R33. Administrative Services, Purchasing and General Services.
R33-6. Modification and Termination of Contracts for Supplies and Services.
R33-6-101. Revisions to Contract Clauses.

The clauses set forth in this rule may be varied for use in a particular contract at the discretion of the procurement officer.

R33-6-102. Changes Clause.

Changes Clause in Fixed-Price Contracts. In fixed-price contracts, the following clause may be inserted:

"Changes"

Change Order. By a written order, at any time, and without notice to any surety, the procurement officer may, subject to all appropriate adjustments, make changes within the general scope of this contract in any one or more of the following:

(1) drawings, designs, or specifications, if the supplies to be furnished are to be specially manufactured for the purchasing agency,

(2) method of shipment or packing; or

(3) place of delivery.

Adjustments of Price or Time or Performance. If any 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, 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 the contractor from proceeding with the contract as changed, provided that the purchasing agency promptly and duly makes provisional adjustments in payment 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.

Time Period for Claim. Within 30 days after receipt of a written change order under the Change Order paragraph of this clause, unless the period is extended by the procurement officer in writing, the contractor shall file notice of intent to assert a claim for an adjustment.

Claim Barred After Final Payment. No claim by the contractor for an adjustment hereunder shall be allowed if asserted after final payment under this contract."

R33-6-103. Stop Work Order Clause.

(1) Use of Clause. This clause is authorized for use in any fixed-price contract under which work stoppage may be required for reasons such as advancements in the state of the art, production modifications, engineering changes or realignment of programs.

(2) Use of Orders.

(a) Because stop work orders may result in increased costs by reason of standby costs, these orders will be issued only with prior approval of the procurement officer.

(b) Stop work orders shall include, as appropriate:

(i) a clear description of the work to be suspended;

(ii) instructions as to the issuance of further orders by the contractor for material or services.

(c) If an extension of the stop work order is necessary, it must be evidenced by a supplemental agreement as soon as feasible after a stop work order is issued. Any cancellation of a stop work order shall be subject to the same approvals as were required for the issuance of the order.

(3) Clause.

"Stop Work Order"

Order to Stop Work. The procurement officer, may, by written order to the contractor, at any time, and without notice to any surety, require the contractor to stop all or any part of the work called for by this contract. This order shall be for a specified period after the order is delivered to the contractor. Any order shall be identified specifically as a stop work order issued pursuant to this clause. Upon receipt of such an order, the contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage. Before the stop work order expires, or as legally extended, the procurement officer shall either:

(a) cancel the stop work order;

(b) terminate the work covered by the order; or

(c) terminate the contract.

Cancellation or Expiration of the Order. If a stop work order issued under this clause is properly canceled, the contractor shall have the right to resume work. An appropriate adjustment shall be made in the delivery schedule or contract price, or both, and the contract shall be modified in writing accordingly, if:

(a) the stop work order results in an increase in the time required for, or in the contractor's cost properly allocable to, the performance of any part of this contract; and

(b) the contractor asserts a claim for such an adjustment within 30 days after the end of the period of work stoppage.

Termination of Stopped Work. If the work covered by the order is terminated for default or convenience, the reasonable costs resulting from the stop work order shall be allowed by adjustment or otherwise and the adjustment shall be in accordance with the Price Adjustment Clause of this contract."

R33-6-104. Variations in Estimated Quantities Clause.

(1) Definite Quantity Contracts. The following clause may be used in definite quantity supply or service contracts:

Variation in Quantity

Upon the agreement of the parties, the quantity of supplies or services, or both, specified in this contract may be increased provided:

(a) the unit prices for the increased quantity increment will remain the same; and

(b) an increase will either be more economical than awarding another contract or that it would not be practical to award another contract."

(2) Indefinite Quantity Contracts. No clause is provided here. However, the solicitation and contract should include:

(a) the minimum quantity, if any, the purchasing agency is obligated to order and the contractor to provide;

(b) whether there is an approximate quantity the purchasing agency expects to order and how this quantity relates to the minimum and maximum quantities that may be ordered under the contract;

(c) whether there is a maximum quantity the purchasing agency may order and the contractor must provide; and

(d) whether the purchasing agency is obligated to order its actual requirements under the contract, with exception for a stated quantity, which if exceeded, separate bids will be solicited.

R33-6-105. Price Adjustment Clause.

The following clause may be used when price adjustments are anticipated:

Price Adjustment

Price Adjustment Methods. Any adjustment in contract price pursuant to the application of a clause in this contract shall be made in one or more of the following ways:

(1) by agreement on a fixed-price adjustment;

(2) by unit prices specified in the contract;

(3) in another manner as the parties may mutually agree; or

(4) in the absence of agreement between the parties, by a unilateral determination by the procurement officer of the costs attributable to the event or situation covered by the clause, plus

appropriate profit or fee.

Submission of Cost or Pricing Data. The contractor shall provide cost or pricing data for any price adjustment subject to the provisions of the Cost or Pricing Data section of the Utah State Procurement Rules."

R33-6-106. Termination for Default Clause.

Termination For Default

Default. If the contractor refuses or fails to timely perform any of the provisions of this contract, with sufficient diligence as will ensure its completion within the time specified in this contract, the procurement officer may notify the contractor in writing of the nonperformance, and if not promptly corrected, such officer may terminate the contractor's right to proceed with the contract or part of the contract as to which there has been delay or a failure to properly perform. The contractor shall continue performance of the contract to the extent it is not terminated and shall be liable for excess costs incurred in procuring similar goods or services elsewhere.

Contractor's Duties. Notwithstanding termination of the contract and subject to any directions from the procurement officer, the contractor shall take timely, reasonable, and necessary action to protect and preserve property in the possession of the contractor in which the purchasing agency has an interest.

Compensation. Payment for completed supplies delivered and accepted by the purchasing agency shall be at the contract price. The purchasing agency may withhold amounts due the contractor as the procurement officer deems to be necessary to protect the purchasing agency against loss because of outstanding liens or claims of former lien holders and to reimburse the purchasing agency for the excess costs incurred in procuring similar goods and services.

Excuse for Nonperformance or Delayed Performance. The contractor shall not be in default by reason or any failure in performance of this contract in accordance with its terms if the failure arises out of acts of God; acts of the public enemy; acts of the state and any other governmental entity in its sovereign or contractual capacity; fires; floods; epidemics; quarantine restrictions; strikes or other labor disputes; freight embargoes; or unusually severe weather.

Upon request of the contractor, the procurement officer shall ascertain the facts and extent of such failure, and, if such officer determines that any failure to perform was occasioned by any one or more of the excusable causes, and that, but for the excusable cause, the contractor's progress and performance would have met the terms of the contract, the delivery schedule shall be revised accordingly, subject to the rights of the purchasing agency.

Erroneous Termination for Default. If after notice of termination of the contractor's right to proceed under the provision 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, the rights and obligations of the parties shall be the same as if the notice of termination had been issued pursuant to the termination for convenience clause."

R33-6-107. Liquidated Damages Clause.

Liquidated Damages

When the contractor is given notice of delay or nonperformance and fails to cure in the time specified, in addition to any other damages that are applicable, the contractor shall be liable for $..... per calendar day from date set for cure until either the purchasing agency reasonably obtains similar supplies or services if the contractor is terminated for default, or until the contractor provides the supplies or services if the contractor is not terminated for default. To the extent that the contractor's delay or nonperformance is excused under the Excuse for Nonperformance or Delayed Performance paragraph of the Termination for Default Clause of this contract, liquidated damages shall not be due the purchasing agency.

R33-6-108. Termination for Convenience Clause.

Termination For Convenience

Termination. The procurement officer may, when the interests of the purchasing agency so require, terminate this contract in whole or in part, for the convenience of the agency. 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. This in no way implies that the purchasing agency has breached the contract by exercise of the Termination for Convenience Clause.

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 purchasing agency. The contractor must still complete and deliver to the purchasing agency the work not terminated by the notice of termination and may incur obligations to do so.

Compensation.

(1) The contractor shall submit a termination claim specifying the amounts due because of the termination for convenience together with cost or pricing data bearing on such claim. If the contractor fails to file a termination claim within 90 days 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.

(2) 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 and that the settlement does not exceed the total contract price plus settlement costs, reduced by payments previously made by the purchasing agency, the proceeds of any sales of supplies and manufacturing materials made under agreement, and the contract price of the work not terminated.

(3) Absent complete agreement under subparagraph (b) of this paragraph, the procurement officer shall pay the contractor the following amounts, provided payments agreed to under subparagraph (b) shall not duplicate payments under this subparagraph:

(a) contract prices for supplies or services accepted under the contract;

(b) costs incurred in preparing to perform the terminated portion of the work plus a fair and reasonable profit on a portion of the work not including anticipatory profit or consequential damages, less amounts paid or to be paid for accepted supplies or services; 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;

(c) costs of settling and paying claims arising out of the termination of subcontracts or orders pursuant to the Contractor's Obligations paragraph of this clause. These costs must not include costs paid in accordance with subparagraph (c)(ii) of this paragraph;

(d) 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, 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 subparagraph shall not exceed the total contract price reduced by the amount of payments otherwise made, the proceeds of any sales of supplies and manufacturing materials under subparagraph (b) of this paragraph, and the contract price of work not terminated.

(4) Cost claimed or agreed to under this section shall be in accordance with applicable sections of the Utah State Procurement Rules."

R33-6-109. Novation, Assignment or Change of Name.

(1) Assignment. No contract is transferable, or otherwise assignable, without the written consent of the procurement officer provided, however, that a contractor may assign monies receivable under a contract after due notice to the purchasing agency.

(2) Recognition of a Successor in Interest; Novation. When in the best interest of the purchasing agency, a successor in interest may be recognized in a novation agreement in which the transferor and the transferee shall agree that:

(a) the transferee assumes all of the transferor's obligations;

(b) the transferor waives all rights under the contract as against the agency; and

(c) unless the transferor guarantees performance of the contract by the transferee, the transferee shall, if required, furnish a satisfactory performance bond.

