spouse; then the following deductions are allowed:

(i) an amount equal to 100% of the SNB amount for the number of people living in the sponsor's household who are or could be claimed as dependents under federal income tax policy; then,

(ii) actual payments made to people not living in the

sponsor's household whom the sponsor claims or could claim as dependents under federal income tax policy; then,

(iii) actual payments of alimony and/or child support the sponsor makes to individuals not living in the sponsor's household.

(c) The remaining amount is counted as unearned income against the alien whether or not the income is actually made available to the alien.

(5) Actual payments by the sponsor to aliens will be counted as income only to the extent that the payment amount exceeds the amount of the sponsor's income already determined as countable.

(6) A sponsor can be held liable for an overpayment made to a sponsored alien if the sponsor was responsible for, or signed the documents which contained, the misinformation that resulted in the overpayment. The sponsor is not held liable for an overpayment if the alien fails to give accurate information to the Department or the sponsor is deceased, in prison, or can prove the request for information was incomplete or vague.

(7) In the case where the alien entered the United States after December 19, 1997, the sponsor's income does not count if:

(a) the alien becomes a United States citizen through naturalization;

(b) the alien has worked 40 qualifying quarters as determined by Social Security Administration; or

(c) the alien or the sponsor dies.

R986-200-244. TANF Needy Family (TNF).

(1) TNF is not a program but describes a population that can be served using TANF Surplus Funds.

(2) Eligible families must have a dependent child under the age of 18 residing in the home, and the total household income must not exceed 200% of the Federal poverty level. Income is determined as gross income without allowance for disregards.

(3) Services available vary throughout the state. Information on what is available in each region is available at each Employment Center. The Department may elect to contract out services.

(4) If TANF funded payments are made for basic needs such as housing, food, clothing, shelter, or utilities, each month a payment is received under TNF, counts as one month of assistance toward the 36 month lifetime limit. Basic needs also include transportation and child care if all adults in the household are unemployed and will count toward the 36 month lifetime limit.

(5) If a member of the household has used all 36 months of FEP assistance the household is not eligible for basic needs assistance under TNF but may be eligible for other TANF funded services.

(6) Assets are not counted when determining eligibility for TNF services.

R986-200-245. TANF Non-FEP Training (TNT).

(1) TNT is to provide skills and training to parents to help them become suitably employed and self-sufficient.

(2) The client must be unable to achieve self-sufficiency without training.

(3) Eligible families must have a dependent child under the age of 18 residing in the home and the total household income must not exceed 200% of the Federal poverty level. If the only dependent child is 18 and expected to graduate from High School before their 19th birthday the family is eligible up through the month of graduation. Income is counted and calculated the same as for WIA as found in rule R986-600.

(4) Assets are not counted when determining eligibility for TNT services.

(5) The client must show need and appropriateness of

training.

(6) The client must negotiate an employment plan with the Department and participate to the maximum extent possible.

(7) The Department will not pay for supportive services such as child care, transportation or living expenses under TNT. The Department can pay for books, tools, work clothes and other needs associated with training.

R986-200-246. Transitional Cash Assistance.

(1) Transitional Cash Assistance, (TCA) is offered to help FEP and FEPTP customers stabilize employment and reduce recidivism.

(2) To be eligible for TCA a client must;

(a) have been eligible for and have received FEP or FEPTP during the month immediately preceding the month during which TCA is requested or granted. The FEP or FEPTP assistance must have been terminated due to earned or unearned income and not for nonparticipation under R986-200-212. If the immediately preceding month was during a diversion period, the client is not eligible for TCA, and

(b) be employed an average of 30 hours per week for FEP households. The parents in a FEPTP household cannot combine hours for TCA. Each parent must be employed 30 hours per week.

(3) TCA is only available if the customer verifies employment averaging the minimum required in subparagraph (2)(b) of this section.

(4) TCA is available for a maximum of three months.

(a) The assistance payment for the first two months of TCA is based on household size. All household income, earned and unearned, is disregarded.

(b) Payment for the third month is one half of the payment available in (4)(a) of this section.

(5) If initial verification is provided and a client is paid one month of TCA but the client is unable to provide documentation to support that initial verification, no further payments will be made under TCA but the one month payment will not result in an overpayment.

(6) A client can only receive TCA once in any 24 month period. This time limit applies regardless of how many months of TCA a client received.

(7) TCA does not count toward the 36 month time limit found in R986-200-217.

R986-200-250. Basic Education Training Provider.

(1) Basic education funds can only be provided to training providers approved by the Department.

(2) This section applies to basic education providers receiving funds from the Department including WIA funds under R986-600.

R986-200-251. Types of Basic Education Training Providers and Approval Requirements.

(1) Public schools governed by the Utah State Office of Education (USOE) must complete and submit Application "A" to the Department.

(2) Individuals offering youth tutoring personally, and not as an employee of another business or school, must be over 18 years of age, submit Application "B" and provide all of the following;

(a) a birth certificate,

(b) a current BCI background check results for Utah, from the Utah Department of Public Safety, paid for by the individual. The BCI report cannot contain:

(i) any matters involving an alleged sexual offense;

(ii) any matters involving an alleged felony or class A misdemeanor drug offense; or

(iii) any matters involving an alleged offense against the person under Utah State Code Title 76 Chapter 5, Offenses

Against the Person.

(c) a resume with tutoring-related work history or subject matter knowledge,

(d) three letters of recommendation addressing suitability as a tutor, and

(e) an approved grievance procedure for clients to use in making complaints.