(3) Change of Name. When a contractor requests to change the name in which it holds a contract with a purchasing agency, the procurement officer responsible for the contract shall, upon receipt of a document indicating a change of name, enter into an agreement with the requesting contractor to effect such a change of name. The agreement changing the name should specifically indicate that no other terms and conditions of the contract are changed.

KEY: government purchasing
1988 63-56
Notice of Continuation January 29, 2009

R33. Administrative Services, Purchasing and General Services.
R33-7. Cost Principles.
R33-7-101. Applicability of Cost Principles.

(1) Application. This subpart contains cost principles and procedures to be used as guidance in:

(a) establishment of contract cost estimates and prices under contracts made by competitive sealed proposals where the award may not be based on adequate price competition, sole source procurement, contracts for certain services, or architect-engineer services;

(b) establishment of price adjustments for contract changes;

(c) pricing of termination for convenience settlements; and

(d) any other situation in which cost analysis is required.

(2) Limitation. Cost principles in this subpart are not applicable to:

(a) the establishment of prices under contracts made by competitive sealed bidding or otherwise based on adequate price competition rather than the analysis of individual, specific cost elements, except that this subpart does apply to the establishment of adjustments of price for changes made to contracts;

(b) prices which are fixed by law or rule;

(c) prices which are based on established catalog prices as defined in Section 63G-6-103(10) of the Utah Procurement Code, or established market prices; and

(d) stipulated unit prices.

R33-7-102. Allowable Costs.

(1) General. Any contract cost proposed for estimating purposes or invoiced for cost-reimbursement purposes shall be allowable as provided in the contract. The contract shall provide that the total allowable cost of a contract is the sum of the allowable direct costs actually incurred or, in the case of forward pricing, the amount estimated to be incurred in the performance of the contract in accordance with its terms, plus the properly allocable portion of the allowable indirect costs, less any applicable credits such as discounts, rebates, refunds, and property disposal income.

(2) Accounting Consistency. All costs shall be accounted for in accordance with generally accepted accounting principles and in a manner that is consistent with the contractor's usual accounting practices in charging costs to other activities. In pricing a proposal, a contractor shall estimate costs consistently with cost accounting practices used in accumulating and reporting costs.

(3) When Allowable. The contract shall provide that costs shall be allowed to the extent they are:

(a) reasonable, as defined in Section 7-103;

(b) allocable, as defined in Section 7-104;

(c) not made unlawful under any applicable law;

(d) not unallowable under Section 7-105 or Section 7-106; and

(e) actually incurred or accrued and accounted for in accordance with generally accepted accounting principles in the case of costs invoiced for reimbursement.

R33-7-103. Reasonable Costs.

Any cost is reasonable if, in its nature or amount, it does not exceed that which would be incurred by an ordinarily prudent person in the conduct of competitive business. In determining the reasonableness of a given cost, consideration shall be given to:

(1) whether the cost is of a type generally recognized as ordinary and necessary for the conduct of the contractor's business or the performance of the contract;

(2) the restraints inherent in and the requirements imposed by the factors generally accepted sound business practices, arm's length bargaining, federal and state laws and regulations, and contract terms and specifications;

(3) the action that a prudent businessman would take under the circumstances, considering responsibilities to the owners of the business, employees, customers, the purchasing agency, and the general public;

(4) significant deviations from the contractor's established practices which may unjustifiably increase the contract costs; and

(5) any other relevant circumstances.

R33-7-104. Allocable Costs.

(1) General. A cost is allocable if it is assignable or chargeable to one or more cost objectives in accordance with relative benefits received and if it:

(a) is incurred specifically for the contract;

(b) benefits both the contract and other work, and can be distributed to both in reasonable proportion to the benefits received; or

(c) is necessary to the overall operation of the business, although a direct relationship to any particular cost objective cannot be shown.

(2) Allocation Consistency. Costs are allocable as direct or indirect costs. Similar costs shall be treated consistently either as direct costs or indirect costs except as provided by these rules. When a cost is treated as a direct cost in respect to one cost objective, it and all similar costs shall be treated as a direct cost for all cost objectives. Further, all costs similar to those included in any indirect cost pool shall be treated as indirect costs. All distributions to cost objectives from a cost pool shall be on the same basis.

(3) Direct Cost. A direct cost is any cost which can be identified specifically with a particular cost objective. A direct cost shall be allocated only to its specific cost objective. To be allowable, a direct cost must be incurred in accordance with the terms of the contract.

(4) Indirect Costs.

(a) An indirect cost is one identified with more than one cost objective. Indirect costs are those remaining to be allocated to the several cost objectives after direct costs have been determined and charged directly to the contract or other work as appropriate. Any direct costs of minor dollar amount may be treated as indirect costs, provided that the treatment produces substantially the same results as treating the cost as a direct cost.

(b) Indirect costs shall be accumulated into logical cost groups with consideration of the reasons for incurring the costs. Each group should be distributed to cost objectives benefiting from the costs in the group. Each indirect cost group shall be distributed to the cost objectives substantially in proportion to the benefits received by the cost objectives. The number and composition of the groups and the method of distribution should not unduly complicate indirect cost allocation where substantially the same results could be achieved through less precise methods.

(c) The contractor's method of distribution may require examination when:

(i) any substantial difference exists between the cost patterns of the work performed under the contract and the contractor's other work;

(ii) any significant change occurs in the nature of the business, the extent of subcontracting, fixed asset improvement programs, inventories, the volume of sales and production, manufacturing processes, the contractor's products, or other relevant circumstances; or

(iii) indirect cost groups developed for a contractor's primary location are applied to off-site locations. Separate cost groups for costs allocable to off-site locations may be necessary to distribute the contractor's costs on the basis of the benefits accruing to the appropriate cost objectives.

(d) The base period for indirect cost allocation is the one in which the costs are incurred and accumulated for distribution to work performed in that period. Normally, the base period is the contractor's fiscal year. A different base period may be appropriate under unusual circumstances. In these cases, an appropriate period should be agreed to in advance.

R33-7-105. Treatment of Specific Costs.

(1) Advertising. The only allowable advertising costs are those for:

(a) the recruitment of personnel;

(b) the procurement of scarce items;

(c) the disposal of scrap or surplus materials;

(d) the listing of a business' name and location in a classified directory; and

(e) other forms of advertising as approved by the purchasing agency when in the best interest of the agency.

(2) Bad Debts. Bad debts include losses arising from uncollectible accounts and other claims, such as dishonored checks, employee advances, and related collection and legal costs. All bad debt costs are unallowable.

(3) Contingencies.

(a) Contingency costs are contributions to a reserve account for unforeseen costs. Contingency costs are unallowable except as provided in subsection (3) (b) of this section.

(b) For the purpose of establishing a contract cost estimate or price in advance of performance of the contract, recognition of uncertainties within a reasonably anticipated range of costs may be required and is not prohibited by this subsection. However, where contract clauses are present which serve to remove risks from the contractor, there shall not be included in the contract price a contingency factor for these risks. Further, contributions to a reserve for self-insurance in lieu of, and not in excess of, commercially available liability insurance premiums, are allowable as an indirect charge.

(4) Depreciation and Use Allowances.

(a) Depreciation and use allowances are allowable to compensate contractors for the use of buildings, capital improvements, and equipment. Depreciation is a method of allocating the acquisition cost of an asset to periods of its useful life. Useful life refers to the asset's period of economic usefulness in the particular contractor's operation as distinguished from its physical life. Use allowances provide compensation in lieu of depreciation or other equivalent costs. Consequently, these two methods may not be combined to compensate contractors for the use of any one type of property.

(b) The computation of depreciation or use allowances shall be based on acquisition costs. When the acquisition costs are unknown, reasonable estimates may be used.

(c) Depreciation shall be computed using any generally accepted method, provided that the method is consistently applied and results in equitable charges considering the use of the property. The straight-line method of depreciation is preferred unless the circumstances warrant some other method. However, the purchasing agency will accept any method which is accepted by the Internal Revenue Service.

(d) In order to compensate the contractor for use of depreciated, contractor-owned property which has been fully depreciated on the contractor's books and records and is being used in the performance of a contract, use allowances may be allowed as a cost of that contract. Use allowances are allowable, provided that they are computed in accordance with an established industry or government schedule or other method mutually agreed upon by the parties. If a schedule is not used, factors to consider in establishing the allowance are the original cost, remaining estimated useful life, the reasonable fair market value, and the affect of any increased maintenance or decreased efficiency.

(5) Entertainment.

(a) Entertainment costs include costs of amusements, social activities, and incidental costs such as meals, beverages, lodging, transportation, and gratuities. Entertainment costs are unallowable.

(b) Nothing shall make unallowable a legitimate expense for employee morale, health, welfare, food service, or lodging cost; except that, where a net profit is generated by employer related services, it shall be treated as a credit as provided in Section 7-207. This section shall not make unallowable costs incurred for meetings or conferences, including costs of food, rental facilities, and transportation where the primary purpose of incurring cost is the dissemination of technical information or the stimulation of production.

(6) Fines and Penalties. Fines and penalties include all costs incurred as the result of violations of or failure to comply with federal, state, and local laws and rules. Fines and penalties are unallowable costs unless incurred as a direct result of compliance with specific provisions of the contract or written instructions of the procurement officer. To the extent that workman's compensation is considered by state law to constitute a fine or penalty, it shall not be an allowable cost under this subsection.

(7) Gifts, Contributions, and Donations. A gift is property transferred to another person without the other person providing return consideration of equivalent value. Reasonable costs for employee morale, health, welfare, food services, or lodging are not gifts and are allowable. Contributions and donations are property transferred to a nonprofit institution which are not transferred in exchange for supplies or services of equivalent fair market value rendered by a nonprofit institution. Gifts, contributions, and donations are unallowable.

(8) Interest Costs.

(a) Interest is a cost of borrowing. Interest is not allowable except as provided in subsection (8)(b) of this section.

(b) Interest costs on contractor claims for payments due under purchasing agency contracts shall be allowable as provided in Section 63G-6-820 of the Utah Procurement Code.

(9) Losses Incurred Under Other Contracts. A loss is the excess of costs over income earned under a particular contract. Losses may include both direct and indirect costs. A loss incurred under one contract may not be charged to any other contract.

(10) Material Costs.

(a) Material costs are the costs of all supplies, including raw materials, parts, and components whether acquired by purchase from an outside source or acquired by transfer from any division, subsidiary, or affiliate under the common control of the contractor, which are acquired in order to perform the contract. Material costs are allowable, subject to subsection 10(b) and subsection 10(c) of this section. In determining material costs, consideration shall be given to reasonable spoilage, reasonable inventory losses and reasonable overages.

(b) Material costs shall include adjustments for all available discounts, refunds, rebates and allowances which the contractor reasonably should take under the circumstances, and for credits for proceeds the contractor received or reasonably should receive from salvage and material returned to suppliers.

(c) Allowance for all materials transferred from any division including the division performing the contract, subsidiary, or affiliate under the common control of the contractor shall be made on the basis of costs incurred by the transferor determined in accordance with these cost principles rules, except that double charging of indirect costs is unallowable, except the transfer may be made at the established price provided that the price of materials is not determined to be unreasonable by the procurement officer and the price is not higher than the transferor's current sales price to its most favored customer for a like quantity under similar payment and

delivery conditions and:

(i) the price is established either by the established catalog price, as defined in Section 63G-6-103(10) of the Utah Procurement Code; or

(ii) by the lowest price offer obtained as a result of competitive sealed bidding or competitive sealed proposals conducted with other businesses that normally produce the item in similar quantities.

(11) Taxes.

(a) Except as limited in subsection 11(b) of this section, all taxes which the contractor is required to pay and which are paid and accrued in accordance with generally accepted accounting principles are allowable.

(b) The following costs are unallowable:

(i) federal income taxes and federal excess profit taxes;

(ii) all taxes from which the contractor could have obtained an exemption, but failed to do so, except where the administrative cost of obtaining the exemption would have exceeded the tax savings realized from the exemption;

(iii) any interest, fines, or penalties paid on delinquent taxes unless incurred at the written direction of the procurement officer; and

(iv) income tax accruals designed to account for the tax effects of differences between taxable income and pretax income as reflected by the contractor's books of account and financial statements.

(c) Any refund of taxes which were allowed as a direct cost under the contract shall be credited to the contract. Any refund of taxes which were allowed as an indirect cost under a contract shall be credited to the indirect cost group applicable to any contracts being priced or costs being reimbursed during the period in which the refund is made.

(d) Direct government charges for services such as water, or capital improvements such as sidewalks, are not considered taxes and are allowable costs.

R33-7-106. Costs Requiring Prior Approval to be Allowable.

(1) General. The costs described in subsections (2), (3), (4), and (5) of this section are allowable as direct costs to cost-reimbursement type contracts to the extent that they have been approved in advance by the procurement officer. In other situations those costs are negotiable in accordance with general standards.

(2) Pre-Contract Costs. Pre-contract costs are those incurred prior to the effective date of the contract directly pursuant to, and in anticipation of, the award of the contract. These costs are allowable to the extent that they would have been allowable if incurred after the date of the contract; provided that, in the case of a cost-reimbursement type contract, a special provision must be inserted in the contract setting forth the period of time and maximum amount of cost which will be covered as allowable pre-contract costs.

(3) Bid and Proposal Costs. Bid and proposal costs are the costs incurred in preparing, submitting, and supporting bids and proposals. Reasonable ordinary bid and proposal costs are allowable as indirect costs. Bid and proposal costs are allowable as direct costs only to the extent that they are specifically permitted by a provision of the contract or solicitation document. Where bid and proposal costs are allowable as direct costs, to avoid double accounting, the same bid and proposal costs shall not be charged as indirect costs.

(4) Insurance.

(a) Insurance costs are the costs of obtaining insurance in connection with performance of the contract or contributions to a reserve account for the purpose of self-insurance. Ordinary and necessary insurance costs are allowable in accordance with these cost principles. Self-insurance contributions are allowable only to the extent of the cost to the contractor to obtain similar insurance.

(b) Insurance costs may be approved as a direct cost only if the insurance is specifically required for the performance of the contract.

(c) Actual losses which should reasonably have been covered by permissible insurance or were expressly covered by self insurance are unallowable unless the parties expressly agree otherwise in the terms of the contract.

(5) Litigation Costs. Litigation costs include all filing fees, legal fees, expert witness fees, and all other costs involved in litigating claims in court or before an administrative board. Litigation costs are allowable as indirect costs in accordance with these rules, except that costs incurred in litigation against the purchasing agency are unallowable.

R33-7-107. Applicable Credits.

(1) Definitions and Examples. Applicable credits are receipts or price reductions which offset or reduce expenditures allocable to contracts as direct or indirect costs. Examples include purchase discounts, rebates, allowance, recoveries or indemnification for losses, sale of scrap and surplus equipment and materials, adjustments for overpayments or erroneous charges, and income from employee recreational or incidental services and food sales.

(2) Reducing Costs. Credits shall be applied to reduce related direct or indirect costs.

(3) Refund. The purchasing agency shall be entitled to a cash refund if the related expenditures have been paid to the contractor under a cost-reimbursement type contract.

R33-7-108. Advance Agreements.

(1) Purpose. Both the purchasing agency and the contractor should seek to avoid disputes and litigation arising from potential problems by providing in the terms of the contract the treatment to be accorded special or unusual costs.

(2) Procedure Required. Advance agreements may be negotiated either before or after contract award, but shall be negotiated before a significant portion of the cost covered by the agreement has been incurred. Advance agreements shall be in writing, executed by both contracting parties, and incorporated in the contract.

(3) Limitation on Costs Covered. An advance agreement shall not provide for any treatment of costs inconsistent with these rules unless a determination has been made pursuant to Section 7-210.

R33-7-109. Use of Federal Cost Principles.

(1) Cost Negotiations. In dealing with contractors operating according to federal cost principles, such as Defense Acquisition Regulation, 48 CFR 901 (1993), or Federal Procurement Regulations, 48 CFR 901 (1993), the procurement officer, after notifying the contractor, may use the federal cost principles as guidance in contract negotiations, subject to subsection (2) of this section.

(2) Incorporation of Federal Cost Principles; Conflicts Between Federal Principles and this Part.

(a) In contracts not awarded under a program which is funded by federal assistance funds, the procurement officer may explicitly incorporate federal cost principles into a solicitation and thus into any contract awarded pursuant to that solicitation. The procurement officer and the contractor by mutual agreement may incorporate federal cost principles into a contract during negotiation or after award. In either instance, the language incorporating the federal cost principles shall clearly state that to the extent federal cost principles conflict with the rules issued pursuant to Section 63G-6-415(1), the state rules shall control.

(b) In contracts awarded under a program which is financed in whole or in part by federal assistance funds, all requirements set forth in the assistance document including specified federal cost principles, must be satisfied. To the

extent that the cost principles specified in the grant document conflict with the cost principles issued pursuant to Section 63G-6-415(1) of the Utah Procurement Code, the cost principles specified in the grant shall control.

R33-7-110. Authority to Deviate from Cost Principles.

If a procurement officer desires to deviate from the cost principles set forth in these rules, a written determination shall be made by the officer specifying the reasons for the deviation.

KEY: government purchasing
1988 63G-6
Notice of Continuation January 29, 2009

R33. Administrative Services, Purchasing and General Services.
R33-9. Insurance Procurement.
R33-9-101. Standard Bidding Method.

All new or renewal liability insurance purchases regardless of premium size and all other new or renewal insurance purchases over $5,000 annual premium will be made after advertisement for public bid, in accordance with these rules, except in cases of emergency for nonliability policies. In awarding the bid, the procurement officer shall consider the following:

(1) financial resources of agent, broker and underwriting company;
(2) quality of prior service rendered to the state;
(3) service facilities available in-state;
(4) service reputation;
(5) insurance experience and expertise;
(6) coverages and services to be provided; and
(7) any other reasonable factors which will provide the best possible coverage and service to the purchasing agency.

R33-9-102. Alternate Bidding Method.

To avoid oversaturation of limited primary or reinsurance markets, a two-step bidding method may be used at the option of the procurement officer.

(1) All interested agents and brokers would be required to qualify for final bidding according to reasonable selection criteria such as: similar accounts in office; size of firm; background of firm principles; specialized knowledge or expertise; and any other reasonable factors which will provide the best possible coverage for the purchasing agency. At least three unaffiliated brokers or agents must qualify for final bidding.

(2) The prequalified group of final bidders must submit a list of markets to the procurement officer in order of preference. The procurement officer will then, as equitably as possible, assign no more than five and no less than three markets to each final bidder, based upon their preferences.

Bidders will then submit an official bid for each assigned market, according to bid specifications.

KEY: government purchasing
1988 63-56
Notice of Continuation January 29, 2009

R70. Agriculture and Food, Regulatory Services.
R70-630. Water Vending Machine.
R70-630-1. Authority.

Promulgated under authority of Title 4, Chapter 5.

R70-630-2. Purpose.

The purpose of these rules is to set forth requirements and controls for vending machines designed to dispense water intended for human consumption to assure:

(1) Consumers using such machines are given appropriate information as to the nature of the vended water;

(2) The quality of the water vended meets acceptable standards for potability; and

(3) The vending equipment is installed, operated, and maintained to protect the health, safety, and welfare of the consuming public.

R70-630-3. Definitions.