(3) All other providers must submit Application "C" and;

(a) have been in business in Utah for at least one year;

(b) meet all state and local licensing requirements;

(c) have a satisfactory record with the Better Business

Bureau;

(d) submit evidence of financial stability prepared by a certified public accountant (CPA) using generally accepted accounting principles. The evidence must include at least one of the following:

(i) balance sheet, income statement and a statement of changes in financial position;

(ii) copy of the most recent annual business audit; or

(iii) copies of each owner's most recent personal income tax return.

(e) submit a current Utah Business License showing at least one year in business, and

(f) submit an approved grievance procedure for clients to use in making complaints.

(g) ESL training providers must also submit documentation of registration as a Postsecondary Proprietary School with the Utah Division of Consumer Protection or show an exemption from such registration.

(h) Providers offering high school credit must also provide documentation of accreditation through Utah State Office of Education and Northwest Association of Accredited Schools.

(4) Training providers submitting Application "B" or "C" must provide the following information for each training program for which the provider is seeking approval:

(a) program completion rates for all individuals enrolled;

(b) the type of certification students completing the program will obtain;

(c) the percentage rate of certification attained by program graduates; and

(d) program costs including tuition, fees and refund policy.

(5) A training provider approved under R986-600-652 can be approved for its basic education curriculum upon submission and approval of the information required in subsection (4) of this section. However, public schools governed by Title IV of the Higher Education Act of 1965 (20 USCA 1070 et seq.) or the Utah State Office of Education (USOE) approved as providers under R986-600-652 do not need to submit the information required in subsection (4) of this section.

R986-200-252. Renewal and Revocation of Approval for Training Providers.

(1) Once a provider has been approved, the Department will establish a review date for that provider and notify the provider of the review date. The Department will determine at the time of the review if the provider is still eligible for approved provider status and notify the provider of that determination. At the time of review, the provider is required to provide any and all information requested by the Department which the Department has determined is necessary to allow the provider to continue to be an approved provider. This may include completing necessary forms, providing documentation and verification, and returning the Department's telephone calls. The requests for information must be completed within the time frame specified by the Department. If the Department determines as a result of the review that the provider is no longer eligible for approved provider status, the provider will be removed from the approved provider list.

(2) Providers must retain participant program records for

three years from the date the participant completes the program.

(3) A provider who is not on the Department's approved provider list is not eligible for receipt of Department funds. A provider will be removed from the eligible provider list if the provider:

(a) does not meet the performance levels established by the Department including providing training services in a professional and timely manner;

(b) has committed fraud or violated applicable state or federal law, rule, or regulation;

(c) intentionally supplies inaccurate student or program performance information;

(d) fails to complete the review process; or

(e) has lost approval, accreditation, licensing, or certification from any of the following:

(i) Utah Division of Consumer Protection,

(ii) USOE,

(iii) Northwest Association of Accredited Schools, or

(iv) any other required approval, accrediting, licensing, or certification body.

(4) Some providers who have been removed from the eligible provider list may be eligible to be placed back on the list as follows:

(a) a provider who was removed for failure to meet performance levels may reapply for approval if the provider can prove it can meet performance levels;

(b) there is a lifetime ban for a provider who has committed fraud as a provider;

(c) providers removed for other violations of state or federal law will be suspended:

(i) until the provider can prove it is no longer in violation of the law for minor violations;

(ii) for a period of two years for serious violations or supplying inaccurate student or program performance information; or

(iii) for the lifetime of the provider for egregious violations. The seriousness of the violation will be determined by the Department.

R986-200-253. Training Provider's Right to Appeal a Denial or Revocation of Approval.

(1) Training providers will be notified in writing of a decision to deny an application for approval as a basic education training provider or a decision to revoke prior approval. The notice will inform the provider of its right to file a written appeal, where the appeal should be sent, and the deadline for filing an appeal.

(2) A hearing on the appeal will be held by the Department's Appeals Unit following the procedure in R986-100.

KEY: family employment program

July 2, 2008

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35A-3-301 et seq.

R986. Workforce Services, Employment Development.**R986-700. Child Care Assistance.****R986-700-701. Authority for Child Care Assistance (CC) and Other Applicable Rules.**

- (1) The Department administers Child Care Assistance (CC) pursuant to the authority granted in Section 35A-3-310.
- (2) Rule R986-100 applies to CC except as noted in this rule.
- (3) Applicable provisions of R986-200 apply to CC, except as noted in this rule or where in conflict with this rule.

R986-700-702. General Provisions.

- (1) CC is provided to support employment.
- (2) CC is available, as funding permits, to the following clients who are employed or are participating in activities that lead to employment:
 - (a) parents;
 - (b) specified relatives; or
 - (c) clients who have been awarded custody or appointed guardian of the child by court order and both parents are absent from the home. If there is no court order, an exception can be made on a case by case basis in unusual circumstances by the Department program specialist.
- (3) Child care is provided only for children living in the home and only during hours when neither parent is available to provide care for the children.
- (4) If a client is eligible to receive CC, the following children, living in the household unit, are eligible:
 - (a) children under the age of 13; and
 - (b) children up to the age of 18 years if the child;
 - (i) meets the requirements of rule R986-700-717, and/or
 - (ii) is under court supervision.
- (5) Clients who qualify for child care services will be paid if and as funding is available. When the child care needs of eligible applicants exceed available funding, applicants will be placed on a waiting list. Eligible applicants on the list will be served as funding becomes available. Special needs children, homeless children and FEP or FEPTP eligible children will be prioritized at the top of the list and will be served first. "Special needs child" is defined in rule R986-700-717.
- (6) The amount of CC might not cover the entire cost of care.
- (7) A client is only eligible for CC if the client has no other options available for child care. The client is encouraged to obtain child care at no cost from a parent, sibling, relative, or other suitable provider. If suitable child care is available to the client at no cost from another source, CC cannot be provided.
- (8) CC can only be provided for an eligible provider and will not be provided for illegal or unsafe child care. Illegal child care is care provided by any person or facility required to be licensed or certified but where the provider has not fulfilled the requirements necessary to obtain the license or certification.
- (9) CC will not be paid to a client for the care of his or her own child(ren) unless the client is working for an approved child care center.
- (10) Neither the Department nor the state of Utah is liable for injuries that may occur when a child is placed in child care even if the parent receives a subsidy from the Department.
- (11) Foster care parents receiving payment from the Department of Human Services are not eligible to receive CC for the foster children.
- (12) Once eligibility for CC has been established, eligibility must be reviewed at least once every six months. The review is not complete until the client has completed, signed and returned all necessary review forms to the local office. All requested verifications must be provided at the time of the review. If the Department has reason to believe the client's circumstances have changed, affecting either eligibility or payment amount, the Department will reduce or terminate CC