For the purpose of this rule, the following words and phrases shall have the meanings indicated:

(1) "Approved" means a water vending machine, drinking water source, backflow prevention device or other devices or services that meets the minimum standards of this rule. Approved does not imply satisfactory performance for a specific period of time. Approval, when required, shall be in writing based upon departmental review of data submitted by the water vending industry, manufacturers, operators, owners or managers.

(2) "Approved material" means materials approved by the department as being free of substances which may render the water injurious to health or which may adversely affect the flavor, color, odor, radiological, microbial, or chemical quality of the water.

(3) "Department" means the Department of Agriculture and Food, Division of Regulatory Services, or its representative.

(4) "Nontoxic" means free of substances which may render the water injurious to health or may adversely affect the flavor, color, odor, chemical or microbial quality of the water.

(5) "Person" means any individual, partnership, firm, company, corporation, trustee, association, public body, or private entity engaged in the water vending business.

(6) "Potable water" means water satisfactory for drinking, culinary, and domestic purposes, meeting the quality standards of rule R309-103, under the Department of Environmental Quality, the Division of Drinking Water.

(7) "Purified water" means water produced by distillation, deionization, reverse osmosis, or other method of equal effectiveness that meets the requirements for purified water as described in the 21st Edition of the United States Pharmacopoeia issued by Mack Publishing, Easton, Penn. 18042.

(8) "Sanitize" means the effective bactericidal treatment of clean surfaces of equipment, utensils, and containers by a process that provides enough accumulative heat or concentration of chemicals for sufficient time to reduce the bacterial count, including pathogens, to a safe level.

(9) "Sanitizing solution" means Aqueous solutions described by 21 CFR 178.1010, 2004, for the purpose of sanitizing food or water contact surfaces.

(10) "Vended water" means water that is dispensed by a water vending machine or retail water facility for drinking, culinary, or other purposes involving a likelihood of the water being ingested by humans. Vended water does not include water from a public water system which has not undergone additional treatment as indicated in R70-630-5(4).

(11) "Vending machine" means any self-service device which upon insertion of a coin, coins, paper currency, token, card, or receipt of payment by other means dispenses unit servings of food, either in bulk or in packages without the necessity of replenishing the device between each vending operation.

(12) "Water vending machine" means a vending machine connected to water designed to dispense drinking water, purified and/or other water products. Such machines shall be designed to reduce or remove turbidity, off-taste, odors, to provide disinfectant treatment, and may include processes for dissolved solid reduction or removal.

(13) "Water vending machine operator" means any person who owns, leases, manages, or is otherwise responsible for the operation of a water vending machine.

R70-630-4. Location and Operation.

(1) Each water vending machine shall be located indoors or otherwise protected against tampering and vandalism, and shall be located in an area that can be maintained in a clean condition, and in a manner that avoids insect and rodent harborage.

(2) The floor on which a water vending machine is located shall be smooth and of cleanable construction.

(3) Each water vending machine system shall have an adequate system for collecting and disposing drippage, spillage, and overflow of water to prevent creation of a nuisance.

(a) Where process waste water is collected within the processing unit for pumping or gravity flow to an outside drain, the waste water drain line shall terminate at least two inches above the top rim of the retention vessel within said unit.

(b) The waste line from the water vending machine to an approved drainage system shall be air-gapped.

(c) Containers or drip pans used for the storage or collection of liquid wastes within a vending machine shall be leakproof, readily removable, easily cleanable, and corrosion resistant. In water vending machines which utilize the bottom of the cabinet interior as an internal sump, the sump shall be readily accessible and corrosion resistant. The waste disposal holding tank shall be maintained in a clean and sanitary manner.

(4) Each machine shall have a backflow prevention device for all connections with the water supply source which meets requirements of The International Plumbing Code and its amendment as adopted by the State of Utah Building Codes Commission and shall have no cross connections between the drain and potable water.

(5) Each person who establishes, maintains, or operates any water vending machine in the state, shall first secure a Water Vending Machine Operating Registration issued under Section 4-5-9. The Registration shall be renewed annually.

(6) Application for Registration shall be made in writing and include the location of each water vending machine, the source of the water to be vended, the treatment that the water will receive prior to being vended, and the name of the manufacturer and the model number of each machine.

(7) The source of the water supply shall be an approved public water system as defined under the Department of Environmental Quality, Division of Drinking Water. Upon application for an initial operating Registration, the operator shall submit information which indicates the product being dispensed into the container meets all finished product quality standards applicable to drinking water. When indicated by reason of complaint or illness, the department may require that additional analyses be performed on the source or products of water vending machines.

(8) Each water vending machine shall be maintained in a clean and sanitary condition, free from dust, dirt, and vermin.

(9) Labels or advertisements located on or near water vending machines shall not imply nor describe the vended water as "spring water."

(10) Water vending machine labels or advertisements shall not describe or use other words to imply, on the machine or elsewhere, the water as being "purified water" unless such water conforms to the definition contained in this rule.

(11) Water vending machine labels or advertisements shall not describe, on the machine or elsewhere, the water as having medicinal or health giving properties.

(12) Each water vending machine shall have in a position clearly visible to customers the following information:

(a) Name and address of the operator.

(b) Name of the water supply purveyor.

(c) The method of treatment that is utilized.

(d) The method of post-disinfection that is utilized.

(e) A local or toll free number that may be called for further information, problems, or complaints; or the name of the store or building manager can be listed when the machine is located within a business establishment and the establishment manager is responsible for the operation of the machine.

R70-630-5. Construction Requirements.

(1) Water vending machines shall comply with the construction and performance standards of the National Sanitation Foundation or National Automatic Merchandising Association. A list of acceptable third party certification groups is available from 8:00 to 5:00 p.m. at the Utah Department of Agriculture and Food. Water vending machines shall be designed and constructed to permit easy cleaning and maintenance of all exterior and interior surfaces and component parts.

(2) Water contact surfaces and parts of the water vending machine shall be of non-toxic, corrosion-resistant, non-absorbent material capable of withstanding repeated cleaning and sanitizing treatment.

(3) Water vending machines shall have a guarded or recessed spout.

(4) Owners, managers, and operators of water vending machines shall ensure that the methods used for treatment of vended water are acceptable to the department. Such acceptable treatment includes distillation, ion-exchange, filtration, ultra-violet light, mineral addition, and reverse osmosis.

(5) Water vending machines shall be equipped to disinfect the vended water by ultra-violet light, ozone, or equally effective methods prior to delivery into the customer's container.

(6) Water vending machines shall be equipped with monitoring devices designed to shut down operation of the machine when the treatment or disinfectant unit fails to properly function.

(7) Water vending machines shall be equipped with a self-closing, tight-fitting door on the vending compartment if the machine is not located in an enclosed building.

(8) Granular activated carbon, if used in the treatment process of vended water, shall comply with the specifications provided by the American Water Works Association for that substance (Standard B604-90).

R70-630-6. Operator Requirements.

(1) Water vending machine operators shall have on file and perform a maintenance program that includes:

(a) Visits for cleaning, sanitizing, and servicing of machines at least every two weeks.

(b) Written servicing instructions.

(c) Technical manuals for the machines.

(d) Technical manuals for the water treatment appurtenances involved.

(2) Parts and surfaces of water vending machines shall be kept clean and maintained by the water vending machine operator. The vending chamber and the vending nozzle shall be cleaned and sanitized each time the machine is serviced. A record of cleaning and maintenance operations shall be kept by the operator for each water vending machine. These records shall be made available to the department's employees upon request.

(3) Water vending machine operators shall ensure that machines are maintained and monitored to dispense water meeting quality standards specified in this rule. Water analysis shall be performed using approved testing procedures set forth in 21 CFR 165, 2004. Each machine's finished product shall be sampled at least once every three months by the operator, to determine total coliform content. However, provided a satisfactory method of post-treatment disinfection is utilized and based on a sustained record of satisfactory total coliform analyses, the department shall allow modification of the three-month sampling requirement as follows:

(a) When three consecutive three-month samples are each found to contain zero coliform colonies per 100 milliliters of the vended water, microbiological sampling intervals shall be extended to a period not exceeding six months. Should a subsequent six-month sample test positive for total coliform, the required sampling frequency shall revert to the three-month frequency until three consecutive samples again test negative for total coliform bacteria.

(b) If any sample collected from a machine is determined to be unsatisfactory, exceeding the zero coliform colonies per 100 milliliter, the machine shall be cleaned, sanitized and resampled immediately. If, after being cleaned and sanitized, the vended product is determined to be positive for coliform, the machine shall be taken out of service until the source of contamination has been located and corrected.

(4) Each water vending machine operator shall take whatever investigative or corrective actions are necessary to assure a potable water is supplied to consumers.

(5) The vended water from each vending machine utilizing silver-impregnated carbon filters in the treatment process shall be sampled once every six months for silver.

(6) All records pertaining to the sampling and analyses shall be retained by the operator for a period of not less than two years. Results of all analyses shall be available for department review upon request.

R70-630-7. Duties and Responsibilities of the Department.

(1) The department may collect and analyze samples of vended water when necessary to determine if the vended water meets the standards of potable water.

(2) After considering the source of water and the treatment process provided by the water vending machine, the department shall determine whether the finished product water will or will not meet quality standards as provided under rule R309-103 under the Division of Drinking Water. If it is determined that the water will not meet potable water standards, the Registration to operate a water vending machine shall be denied.

(3) The department will evaluate water vending machines, as well as their locations and support facilities, as often as may be deemed necessary for enforcement of the provisions of this rule.

(4) Water vending machine operators shall allow the department to examine necessary records pertaining to the operation and maintenance of the vending machines and also provide access to the machines for inspection at reasonable hours.

R70-630-8. Enforcement and Penalties.