even if the certification period has not expired.

R986-700-703. Client Rights and Responsibilities.

In addition to the client rights and responsibilities found in R986-100, the following client rights and responsibilities apply:

- (1) A client has the right to select the type of child care which best meets the family's needs.
- (2) If a client requests help in selecting a provider, the Department will refer the client to the local Child Care Resource and Referral agency.
- (3) A client is responsible for monitoring the child care provider. The Department will not monitor the provider.
- (4) A client is responsible to pay all costs of care charged by the provider. If the child care assistance payment provided by the Department is less than the amount charged by the provider, the client is responsible for paying the provider the difference.
- (5) The only changes a client must report to the Department within ten days of the change occurring are:
 - (a) that the household's gross monthly income exceeds the percentage of the state median income as determined by the Department in R986-700-710(3);
 - (b) that the client is no longer in an approved training or educational program;
 - (c) if the client's and/or child's schedule changes so that child care is no longer needed during the hours of approved employment and/or training activities;
 - (d) that the client does not meet the minimum work requirements of an average of 15 hours per week or 15 and 30 hours per week when two parents are in the household and it is expected to continue;
 - (e) the client is separated from his or her employment;
 - (f) a change of address;
 - (g) any of the following changes in household composition; a parent, stepparent, spouse, or former spouse moves into the home, a child receiving child care moves out of the home, or the client gets married; or
 - (h) a change in the child care provider, including when care is provided at no cost.
- (6) If a material change which would result in a decrease in the amount of the CC payment is reported within 10 days, the decrease will be made effective beginning the next month and sums received in the month in which the change occurred will not be treated as an overpayment. If it is too late to make the change to the next month's CC payment, the client is responsible for repayment even if the 10 days for reporting the change has not expired. If the client fails to report the change within 10 days, the decrease will occur as soon as the Department learns of the change and the overpayment will be assessed back to the date of the change.
- (7) A client is responsible for payment to the Department of any overpayment made in CC.
- (8) If the client has failed to provide all necessary information and the child care provider requests information about payment of CC to the client, the Department is authorized to inform the provider that further information is needed before payment can be determined.
- (9) The Department may also release the following information to the designated provider:
 - (a) limited information regarding the status of a CC payment including that no payment was issued or services were denied;
 - (b) information contained on the Form 980;
 - (c) the date the child care subsidy was issued;
 - (d) the subsidy amount for that provider;
 - (e) the subsidy deduction amount;
 - (f) the date a two party check was mailed to the client;
 - (g) a copy of the two party check on a need to know basis;

and

(h) the month the client is scheduled for review or reestablishment.

(10) If child care funds are issued on the Horizon Card (electronic benefit transfer) unused child care funds will be removed from the Horizon Card 60 days after the last child care transaction/transfer occurred ("aged off") and will no longer be available to the client.

R986-700-704. Establishment of Paternity.

The provisions of rules R986-100 and R986-200 pertaining to cooperation with ORS in the establishment of paternity and collection of child support do not apply to ES CC.

R986-700-705. Eligible Providers and Provider Settings.

(1) The Department will only pay CC to clients who select eligible providers. The only eligible providers are:

- (a) licensed and accredited providers:
 - (i) licensed homes;
 - (ii) licensed family group homes; and
 - (iii) licensed child care centers.

(b) license exempt providers who are not required by law to be licensed and are either;

- (i) license exempt centers; or
- (ii) related to at least one of the children for whom CC is provided. Related under this paragraph means: siblings who are at least 18 years of age and who live in a different residence than the parent, grandparents, step grandparents, aunts, step aunts, uncles, step uncles or people of prior generations of grandparents, aunts, or uncles, as designated by the prefix grand or, great, or persons who meet any of the above relationships even if the marriage has been terminated.

(c) homes with a Residential Certificate obtained from the Bureau of Licensing.

(2) The Department may, on a case by case basis, grant an exception and pay for CC when an eligible provider is not available:

(a) within a reasonable distance from the client's home. A reasonable distance, for the purpose of this exception only, will be determined by the transportation situation of the parent and child care availability in the community where the parent resides;

(b) because a child in the home has special needs which cannot be otherwise accommodated; or

(c) which will accommodate the hours when the client needs child care.

(d) However, the child's sibling, living in the same home, can never be approved even under the exceptions in this subsection.

(3) If an eligible provider is available, an exception may be granted in the event of unusual or extraordinary circumstances but only with the approval of a Department supervisor.

(4) If an exception is granted under paragraph (2) or (3) above, the exception will be reviewed at each of the client's review dates to determine if an exception is still appropriate.