(1) The department shall order a water vending machine operator to discontinue the operation of any water vending machine that represents a threat to the life or health of any person, or whose finished water does not meet the minimum standards provided for in this rule. Such water vending machine shall not be returned to use until such time the department determines that the conditions which caused the discontinuance of operation no longer exist.

(2) The department shall deny a Registration (procedures for Registration denial are stated in R51-2) when it is determined that there has been a substantial failure to comply

with the provisions of this rule by which the health or life of the consumers is threatened or impaired, or by which or through which, directly or indirectly, disease is caused. Registration can also be denied or suspended if the water has been adulterated.

R70-630-9. Preemption of Authority to Regulate.

The regulation of water vending machines is hereby preempted by the state. No county or municipality may adopt or enforce any ordinance which regulates the licensure or operation of water vending machines, unless the local health department authority in consultation with and approval of UDAF, determine that unique conditions exist within the county which make it more appropriate for the county to regulate the water vending machines in order to protect the health or welfare of the public.

KEY: food inspection
September 8, 2004 4-5
Notice of Continuation January 8, 2009

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

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

R81-1-2. Definitions.

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

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

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

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

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

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

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

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

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

(9) "DISPENSING SYSTEM" means a dispensing system or device which dispenses liquor in controlled quantities not exceeding 1.5 ounces and has a meter which counts the number of pours served.

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

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

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

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

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

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

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

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

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

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

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

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

R81-1-3. General Policies.

(1) Official State Label.

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

(2) Labeling.

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

(3) Manner of Paying Fees.

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

(4) Copy of Commission Rules.

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

(5) Interest Assessment on Delinquent Accounts.

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

(6) Returned Checks.

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

(i) insufficient funds;

(ii) refer to maker; or

(iii) account closed.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(7) Disposition of unsaleable merchandise.

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

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

R81-1-4. Employees.

The department is an Equal Opportunity Employer.

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

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

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

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

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

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

R81-1-6. Violation Schedule.

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

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

(3) Application of Rule.

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

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

with the Administrative Procedures Act, Title 63G, Chapter 4 or Section R81-1-7. They are administered by issuance of an order to show cause requiring the licensee or permittee to provide the commission with proof of qualification to maintain their license or permit.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

TABLE

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

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

TABLE

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

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

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

R81-1-7. Disciplinary Hearings.

(1) General Provisions.

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

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

(c) Emergency Adjudication Proceedings. The department or commission may issue an order on an emergency basis without complying with the Utah Administrative Procedures Act in accordance with the procedures outlined in Section 63G-4-502.

(d) Utah Administrative Procedures Act. Proceedings under this rule shall be in accordance with Title 63G, Chapter 4, Utah Administrative Procedures Act (UAPA), and Sections 32A-1-119 and -120.

(e) Penalties.

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

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

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

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

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

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

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

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

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

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

(j) Presiding Officers.

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

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

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

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

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

(A) encourage settlement;

(B) clarify issues;

(C) simplify the evidence;

(D) expedite the proceedings; or

(E) facilitate discovery, if a formal proceeding.

(k) Definitions. The definitions found in Sections 32A-1-105 and Title 63G, Chapter 4 apply to this rule.

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

(m) Default.

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

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

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

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

issues in the adjudicative proceeding, including those affecting the defaulting respondent.

(2) Pre-adjudication Proceedings.

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

(b) Letters of Admonishment. Because letters of admonishment are not "state agency actions" under Section 63G-4-102(1)(a), no adjudicative proceedings are required in processing them, and they shall be handled in accordance with the following procedures:

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

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

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

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

(A) The case number assigned to the action;

(B) The name of the respondent;

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

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

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

(c) Commencement of Adjudicative Proceedings.

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

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

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

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

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

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

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

(3) The Informal Process.

(a) Notice of agency action.

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

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

(B) The department's case number;

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

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

(E) A statement that the adjudicative proceeding is to be conducted informally according to the provisions of this rule and Sections 63G-4-202 and -203 unless a presiding officer converts the matter to a formal proceeding pursuant to Sections (2)(c)(iii) or (iv) of this rule, in which event the proceeding will be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

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

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

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

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

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

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

(II) the penalty sought, which may include assessment of costs under Section 32A-1-119(5)(c) and (d) if the respondent

is found guilty of the alleged violation, and forfeiture of any compliance bond on final revocation under Section 32A-1-119(5)(f) if revocation is sought by the department;

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

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

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

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

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

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

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

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

(b) The Prehearing Conference.

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

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

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

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

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

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

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

(c) The Informal Hearing.

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

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

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

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

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

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

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document;

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the commission, and of technical or scientific facts within the commission's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(iv) All testimony shall be under oath.

(v) Discovery is prohibited.

(vi) Subpoenas and orders to secure the attendance of witnesses or the production of evidence shall be issued by the presiding officer when requested by a respondent or the department, or may be issued by the presiding officer on his own motion.

(vii) A respondent shall have access to information contained in the department's files and to material gathered in the investigation of respondent to the extent permitted by law.

(viii) Intervention is prohibited.

(ix) The hearing shall be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open meeting is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(x) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the department's expense, as follows:

(A) The record of the proceedings may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department, prepare a transcript of the hearing, subject to any restrictions that the department is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xi) The presiding officer may grant continuances or recesses as necessary.

(xii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) department; (2) respondent; (3) rebuttal by department.

(xiii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(xiv) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a respondent or the department indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(xv) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit a respondent and the department to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(d) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time after the close of the hearing, the presiding officer shall issue a signed order in writing that includes the following:

(I) the decision;

(II) the reasons for the decision;

(III) findings of facts;

(IV) conclusions of law;

(V) recommendations for final commission action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order, setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful or not supported by the evidence.

(B) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing. Any finding of fact that was contested may not be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence. The order shall not recommend a penalty more severe than that sought in the notice of agency action, and in no event may it recommend administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(C) A copy of the presiding officer's order shall be promptly mailed to the respondent and the department.

(D) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit or which are not disputed.

(E) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the informal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the respondent and department to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and, 63G-4-203(1)(i) containing:

(I) the decision;

(II) the reasons for the decision;

(III) findings of fact;

(IV) conclusions of law;

(V) action ordered by the commission and effective date of the action taken;

(VI) notice of the right to seek judicial review of the order within 30 days from the date of its issuance in the district court in accordance with Sections 63G-4-401, -402, -404, and -405 and 32A-1-119 and -120.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The order shall be based on the facts appearing in the department's files and on the facts presented in evidence at the informal hearing.

(G) The order shall not impose a penalty more severe than that sought in the notice of agency action, and in no event may it impose administrative fines exceeding $3000, a suspension of the license, permit, or certificate of approval for more than ten days, or a revocation of the license, permit, or certificate of approval.

(H) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(I) A copy of the commission's order shall be promptly mailed to the parties.

(e) Judicial Review.

(i) Any petition for judicial review of the commission's final order must be filed within 30 days from the date the order is issued.

(ii) Appeals from informal adjudicative proceedings shall be to the district court in accordance with Sections 63G-4-402, -404, and -405, and 32A-1-119 and -120.

(4) The Formal Process.

(a) Conversion Procedures. If a presiding officer converts an informal adjudicative proceeding to a formal adjudicative proceeding pursuant to sections (2)(c)(iii) or (iv):

(i) the presiding officer shall notify the parties that the adjudicative proceeding is to be conducted formally according to the provisions of this rule and Sections 63G-4-204 to -209;

(ii) the case shall proceed without requiring the issuance of a new or amended notice of agency action;

(iii) the respondent shall be required to file a written response to the original notice of agency action within 30 days of the notice of the conversion of the adjudicative proceeding to a formal proceeding, unless this requirement is waived by the department. Extensions of time to file a response are not favored, but may be granted by the presiding officer for good cause shown. Failure to file a timely response shall waive the respondent's right to contest the matters stated in the notice of agency action, and the presiding officer may enter an order of default and proceed to prepare and serve his final order pursuant to R81-1-7(4)(e). The response shall be signed by the respondent, or by an authorized agent or attorney of the respondent, and shall set forth in clear and concise terms:

(A) the case number assigned to the action;

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

(C) the name of the respondent;

(D) whether the respondent admits, denies, or lacks sufficient knowledge to admit or deny each allegation stated in the notice of agency action, in which event the allegation shall be deemed denied;

(E) any facts in defense or mitigation of the alleged violation or possible penalty;

(F) a brief summary of any attached evidence. Any supporting documents, exhibits, signed statements, transcripts, etc., to be considered as evidence shall accompany the response;

(G) a statement of the relief the respondent seeks;

(H) a statement summarizing the reasons that the relief requested should be granted.

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

(v) the presiding officer may, upon motion of the responsible party made at or before the hearing, allow any pleading to be amended or corrected. Defects which do not substantially prejudice any of the parties shall be disregarded;

(vi) Pleadings shall be signed by the party or the party's attorney and shall show the signer's address and telephone number. The signature shall be deemed to be a certification by the signer that he has read the pleading and that he has taken reasonable measures to assure its truth;

(b) Intervention.

(i) Any person not a party may file a signed, written petition to intervene in a formal adjudicative proceeding with the presiding officer. The person who wishes to intervene shall mail a copy of the petition to each party. The petition shall include:

(A) the agency's case number;

(B) a statement of facts demonstrating that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceedings or that the petitioner qualifies as an intervenor under any provision of law; and

(C) a statement of the relief that the petitioner seeks from the agency;

(ii) Response to Petition. Any party to a proceeding into which intervention is sought may make an oral or written response to the petition for intervention. The response shall state the basis for opposition to intervention and may suggest limitations to be placed upon the intervenor if intervention is granted. The response must be presented or filed at or before the hearing.

(iii) Granting of Petition. The presiding officer shall grant a petition for intervention if the presiding officer determines that:

(A) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

(B) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention.

(iv) Order Requirements.

(A) Any order granting or denying a petition to intervene shall be in writing and sent by mail to the petitioner and each party.

(B) An order permitting intervention may impose conditions on the intervenor's participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt conduct of the adjudicative proceeding.

(C) The presiding officer may impose conditions at any time after the intervention.

(D) If it appears during the course of the proceeding that an intervenor has no direct or substantial interest in the proceeding and that the public interest does not require the intervenor's participation, the presiding officer may dismiss the intervenor from the proceeding.

(E) In the interest of expediting a hearing, the presiding officer may limit the extent of participation of an intervenor. Where two or more intervenors have substantially like interests and positions, the presiding officer may at any time during the hearing limit the number of intervenors who will be permitted to testify, cross-examine witnesses or make and argue motions and objections.

(c) Discovery and Subpoenas.

(i) Discovery. Upon the motion of a party and for good cause shown that it is to obtain relevant information necessary to support a claim or defense, the presiding officer may authorize the manner of discovery against another party or person, including the staff, as may be allowed by the Utah Rules of Civil Procedure.

(ii) Subpoenas. Subpoenas and orders to secure the attendance of witnesses or the production of evidence in formal adjudicative proceedings shall be issued by the presiding officer when requested by any party, or may be issued by the presiding officer on his own motion.

(d) The Formal Hearing.

(i) Notice. The presiding officer shall notify the parties in writing of the date, time, and place of the hearing at least ten days in advance of the hearing. The presiding officer's name, title, mailing address, and telephone number shall be provided to the parties. Continuances of scheduled hearings are not favored, but may be granted by the presiding officer for good cause shown. Failure to appear at the hearing after notice has been given shall be grounds for default and shall waive both the respondent's right to contest the allegations, and the respondent's right to the hearing. The presiding officer shall proceed to prepare and serve on respondent his order pursuant to R81-1-7(4)(e).

(ii) Public Hearing. The hearing shall be open to all parties. It shall also be open to the public, provided that the presiding officer may order the hearing closed upon a written finding that the public interest in an open hearing is clearly outweighed by factors enumerated in the closure order. The presiding officer may take appropriate measures necessary to preserve the integrity of the hearing.

(iii) Rights of Parties. The presiding officer shall regulate the course of the hearings to obtain full disclosure of relevant facts and to afford all the parties reasonable opportunity to present their positions, present evidence, argue, respond, conduct cross-examinations, and submit rebuttal evidence.

(iv) Public Participation. The presiding officer may give persons not a party to the adjudicative proceeding the opportunity to present oral or written statements at the hearing.

(v) Rules of Evidence. Technical rules of evidence shall not apply. Any reliable evidence may be admitted subject to the following guidelines. The presiding officer:

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

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

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

(D) may receive documentary evidence in the form of a copy or excerpt if the copy or excerpt contains all the pertinent portions of the original document.

(E) may take official notice of any facts that could be judicially noticed under the Utah Rules of Evidence, of the record of other proceedings before the agency, and of technical or scientific facts within the agency's specialized knowledge;

(F) may not exclude evidence solely because it is hearsay; and

(G) may use his experience, technical competence, and specialized knowledge to evaluate the evidence.

(vi) Oath. All testimony presented at the hearing, if offered as evidence to be considered in reaching a decision on the merits, shall be given under oath.

(vii) Order of presentation. Unless otherwise directed by the presiding officer at the hearing, the order of procedure and presentation of evidence will be as follows: (1) agency; (2) respondent; (3) intervenors (if any); (4) rebuttal by agency.

(viii) Time limits. The presiding officer may set reasonable time limits for the presentations described above.

(ix) Continuances of the hearing. Any hearing may be continued to a time and date certain announced at the hearing, which shall not require any new notification. The continuance of the hearing may be made upon motion of a party indicating good cause why a continuance is necessary. The continuance of the hearing may also be made upon the motion of the presiding officer when in the public interest.

(x) Oral Argument and Briefs. Upon the conclusion of the taking of evidence, the presiding officer may, in his discretion, permit the parties to make oral arguments or submit additional briefs or memoranda upon a schedule to be designated by the presiding officer.

(xi) Record of Hearing. The presiding officer shall cause an official record of the hearing to be made, at the agency's expense, as follows:

(A) The record may be made by means of an audio or video recorder or other recording device at the department's expense.

(B) The record may also be made by means of a certified shorthand reporter employed by the department or by a party desiring to employ a certified shorthand reporter at its own cost in the event that the department chooses not to employ a reporter. If a party employs a certified shorthand reporter, the original transcript of the hearing shall be filed with the department. Those desiring a copy of the certified shorthand reporter's transcript may purchase it from the reporter.

(C) Any respondent, at his own expense, may have a person approved by the department prepare a transcript of the hearing, subject to any restrictions that the agency is permitted by statute to impose to protect confidential information disclosed at the hearing. Whenever a transcript or audio or video recording of a hearing is made, it will be available at the department for use by the parties, but the original transcript or recording may not be withdrawn.

(D) The department shall retain the record of the evidentiary hearing for a minimum of one year from the date of the hearing, or until the completion of any court proceeding on the matter.

(xii) Failure to appear. Inexcusable failure of the respondent to appear at a scheduled evidentiary hearing after receiving proper notice constitutes an admission of the charged violation. The validity of any hearing is not affected by the failure of any person to attend or remain in attendance pursuant to Section 32A-1-119(5)(c).

(e) Disposition.

(i) Presiding Officer's Order; Objections.

(A) Within a reasonable time of the close of the hearing, or after the filing of any post-hearing papers permitted by the presiding officer, the presiding officer shall sign and issue a written order that includes the following:

(I) the findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of fact shall adopt the allegations in the notice of agency action;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) recommendations for final commission action. The order shall not recommend a penalty more severe than that sought in the notice of agency action;

(VI) notice that a respondent or the department having objections to the presiding officer's order may file written objections with the presiding officer within ten days of service of the order setting forth the particulars in which the report is alleged to be unfair, inaccurate, incomplete, unreasonable, unlawful, or not supported by the evidence.

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

(C) The presiding officer shall wait ten days from service of his order for written objections, if any. The presiding officer may then amend or supplement his findings of fact, conclusions of law, and recommendations to reflect those objections which have merit and which are not disputed.

(D) Upon expiration of the time for filing written objections, the order of the presiding officer and any written objections timely filed, shall be submitted to the commission for final consideration.

(ii) Commission Action.

(A) Upon expiration of the time for filing objections, the order shall be placed on the next available agenda of a regular commission meeting for consideration by the commission. Copies of the order, together with any objections filed by the respondent, shall be forwarded to the commission, and the commission shall finally decide the matter on the basis of the order and any objections submitted.

(B) The commission shall be deemed a substitute presiding officer for this final stage of the formal adjudicative proceeding pursuant to Sections 63G-4-103(1)(h)(ii) and (iii). This stage is not considered a "review of an order by an agency or a superior agency" under Sections 63G-4-301 and -302.

(C) No additional evidence shall be presented to the commission. The commission may, in its discretion, permit the parties to present oral presentations.

(D) After the commission has reached a final decision, it shall issue or cause to be issued a signed, written order pursuant to Section 32A-1-119(3)(c) and (6) and 63G-4-208(1) that includes:

(I) findings of fact based exclusively on evidence found in the record of the adjudicative proceedings, or facts officially noted. No finding of fact that was contested may be based solely on hearsay evidence. The findings of fact shall be based upon a preponderance of the evidence, except if the respondent fails to respond as per R81-1-7(4)(a)(iii), then the findings of

fact shall adopt the allegations in the notice of agency action and the respondent is considered in default;

(II) conclusions of law;

(III) the decision;

(IV) the reasons for the decision;

(V) action ordered by the commission and effective date of the action taken. The order shall not impose a penalty more severe than that sought in the notice of agency action;

(VI) notice of the right to file a written request for reconsideration within ten days of the service of the order;

(VII) notice of the right to seek judicial review of the order within thirty days of the date of its issuance in the court of appeals in accordance with Sections 32A-1-120 and 63G-4-403, -404, -405.

(E) The commission may adopt in whole or in part, any portion(s) of the initial presiding officer's order.

(F) The commission may use its experience, technical competence and specialized knowledge to evaluate the evidence.

(G) The commission, after it has rendered its final decision and order, may direct the department director to prepare, issue, and cause to be served on the parties the final written order on behalf of the commission.

(H) A copy of the commission's order shall be promptly mailed to the parties.

(I) A respondent having objections to the order of the commission may file, within ten days of service of the order, a request for reconsideration with the commission, setting forth the particulars in which the order is unfair, unreasonable, unlawful, or not supported by the evidence. If the request is based upon newly discovered evidence, the petition shall be accompanied by a summary of the new evidence, with a statement of reasons why the respondent could not with reasonable diligence have discovered the evidence prior to the formal hearing, and why the evidence would affect the commission's order.

(J) The filing of a request for reconsideration is not a prerequisite for seeking judicial review of the commission's order.

(K) Within twenty days of the filing of a request for reconsideration, the commission may issue or cause to be issued a written order granting the request or denying the request in whole or in part. If the request is granted, it shall be limited to the matter specified in the order. Upon reconsideration, the commission may confirm its former order or vacate, change or modify the same in any particular, or may remand for further action. The final order shall have the same force and effect as the original order.

(L) If the commission does not issue an order within twenty days after the filing of the request, the request for reconsideration shall be considered denied.

(f) Judicial Review.

(i) Respondent may file a petition for judicial review of the commission's final order within 30 days from the date the order is issued.

(ii) Appeals from formal adjudicative proceedings shall be to the Utah Court of Appeals in accordance with Sections 63G-4-403, -404, and 405, and Section 32A-1-120.

R81-1-8. Consent Calendar Procedures.

(1) Authority. This rule is pursuant to the commission's authority to establish procedures for suspending or revoking permits, licenses, and package agencies under 32A-1-107(1)(b) and (e), and the commission's authority to adjudicate violations of Title 32A.