(5) License exempt providers must register with the Department and agree to maintain minimal health and safety criteria by signing a certification before payment to the client can be approved. The minimum criteria are that:

(a) the provider be at least 18 years of age and be legally able to work in the United States;

(b) the provider's home is clean and safe from hazardous items which could cause injury to a child. This applies to outdoor areas as well;

(c) there are working smoke detectors where children are provided care;

(d) the provider and all individuals 12 years old or older living in the home where care is provided submit to and pass a background check as provided in R986-700-751 et seq.;

(e) there is a telephone in operating condition with a list of

emergency numbers;

(f) food will be provided to the child in care. Food supplies will be maintained to prevent spoilage or contamination;

(g) the child in care will be immunized as required for children in licensed day care and;

(h) good hand washing practices will be maintained to discourage infection and contamination.

(6) The following providers are not eligible for receipt of a CC payment:

(a) a member of a household assistance unit who is receiving one or more of the following assistance payments: FEP, FEPTP, diversion assistance or food stamps for any child in that household assistance unit. The person may, however, be paid as a provider for a child in a different household assistance unit;

(b) a sibling of the child living in the home;

(c) household members whose income must be counted in determining eligibility for CC;

(d) a parent, foster care parent, stepparent or former stepparent, even if living in another residence;

(e) illegal aliens;

(f) persons under age 18;

(g) a provider providing care for the child in another state;

(h) a provider who has committed fraud as a provider, as determined by the Department or by a court;

(i) any provider disqualified under R986-700-718;

(j) a provider who does not cooperate with a Department investigation of a potential overpayment

(k) a provider living in the same home as the client unless one of the exceptions in subsection (2) of this section are met.

R986-700-706. Provider Rights and Responsibilities.

(1) Providers assume the responsibility to collect payment for child care services rendered. Neither the Department nor the state of Utah assumes responsibility for payment to providers.

(2) A provider may not charge clients receiving a CC subsidy a higher rate than their customers who do not receive a CC subsidy.

(3) Providers must keep accurate records of subsidized child care payments, time and attendance. The Department has the right to investigate child care providers and audit their records. Time and attendance records for all subsidized clients must be kept for at least one year. If a provider fails to cooperate with a Department investigation or audit, or fails to keep records for one year, the provider will no longer be an approved provider.

(4) If a provider accepts payment from funds provided by the Department for services which were not provided, the provider may be referred for criminal prosecution and will no longer be an approved provider.

(5) If an overpayment is established and it is determined that the provider was at fault in the creation of the overpayment, the provider is responsible for repayment of the overpayment.

(6) Records will be kept by the Department for individuals who are not approved providers and against whom a referral or complaint is received.

R986-700-707. Subsidy Deduction and Transitional Child Care.

(1) "Subsidy deduction" means a dollar amount which is deducted from the standard CC subsidy for Employment Support CC. The deduction is determined on a sliding scale and the amount of the deduction is based on the parent(s) countable earned and unearned income and household size.

(2) The parent is responsible for paying the amount of the subsidy deduction directly to the child care provider.

(3) If the subsidy deduction exceeds the actual cost of child care, the family is not eligible for child care assistance.

(4) The full monthly subsidy deduction is taken even if the client receives CC for only part of the month.

(5) There is no subsidy deduction during:

(a) the months covered by a FEP diversion payment;
(b) transitional child care. Transitional child care is available during;

(i) the six months immediately following the period covered by the diversion payment if the client is working a minimum of 15 hours per week and is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the period covered by the diversion payment; or

(ii) the six months immediately following a FEP or FEPTP termination if the termination was due to increased income and the parent is otherwise eligible for ESCC. The subsidy deduction will resume in the seventh month after the termination of FEP or FEPTP. The six month time limit is the same regardless of whether the client receives TCA or not.

(6) A client does not need to fill out a new application for child care during the six month transitional period even if there is a gap in services during those six months.

R986-700-708. FEP, and Diversion CC.

(1) FEP CC may be provided to clients receiving financial assistance from FEP or FEPTP. FEP CC will only be provided to cover the hours a client needs child care to support the activities required by the employment plan. FEP CC is not subject to the subsidy deduction.

(2) Additional time for travel may be included on a case by case basis when circumstances create a hardship for the client because the required activities necessitate travel of distances taking at least one hour each way.

(3) Diversion CC is available for clients who have received a diversion payment from FEP. There is no subsidy deduction for the months covered by the FEP diversion payment.

R986-700-709. Employment Support (ES) CC.

(1) Parents who are not eligible for FEP CC or Diversion CC may be eligible for Employment Support (ES) CC. To be eligible, a parent must be employed or be employed while participating in educational or training activities. Work Study is not considered employment. A parent who attends school but is not employed at least 15 hours per week, is not eligible for ES CC. ES CC will only be provided to cover the hours a client needs child care for work or work and approved educational or training activities.

(2) If the household has only one parent, the parent must be employed at least an average of 15 hours per week.

(3) If the family has two parents, CC can be provided if:

(a) one parent is employed at least an average of 30 hours per week and the other parent is employed at least an average of 15 hours per week and their work schedules cannot be changed to provide care for the child(ren). CC will only be provided during the time both parents are in approved activities and neither is available to care for the children; or

(b) one parent is employed and the other parent cannot work, or is not capable of earning \$500 per month and cannot provide care for their own children because of a physical, emotional or mental incapacity. Any employment or educational or training activities invalidate a claim of incapacity. The incapacity must be expected to last 30 days or longer. The individual claiming incapacity must verify that incapacity in one of the following ways:

(i) receipt of disability benefits from SSA;

(ii) 100% disabled by VA; or

(iii) by submitting a written statement from:

(A) a licensed medical doctor;

(B) a doctor of osteopathy;

(C) a licensed Mental Health Therapist as defined in UCA 58-60-102;

(D) a licensed Advanced Practice Registered Nurse; or

(E) a licensed Physician's Assistant.

(4) Employed or self-employed parent client(s) must make, either through wages or profit from self-employment, a rate of pay equal to or greater than minimum wage multiplied by the number of hours the parent is working. To be eligible for ES CC, a self employed parent must provide business records for the most recent three month time period to establish that the parent is likely to make at least minimum wage. If a parent has a barrier to other types of employment, exceptions can be made in extraordinary cases with the approval of the state program specialist.

(5) Americorps*Vista is not supported. Job Corps activities are considered to be training and a client in the Job Corps would also have to meet the work requirements to be eligible for ES CC.

(6) Applicants must verify identity but are not required to provide a Social Security Number (SSN) for household members. Benefits will not be denied or withheld if a customer chooses not to provide a SSN if all factors of eligibility are met. SSN's that are supplied will be verified. If an SSN is provided but is not valid, further verification will be requested to confirm identity.

R986-700-710. Income Limits for ES CC.

(1) Rule R986-200 is used to determine:

(a) who must be included in the household assistance unit for determining whose income must be counted to establish eligibility. In some circumstances, determining household composition for a ES CC household is different from determining household composition for a FEP or FEPTP household. ES CC follows the parent and the child, not just the child so, for example, if a parent in the household is ineligible, the entire ES CC household is ineligible. A specified relative may not opt out of the household assistance unit when determining eligibility for CC. The income of the specified relatives needing ES CC in the household must be counted. For ES CC, only the income of the parent/client is counted in determining eligibility regardless of who else lives in the household. If both parents are living in the household, the income of both parents is counted.

(b) what is counted as income except:

(i) the earned income of a minor child who is not a parent is not counted; and

(ii) child support, including in kind child support payments, is counted as unearned income, even if it exceeds the court or ORS ordered amount of child support, if the payments are made directly to the client. If the child support payments are paid to a third party, only the amount up to the court or ORS ordered child support amount is counted.

(c) how to estimate income.

(2) The following income deductions are the only deductions allowed on a monthly basis:

(a) the first \$50 of child support received by the family;

(b) court ordered and verified child support and alimony paid out by the household;

(c) \$100 for each person with countable earned income; and

(d) a \$100 medical deduction. The medical deduction is automatic and does not require proof of expenditure.

(3) The household's countable income, less applicable deductions in paragraph (2) above, must be at, or below, a percentage of the state median income as determined by the Department. The Department will make adjustments to the percentage of the state median income as funding permits. The percentage currently in use is available at the Department's administrative office.

(4) Charts establishing income limits and the subsidy deduction amounts are available at all local Department offices.

(5) An independent living grant paid by DHS to a minor parent is not counted as income.

R986-700-711. ES CC to Support Education and Training Activities.

(1) CC may be provided when the client(s) is engaged in education or training and employment, provided the client(s) meet the work requirements under Section R986-700-709(1).

(2) The education or training is limited to courses that directly relate to improving the parent(s)' employment skills.

(3) ES CC will only be paid to support education or training activities for a total of 24 calendar months. The months need not be consecutive.

(a) On a case by case basis, and for a reasonable length of time, months do not count toward the 24-month time limit when a client is enrolled in a formal course of study for any of the following:

- (i) obtaining a high school diploma or equivalent,
- (ii) adult basic education, and/or
- (iii) learning English as a second language.

(b) Months during which the client received FEP child care while receiving education and training do not count toward the 24-month time limit.

(c) CC can not ordinarily be used to support short term workshops unless they are required or encouraged by the employer. If a short term workshop is required or encouraged by the employer, and approved by the Department, months during which the client receives child care to attend such a workshop do not count toward the 24- month time limit.

(4) Education or training can only be approved if the parent can realistically complete the course of study within 24 months.

(5) Any child care assistance payment made for a calendar month, or a partial calendar month, counts as one month toward the 24-month limit.

(6) There are no exceptions to the 24-month time limit, and no extensions can be granted.

(7) CC is not allowed to support education or training if the parent already has a bachelor's degree.

(8) CC cannot be approved for graduate study or obtaining a teaching certificate if the client already has a bachelor's degree.

R986-700-712. CC for Certain Homeless Families.

(1) CC can be provided for homeless families with one or two parents when the family meets the following criteria:

(a) The family must present a referral for CC from an agency known by the local office to be an agency that works with homeless families, including shelters for abused women and children. This referral will serve as proof of their homeless state. Local offices will provide a list of recognized homeless agencies in local office area.

(b) The family must show a need for child care to resolve an emergency crisis.

(c) The family must meet all other relationship and income eligibility criteria.

(2) CC for homeless families is only available for up to three months in any 12-month period. When a payment is made for any part of a calendar month, that month counts as one of the three months. The months need not be consecutive.

(3) Qualifying families may use child care assistance for any activity including, but not limited to, employment, job search, training, shelter search or working through a crisis situation.

(4) If the family is eligible for a different type of CC, the family will be paid under the other type of CC.

(5) When a homeless family presents a referral from a recognized agency, the Department will, if possible, schedule the application interview within three working days of the date of the application.

R986-700-713. Amount of CC Payment.

(1) CC will be paid at the lower of the following levels:

(a) the maximum monthly local market rate as calculated using the Local Market Survey. The Local Market Survey is conducted by the Department and based on the provider category and age of the child. The Survey results are available for review at any Department office through the Department web site on the Internet; or

(b) the rate established by the provider for services; or

(c) the unit cost multiplied by the number of hours approved by the Department. The unit cost is determined by dividing the maximum monthly local market rate by 137.6 hours.