(2) Purpose. This rule establishes a consent calendar procedure for handling letters of admonishment issued and settlement agreements proposed pursuant to R81-1-7 that meet the following criteria:

(a) Uncontested letters of admonishment where no written objections have been received from the respondent; and

(b) Settlement agreements except those where the respondent is allowed to present further argument to the commission under the terms of the settlement agreement.

(3) Application of the Rule.

(a) A consent calendar may be utilized by the commission at their meetings to expedite the handling of letters of admonishment and settlement agreements that meet the criteria of Section (2).

(b) Consent calendar items shall be briefly summarized by department staff or the assistant attorney general assigned to the department. The summary shall describe the nature of the violations and the penalties sought.

(c)(i) The commission shall be furnished in advance of the meeting a copy of each letter of admonishment and settlement agreement on the consent calendar and any documents essential for the commission to make an informed decision on the matter.

(ii) If the case involves anything unusual or out of the ordinary, it shall be highlighted on the letter of admonishment or settlement agreement and shall be noted by the department staff person or assistant attorney general during the summary of the case.

(iii) Settlement agreements on the consent calendar shall include specific proposed dates for the suspension of any license or permit, and for payment of any fines or administrative costs.

(d) If the case involves a serious or grave violation as defined in R81-1-6, the licensee or permittee, absent good cause, shall be in attendance at the commission meeting. The licensee or permittee shall be present not to make a presentation, but to respond to any questions from the commission. Individual employees of a licensee or permittee are not required to be in attendance at the commission meeting.

(e) Any commissioner may have an item removed from the consent calendar if the commissioner feels that further inquiry is necessary before reaching a final decision. In the event a commissioner elects to remove an item from the consent calendar, and the licensee or permittee is not in attendance, the matter may be rescheduled for the next regular commission meeting. Otherwise, the action recommended by department staff or the assistant attorney general presenting the matter shall be approved by unanimous consent of the commission.

(f) All consent calendar items shall be approved in a single motion at the conclusion of the presentation of the summary.

(g) All fines and administrative costs shall be paid on or before the day of the commission meeting unless otherwise provided by order of the commission.

R81-1-9. Liquor Dispensing Systems.

A licensee may not install or use any system for the automated mixing or dispensing of spirituous liquor unless the dispensing system has been approved by the department.

(1) Minimum requirements. The department will only approve a dispensing system which:

(a) dispenses spirituous liquor in calibrated quantities not to exceed 1.5 ounces; and

(b) has a meter which counts the number of pours dispensed.

The margin of error of the system for a one ounce pour size cannot exceed 1/16 of an ounce or two milliliters.

(2) Types of systems. Dispensing systems may be of various types including: gun, stationary head, tower, insertable spout, ring activator or similar method.

(3) Method of approval.

(a) Suppliers. Companies which manufacture, distribute, sell, or supply dispensing systems must first have their product approved by the department prior to use by any liquor licensee in the state. They shall complete the "Supplier Application for Dispensing System Approval" form provided by the department, which includes: the name, model number, manufacturer and

supplier of the product; the type and method of dispensing, calibrating, and metering; the degree or tolerance of error, and a verification of compliance with federal and state laws, rules, and regulations.

(b) Licensees. Before any dispensing system is put into use by a licensee, the licensee shall complete the "Licensee Application for Dispensing System Approval" form provided by the department. The department shall maintain a list of approved products and shall only authorize installation of a product previously approved by the department as provided in subsection (a). The licensee is thereafter responsible for verifying that the system, when initially installed, meets the specifications which have been supplied to the department by the manufacturer. Once installed, the licensee shall maintain the dispensing system to ensure that it continues to meet the manufacturer's specifications. Failure to maintain the system may be grounds for suspension or revocation of the licensee's liquor license.

(c) Removal from approved list. In the event the system does not meet the specifications as represented by the manufacturer, the licensee shall immediately notify the department. The department shall investigate the situation to determine whether the product should be deleted from the approved list.

(4) Operational restrictions.

(a) The system must be calibrated to pour a quantity of spirituous liquor not to exceed 1.5 ounces.

(b) Voluntary consent is given that representatives of the department, State Bureau of Investigation, or any law enforcement officer shall have access to any system for inspection or testing purposes. A licensee shall furnish to the representatives, upon request, samples of the alcoholic products dispensed through any system for verification and analysis.

(c) Spirituous liquor bottles in use with a dispensing system at the dispensing location must be affixed to the dispensing system by the licensee. Spirituous liquor bottles in use with a remote dispensing system must be in a locked storage area. Any other primary spirituous liquor not in service must remain unopened. There shall be no opened primary spirituous liquor bottles at a dispensing location that are not affixed to an approved dispensing device.

(d) The dispensing system and spirituous liquor bottles attached to the system must be locked or secured in such a place and manner as to preclude the dispensing of spirituous liquor at times when liquor sales are not authorized by law.

(e) All dispensing systems and devices must

(i) avoid an in-series hookup which would permit the contents of liquor bottles to flow from bottle to bottle before reaching the dispensing spigot or nozzle;

(ii) not dispense from or utilize containers other than original liquor bottles; and

(iii) prohibit the intermixing of different kinds of products or brands in the liquor bottles from which they are being dispensed.

(f) Pursuant to federal law, all liquor dispensed through a dispensing system shall be from its original container, and there shall be no re-use or refilling of liquor bottles with any substance whatsoever. The commission adopts federal regulations 27 CFR 31.261-31.262 and 26 USC Section 5301 and incorporates them by reference.

(g) Each licensee shall keep daily records for each dispensing outlet as follows:

(i) a list of brands of liquor dispensed through the dispensing system;

(ii) the number of portions of liquor dispensed through the dispensing system determined by the calculated difference between the beginning and ending meter readings and/or as electronically generated by the recording software of the dispensing system;

(iii) number of portions of liquor sold; and

(iv) a comparison of the number of portions dispensed to the number of portions sold including an explanation of any variances.

(v) These records must be made available for inspection and audit by the department or law enforcement.

(h) This rule does not prohibit the sale of pitchers of mixed drinks as long as the pitcher contains no more than 1.5 ounces of primary spirituous liquor and no more than a total of 2.5 ounces of spirituous liquor per person to which the pitcher is served.

(i) Licensees shall display in a prominent place on the premises a list of the types and brand names of spirituous liquor being served through its dispensing system. This requirement may be satisfied either by printing the list on an alcoholic beverage menu or by wall posting or both.

(j) A licensee or his employee shall not:

(i) sell or serve any brand of spirituous liquor not identical to that ordered by the patron; or

(ii) misrepresent the brand of any spirituous liquor contained in any drink sold or offered for sale.

(k) All dispensing systems and devices must conform to federal, state, and local health and sanitation requirements. Where considered necessary, the department may:

(i) require the alteration or removal of any system,

(ii) require the licensee to clean, disinfect, or otherwise improve the sanitary conditions of any system.

R81-1-11. Multiple-Licensed Facility Storage and Service.

(1) For the purposes of this rule:

(a) "premises" as defined in Section 32A-1-105(42) shall include the location of any licensed restaurant, limited restaurant, club, or on-premise beer retailer facility or facilities operated or managed by the same person or entity that are located within the same building or complex. Multiple licensed facilities shall be termed "qualified premises" as used in this rule.

(b) the terms "sell", "sale", "to sell" as defined in Section 32A-1-105(53) shall not apply to a cost allocation of alcoholic beverages as used in this rule.

(c) "cost allocation" means an apportionment of the as purchased cost of the alcoholic beverage product based on the amount sold in each outlet.

(d) "remote storage alcoholic beverage dispensing system" means a dispensing system where the alcoholic product is stored in a single centralized location, and may have separate dispensing heads at different locations, and is capable of accounting for the amount of alcoholic product dispensed to each location.

(2) Where qualified premises have consumption areas in reasonable proximity to each other, the dispensing of alcoholic beverages may be made from the alcoholic beverage inventory of an outlet in one licensed location to patrons in either consumption area of the qualified premises subject to the following requirements:

(a) point of sale control systems must be implemented that will record the amounts of each alcoholic beverage product sold in each location;

(b) cost allocation of the alcoholic beverage product cost must be made for each location on at least a monthly or quarterly basis pursuant to the record keeping requirements of Section 32A-4-106, 32A-4-307, 32A-5-107, or 32A-10-206;

(c) dispensing of alcoholic beverages to a licensed location may not be made on prohibited days or at prohibited hours pertinent to that license type;

(d) if separate inventories of liquor are maintained in one dispensing location, the storage area of each licensee's liquor must remain locked during the prohibited hours and days of sale for each license type;

(e) dispensing of alcoholic beverages to a licensed location may not be made in any manner prohibited by the statutory or regulatory operational restrictions of that license type;

(f) alcoholic beverages dispensed under this section may be delivered by servers from one outlet to the various approved consumption areas, or dispensed to each outlet through the use of a remote storage alcoholic beverage dispensing system.

(3) On qualified premises where each licensee maintains an inventory of alcoholic beverage products, the alcoholic beverages owned by each licensee may be stored in a common location in the building subject to the following guidelines:

(a) each licensee shall identify the common storage location when applying for or renewing their license, and shall receive department approval of the location;

(b) each licensee must be able to account for its ownership of the alcoholic beverages stored in the common storage location by keeping records, balanced monthly, of expenditures for alcoholic beverages supported by items such as delivery tickets, invoices, receipted bills, canceled checks, petty cash vouchers; and

(c) the common storage area may be located on the premises of one of the licensed liquor establishments.

R81-1-12. Alcohol Training and Education Seminar.

(1) The alcohol training and education seminar, as described in Section 62A-15-401, shall be completed by every individual of every new and renewing licensee under title 32A who:

(a) is employed to sell or furnish alcoholic beverages to the public within the scope of his employment for consumption on the premises;

(b) is employed to manage or supervise the service of alcoholic beverages; or

(c) holds an ownership interest in an on-premise licensed establishment and performs the duties of a manager, supervisor, or server of alcoholic beverages.