(2) An enhanced CC payment is available to clients who are participating more than 172 hours per month. The enhanced subsidy cannot exceed \$100 more than the maximum monthly local market rate for the type of provider used by the client and in no event can an enhanced subsidy payment exceed the accredited center rate for infant care. A two-parent family receiving CC for education or training activities is not eligible for the enhanced CC subsidy.

R986-700-714. CC Payment Method.

(1) CC payments to parents will be generated monthly by a two-party check issued in the parent's name and the chosen provider's name, except as noted in paragraph (2) below. The check is mailed to the client. In the event of an emergency, a payment up to a maximum of \$125 can be made on the Horizon card. Emergency payments can only be made where a parent is in danger of not being able to obtain necessary child care if the parent is required to wait until the two party check can be issued.

(2) CC payments will be made by electronic benefit transfer (EBT) either through a point of sale (POS) machine or interactive voice recording (IVR) system to authorized provider types as determined by the Department. The provider may elect which option of EBT to use. The provider must sign an agreement with the Department's contractor in order to be eligible to receive CC payments. If the provider elects to use the POS method of payment, the provider must lease a POS machine at the provider's own expense.

(3) In the event that a check is reported as lost or stolen, both the parent and the provider are required to sign a statement that they have not received funds from the original check before a replacement check can be issued. The check must be reported as lost or stolen within 60 days of the date the check was mailed. The statement must be signed on an approved Department form and the signing witnessed, and in some cases notarized, at a local office of the Department. If the provider is unable to come into a Department office to sign the form, the form may be accepted if the signature is notarized. If the original check has been redeemed, a copy of the check will be reviewed and both the parent and provider must provide a sworn, notarized statement that the signature on the endorsed check is a forgery. The Department may require a waiting period prior to issuing a replacement check.

(4) The Department is authorized to stop payment on a CC check without prior notice to the client if:

(a) the Department has determined that the client was not eligible for the CC payment, the Department has confirmed with the child care provider that no services were provided for the month in question or the provider cannot be located, and the Department has made an attempt to contact the parent; or

(b) when the check has been outstanding for at least 90 days; or

(c) the check is lost or stolen.

(5) No stop payment will be issued by the Department without prior notice to the provider unless the provider is not providing services or cannot be contacted.

R986-700-715. Overpayments.

(1) An overpayment occurs when a client or provider received CC for which they were not eligible. If the Department fails to establish one or more of the eligibility criteria and through no fault of the client, payments are made, it will not be considered to have been an overpayment if the client would have been eligible and the amount of the subsidy would not have been affected.

(2) If the overpayment was because the client committed fraud, including forging a provider's name on a two party CC check, the client will be responsible for repayment of the resulting overpayment and will be disqualified from further receipt of CC:

- (a) for a period of one year for the first occurrence of fraud;
- (b) for a period of two years for the second occurrence of fraud; and
- (c) for life for the third occurrence of fraud.

(3) If the client was at fault in the creation of an overpayment for any reason other than fraud in paragraph (2) above, the client will be responsible for repayment of the overpayment. There is no disqualification or ineligibility period for a fault overpayment.

(4) All CC overpayments must be repaid to the Department.

Overpayments may be deducted from ongoing CC payments for clients who are receiving CC. If the Department is at fault in the creation of an overpayment, the Department will deduct \$10 from each month's CC payment unless the client requests a larger amount.

(5) CC will be terminated if a client fails to cooperate with the Department's efforts to investigate alleged overpayments.

(6) If the Department has reason to believe an overpayment has occurred and it is likely that the client will be determined to be disqualified or ineligible as a result of the overpayment, payment of future CC may be withheld, at the discretion of the Department, to offset any overpayment which may be determined.

R986-700-716. CC in Unusual Circumstances.

(1) CC may be provided for study time, to support clients in education or training activities if the parent has classes scheduled in such a way that it is not feasible or practical to pick up the child between classes. For example, if a client has one class from 8:00 a.m. to 9:00 a.m. and a second class from 11:00 a.m. to noon it might not be practical to remove the child from care between 9:00 a.m. and 11:00 a.m.

(2) An away-from-home study hall or lab may be required as part of the class course. A client who takes courses with this requirement must verify study hall or lab class attendance. The Department will not approve more study hall hours or lab hours in this setting than hours for which the client is enrolled in school. For example: A client enrolled for ten hours of classes each week may not receive more than ten hours of this type of study hall or lab.

(3) CC will not be provided for private kindergarten or preschool activities when a publicly funded education program is available.

(4) CC may be authorized to support employment for clients who work graveyard shifts and need child care services during the day for sleep time. If no other child care options are available, child care services may be authorized for the graveyard shift or during the day, but not for both. A maximum of six hours per day will be approved for sleep time.

(5) CC may be authorized to support employment for clients who work at home, provided the client makes at least minimum wage from the at home work, and the client has a need for child care services. The client must choose a provider setting outside the home.

(6) CC with an provider that is not licensed, accredited, certified, or a licensed exempt center will not be approved between the hours of 9 p.m. and 6 a.m. except;

- (a) for a child under the age of 24 months old,
- (b) to accommodate a special needs child, or
- (c) under unusual circumstances and then only if approved by the Department program specialist on a case by case basis.

R986-700-717. Child Care for Children With Disabilities or Special Needs.

(1) The Department will fund child care for children with disabilities or special needs at a higher rate if the child has a physical, social, or mental condition or special health care need that requires;

- (a) an increase in the amount of care or supervision and/or
- (b) special care, which includes but is not limited to the use of special equipment, assistance with movement, feeding, toileting or the administration of medications that require specialized procedures.

(2) To be eligible under this section, the client must submit a statement from one of the professionals listed in rule R986-700-709(3)(b)(ii) or one of the following agencies documenting the child's disability or special child care needs;

(a) Social Security Administration showing that the child is a SSI recipient,

- (b) Division of Services for People with Disabilities,
- (c) Division of Mental Health,
- (d) State Office of Education, or
- (e) Baby Watch, Early Intervention Program.

(3) Verification to support that the child is disabled or has a special need must be dated and signed by the preparer and include the following;

- (a) the child's name,
- (b) a description of the child's disability, and
- (c) the special provisions that justify a higher payment rate.

(4) The Department may require additional information and may deny requests if adequate or complete information or justification is not provided.

(5) The higher rate is available through the month the child turns 18 years of age.

(6) Clients qualify for child care under this section if the household is at or below 85% of the state median income.

(7) The higher rate in effect for each child care category is available at any Department office.

R986-700-718. Provider Disqualification.

(1) A child care provider removing child care subsidy funds from a client's account by way of electronic benefit transfer (EBT), which includes the Horizon card and interactive voice response (IVR), can only remove those funds from a client's account that are authorized by the Department for that provider. All providers receiving payment for child care services through an EBT may learn the exact amount authorized for that provider for each client by accessing the Department's Provider Payment Authorization website. Providers who remove more funds than authorized will be required to reimburse the Department for the excess funds and will be disqualified from receipt of further CC subsidy funds as follows;

(a) if the provider has never removed unauthorized CC subsidy funds before, the Department will send a demand letter to the provider's last known address informing the provider of the unauthorized access and establishing an overpayment in the amount of the excess funds. If the provider repays the overpayment within six months, no further action will be taken on that overpayment,

(b) if the provider removes funds in excess of those authorized by the Department a second time, and the provider repaid the previous overpayment or is making a good faith effort

to repay the overpayment, a second demand letter will be sent to the provider's last known address. The second letter will establish an overpayment in the amount of the excess funds removed and inform the provider that any further unauthorized access will result in disqualification. If the provider removes unauthorized funds and has not repaid the first overpayment, or is not making a good faith effort to repay the first overpayment to the Department, no second demand letter will be sent and the provider will be disqualified for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination. A good faith effort to repay the overpayment means the provider is repaying at least 10% of the overpayment due each month.

(c) if a child care provider removes unauthorized funds a third time, or a second time without repayment of the first overpayment as provided in paragraph (1)(b) of this subsection, the provider will be disqualified and is ineligible for receipt of further CC subsidy funds for a period of one year from the date the Department issues its letter, or in the case of an appeal, from the date the ALJ issues his or her determination,

(d) a CC provider previously disqualified for one year from receipt of CC subsidy funds due to unauthorized removal of funds in paragraph (1)(c) of this subsection, will be disqualified for a period of two years if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds,

(e) a CC provider previously disqualified for a two year period due to unauthorized removal of funds in paragraph (1)(d) of this subsection will be permanently disqualified if the provider removes unauthorized funds again. Warning letters under paragraphs (a) and (b) of this subsection will not be sent if a provider was previously disqualified for receipt of CC subsidy funds.

(2) CC providers disqualified under subsection (1) of this section will be ineligible for receipt of quality grants awarded by the Department during the period of disqualification.

(3) A CC provider overpayment not paid in full within six months will be referred to collection and will be collected in the same manner as all public assistance overpayments. Payment of provider overpayments must be made to the Department and not to the client.

(4) A CC provider may appeal an overpayment or disqualification as provided for public assistance appeals in rule R986-100. Any appeal must be filed in writing within 30 days of the date of letter establishing the overpayment or disqualification. A provider who has been found ineligible may continue to receive CC subsidy funds pending appeal until a decision is issued by the ALJ. The disqualification period will take effect even if the provider files an appeal of the decision issued by the ALJ.

R986-700-751. Background Checks.

(1) Sections R986-700-751 through 756 apply to child care providers identified in Utah Code Section 35A-3-310.5(1).

(2) The provider and each person age 12 years old or older living in the household where the child care is provided must submit to a background check.

(3) If child care is provided in the child's home, a background check must be done on each person age 12 years old or older living in the child's home who is not on the client's child care case.

(4) A client is not eligible for a subsidy if the client chooses a provider and the provider or any person age 12 years old or older living in the household where the child care is provided has:

(a) a supported finding of severe abuse or neglect by the Department of Human Services, a substantiated finding by a Juvenile court under Subsection 78-3a-320 or a criminal

conviction related to neglect, physical abuse, or sexual abuse of any person; or

(b) a conviction for an offense as identified in R986-700-754; or

(c) an adjudication in juvenile court of an act which if committed by an adult would be an offense identified in R986-700-754.

R986-700-752. Definitions.

Terms used in the section R986-700-751 through 756 are defined as followed:

(1) "Convicted" includes a conviction by a jury or court, a guilty plea or a plea of no contest, an adjudication in juvenile court or an individual who is currently subjected to a deferred judgment and sentence agreement, a deferred prosecution agreement, a deferred adjudication agreement, or a plea in abeyance.

(2) "Covered Individual" means:

(a) each person providing child care;

(b) all individuals 12 years old or older residing in a residence where child care is provided.

(3) "Supported" means a finding by the Utah Department of Human Services (DHS), at the completion of an investigation by DHS, that there is a reasonable basis to conclude that one or more of the following severe types of abuse or neglect has occurred:

(a) if committed by a person 18 years of age or older;

(i) severe or chronic physical abuse;

(ii) sexual abuse;

(iii) sexual exploitation;

(iv) abandonment;

(v) medical neglect resulting in death, disability, or serious illness;

(vi) chronic or severe neglect; or

(vii) chronic or severe emotional abuse

(b) if committed by a person under the age of 18:

(i) serious physical injury, as defined in Subsection 76-5-109(1)(f) to another child which indicates a significant risk to other children, or

(ii) sexual behavior with or upon another child which indicates a significant risk to other children.

R986-700-753. Criminal Background Screening.

(1) Each client requesting approval of a covered child care provider must submit to the Department a form, which will include a waiver and certification, completed and signed by the child care provider before the client's application for child care assistance can be approved. A fingerprint card and fee, prepared either by the local law enforcement agency or an agency approved by local law enforcement, shall also be submitted unless an exception is granted under subsection (3) of this section. Normally, child care subsidy will not be delayed pending completion of the background check.

(2) The provider must state in writing, based upon the provider's best information and belief, that no covered person, including the provider's own children, has ever been convicted of a felony, misdemeanor or had a supported finding from DHS or a substantiated finding from a juvenile court of severe abuse or neglect of a child. If the provider is aware of any such conviction or supported or substantiated finding, but is not certain it will result in a disqualification, the Department will obtain information from the provider to assess the threat to children. If the provider knowingly makes false representations or material omissions to the Department regarding a covered individual's record, the provider will be responsible for repayment to the Department of the child care subsidy paid by the Department prior to the background check. If a provider signs an attestation, a disqualification based on a covered individual who no longer lives in the home can be cured under

certain conditions.

(3) Fingerprint cards are not required if the Department is reasonably satisfied that the covered individual has resided in Utah for the last five years. A fingerprint card may be required, even if the individual has resided in Utah for the last five years, if requested by the Department.

(4) The Department will contract with the Department of Health (DOH) to perform a criminal background screening, which includes a review of the Bureau of Criminal Identification, (BCI) database maintained by the Department of Public Safety pursuant to Part 2 of Chapter 10, Title 53; and if a fingerprint card, waiver and fee are submitted, the Department or DOH will forward the fingerprint card, waiver and fee to the Utah Department of Public Safety for submission to the FBI for a national criminal history record check.

(5) If the Department takes an action adverse to any covered individual based upon the background screening, the Department will send a written decision to the client explaining the action and the right of appeal. DOH will send a denial letter to the provider and the covered individual.

R986-700-754. Exclusion from Child Care Due to Criminal Convictions.

(1) As required by Utah Code Subsection 35A-3-310.5(4), if the criminal conviction was a felony, or is a misdemeanor that is not excluded under paragraphs (2) or (3) below, the covered individual may not provide child care or reside in a home where child care is provided.

(2) As allowed by Utah Code Subsection 35A-3-310.5(5), the Department hereby excludes the following misdemeanors and determines that a misdemeanor conviction listed below does not disqualify a covered individual from providing child care:

(a) any class B or C conviction under Chapter 6, Title 76, Offenses Against Property, Utah Criminal Code;

(b) any class B or C conviction under Chapter 6a, Title 76, Pyramid Schemes, Utah Criminal Code;

(c) any class B or C conviction under Chapter 8, Title 76, Offenses Against the Administration of Government, Utah Criminal Code except 76-8-1201 through 1207, Public Assistance Fraud; and 76-8-1301 False statements regarding unemployment compensation;

(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 or designee may consider and approve individual cases where a covered individual will be allowed to provide child care who would otherwise be excluded by this section.

(4) The Department will rely on the criminal background screening as conclusive evidence of the conviction and the Department may revoke or deny approval for a provider based on that evidence.

(5) If a covered individual causes a provider to be disqualified as a provider based upon the criminal background screening and the covered individual disagrees with the information provided by BCI, the covered individual may challenge the information by contacting BCI directly. If the information causing the disqualification came from a Utah court, the covered individual must contact that court or seek an expungement as provided in Utah Code Ann. Sections 77-18-10 through 77-18-15.

(6) All child care providers must report all felony and

misdemeanor arrests, charges or convictions of covered individuals to DOH within ten calendar days of the arrest, notice of the charge, or conviction. All child care providers must also report a person aged 12 or older moving into the home where child care is provided within ten calendar days of that person moving in. A release for a background check must also be provided for that person within the time requested by the Department or DOH.

R986-700-755. 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 R986-700-754, the Department will act to protect the health and safety of children in child care that the covered individual may have contact with. The Department may revoke or suspend approval of the provider if necessary to protect the health and safety of children in care.

(2) If the Department denies or revokes approval based upon the arrest or felony or misdemeanor charge, the Department will send a written decision to the client notifying the client that a hearing with the Department may be requested.

(3) The Department may hold the revocation or denial in abeyance until the arrest or felony or nonexempt misdemeanor charge is resolved.

R986-700-756. Exclusion From Child Care Due to Finding of Abuse, Neglect, or Exploitation.

(1) Pursuant to Utah Code Subsection 62A-4a-1005(2)(a)(v) the Department or DOH will screen all covered individuals, including children residing in a home where child care is provided, for a history of a supported finding of severe abuse, neglect, or exploitation from the licensing information system maintained by the Utah Department of Human Services (DHS) and the juvenile court records.

(2) If a covered individual appears on the licensing information system, the threat to the safety and health of children will be assessed. The Department may revoke any existing approval and refuse to permit child care in the home until the Department is reasonably convinced that the covered individual no longer resides in the home.

(3) If the Department denies or revokes approval of a child care subsidy based upon the licensing information system, the Department will send a written decision to the client.

(4) If the DHS determines a covered individual has a supported finding of severe abuse, neglect or exploitation after the Department approves a child care subsidy, the covered individual has ten calendar days to notify DOH. Failure to notify DOH may result in the child care provider being liable for an overpayment for all subsidy amounts paid to the client between the finding and when it is reported or discovered.

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