(2) Persons described in subsection 1(a) and (b) must complete the training within 30 days of commencing employment. Persons described in subsection 1(c) must complete the training within 30 days of engaging in the duties described in subsection 1(a) and (b).

(3) Each licensee shall maintain current records on each individual indicating:

(a) date of hire, and

(b) date of completion of training.

(4) The seminar shall include the following subjects in the curriculum and training:

(a) alcohol as a drug and its effect on the body and behavior;

(b) recognizing the problem drinker;

(c) an overview of state alcohol laws;

(d) dealing with problem customers; and

(e) alternate means of transportation to get a customer safely home.

(5) Persons required to complete the seminar shall pay a fee to the seminar provider.

(6) The seminar is administered by the Division of Substance Abuse of the Utah Department of Human Services.

(7) Persons who are not in compliance with subsection (2) may not:

(a) serve or supervise the serving of alcoholic beverages to a customer for consumption on the premises of a licensee; or

(b) engage in any activity that would constitute managing operations at the premises of a licensee.

R81-1-13. Utah Government Records Access and Management Act.

(1) Purpose. To provide procedures for access to government records of the commission and the department.

(2) Authority. The authority for this rule is Sections 63G-2-204 and 63A-12-104 of the Government Records Access and Management Act (GRAMA).

(3) Requests for Access. Requests for access to government records of the commission or the department should be written and made to the executive secretary of the commission or the records officer of the department, as the case may be, at the following address: Department of Alcoholic Beverage Control, 1625 South 900 West, P.O. Box 30408, Salt Lake City, Utah 84130-0408.

(4) Fees. A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from the commission and the department by contacting the appropriate official specified in paragraph (3) above. The department may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50 or if the requester has not paid fees from previous requests. Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for this waiver of fees must be made to the appropriate official specified in paragraph (3) above.

(5) Requests for Access for Research Purposes. Access to private or controlled records for research purposes is allowed by Section 63G-2-202(8). Requests for access to these records for research purposes may be made to the appropriate official specified in paragraph (3) above.

(6) Intellectual Property Rights. Whenever the commission or department determines that it owns an intellectual property right to a portion of its records, it may elect to duplicate and distribute, or control any materials, in accordance with the provisions of Section 63G-2-201(10). Decisions affecting records covered by these rights will be made by the appropriate official specified in paragraph (3) above. Any questions regarding the duplication and distribution of materials should be addressed to that individual.

(7) Requests to Amend a Record. An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. The request should be made to the appropriate official specified in paragraph (3) above.

(8) Time Periods Under GRAMA. The provisions of Rule 6 of the Utah Rules of Civil Procedure shall apply to calculate time periods specified in GRAMA.

R81-1-14. Americans With Disabilities Act Complaint Procedure.

(1) Authority and Purpose. This rule is promulgated pursuant to Section 63G-3-201(3). The commission, pursuant to 28 CFR 35.107, July 1, 1992 Ed., adopts, defines, and publishes within this rule complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, with the commission or the department.

(2) No qualified individual with a disability, by reason of disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the commission, or department, or be subjected to discrimination by the commission or department.

(3) Definitions.

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

"ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies: Office of Planning and Budget; Department of Human Resource Management; Division of Risk Management; Division of Facilities Construction Management; and Office of the Attorney General.

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

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

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

(4) Filing of Complaints.

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

(b) The complaint shall be filed with the commission's and department's ADA coordinator in writing or in another accessible format suitable to the individual.

(c) Each complaint shall:

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

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

(iii) describe the commission's or department's alleged discriminatory action in sufficient detail to inform the commission or department of the nature and date of the alleged violation;

(iv) describe the action and accommodation desire; and

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

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

(5) Investigation of Complaint.

(a) The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in paragraph (4)(c) of this rule if it is not made available by the individual.

(b) When conducting the investigation, the ADA coordinator may seek assistance from the commission's or department's legal, human resource, and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the ADA coordinator shall consult with the ADA State Coordinating Committee.

(6) Issuance of Decision.

(a) Within 15 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another acceptable suitable format stating what action, if any, shall be taken on the complaint.

(b) If the coordinator is unable to reach a decision within the 15 working day period, he shall notify the individual with a disability in writing or by another acceptable, suitable format why the decision is being delayed and what additional time is needed to reach a decision.

(7) Appeals.

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

(b) Appeals involving the commission shall be filed in writing with the commission. Appeals involving the department shall be filed in writing with the department's executive director or a designee other than the ADA coordinator.

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

(d) The appeal shall describe in sufficient detail why the ADA coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(e) The commission, executive director, or designee, shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the ADA coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve an expenditure of funds which is not absorbable within the commission's or department's budget and would require appropriation authority; facility modifications; or reclassification or reallocation in grade, the commission, executive director, or designee shall also consult with the State ADA Coordinating Committee.

(f) The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another accessible suitable format to the individual.

(g) If the commission, executive director, or designee is unable to reach a decision within the ten working day period, the individual shall be notified in writing or by another acceptable, suitable format why the decision is being delayed and the additional time needed to reach a decision.

(8) Classification of records. The record of each complaint and appeal, and all written records produced or received as part of the action, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator, executive director, or their designees issue the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the ADA coordinator, executive director, or designees shall be classified as public information.

(9) Relationship to other laws. This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

R81-1-15. Commission Declaratory Orders.

(1) Authority. As required by Section 63G-4-503, and as authorized by Section 32A-1-107, this rule provides the procedures for the submission, review, and disposition of petitions for commission declaratory orders on the applicability of statutes administered by the commission and department, rules promulgated by the commission, and orders issued by the commission.

(2) Petition Procedure.

(a) Any person or government agency directly affected by a statute administered by the commission, a rule promulgated by the commission, or an order issued by the commission may petition for a declaratory order.

(b) The petitioner shall file the petition with the commission's executive secretary.

(3) Petition Form. The petition shall:

(a) be clearly designated as a request for a declaratory

order;

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

(c) describe the situation or circumstances giving rise to the need for the declaratory order, or in which applicability of the statute, rule, or order is to be reviewed;

(d) describe the reason or need for the applicability review;

(e) identify the person or agency directly affected by the statute, rule, or order;

(f) include an address and telephone number where the petitioner can be reached during regular work days; and

(g) be signed by the petitioner.

(4) Petition Review and Disposition.

(a) The commission shall:

(i) review and consider the petition;

(ii) prepare a declaratory order stating:

(A) the applicability or non-applicability of the statute, rule, or order at issue;

(B) the reasons for the applicability or non-applicability of the statute, rule, or order; and

(C) any requirements imposed on the department, the petitioner, or any person as a result of the declaratory order;

(iii) serve the petitioner with a copy of the order.

(b) The commission may:

(i) interview the petitioner;

(ii) hold an informal adjudicative hearing to gather information prior to making its determination;

(iii) hold a public information-gathering hearing on the petition;

(iv) consult with department staff, the Attorney General's Office, other government agencies, or the public; and

(v) take any other action necessary to provide the petition adequate review and due consideration.

R81-1-16. Disqualification Based Upon Conviction of Crime.

(1) The Alcoholic Beverage Control Act generally disqualifies persons from being employees of the department, operating a package agency, holding a license or permit, or being employed in a managerial or supervisory capacity with a package agency, licensee or permittee if they have been convicted of:

(a) a felony under any federal or state law;

(b) any violation of any federal or state law or local ordinance concerning the sale, manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

(c) any crime involving moral turpitude; or

(d) driving under the influence of alcohol or drugs on two or more occasions within the last five years.

(2) In the case of a partnership, corporation, or limited liability company the proscription under Subsection (1) applies if any of the following has been convicted of any offense described in Subsection (1):

(a) a partner;

(b) a managing agent;

(c) a manager;

(d) an officer;

(e) a director;

(f) a stockholder who holds at least 20% of the total issued and outstanding stock of the corporation; or

(g) a member who owns at least 20% of the limited liability company.

(3) As used in the Act and these rules:

(a) "convicted" or "conviction" means a determination of guilt by a judge or a jury, upon either a trial or entry of a plea, in any court, including a court not of record, that has not been reversed on appeal;

(b) "felony" means any crime punishable by a term of imprisonment in excess of one year; and

(c) a "crime involving moral turpitude" means a crime that involves actions done knowingly contrary to justice, honesty, or good morals. It is also described as a crime that is "malum in se" as opposed to "malum prohibitum" - actions that are immoral in themselves regardless of being punishable by law as opposed to actions that are wrong only since they are prohibited by statute. A crime of moral turpitude ordinarily involves an element of falsification or fraud or of harm or injury directed to another person or another's property. For purposes of this rule, crimes of moral turpitude may include crimes involving controlled substances, illegal drugs, and narcotics.

R81-1-17. Advertising.

(1) Authority and General Purpose. This rule is pursuant to Section 32A-12-401(4) which authorizes the commission to establish guidelines for the advertising of alcoholic beverages in this state except to the extent prohibited by Title 32A.

(2) Definitions.

(a) For purposes of this rule, "advertisement" or "advertising" includes any written or verbal statement, illustration, or depiction which is calculated to induce alcoholic beverage sales, whether it appears in a newspaper, magazine, trade booklet, menu, wine card, leaflet, circular, mailer, book insert, catalog, promotional material, sales pamphlet, or any written, printed, graphic, or other matter accompanying the container, representations made on cases, billboard, sign, or other public display, public transit card, other periodical literature, publication or in a radio or television broadcast, or in any other media; except that such term shall not include:

(i) labels on products; or

(ii) any editorial or other reading material (i.e., news release) in any periodical or publication or newspaper for the publication of which no money or valuable consideration is paid or promised, directly or indirectly, by any alcoholic beverage industry member or retailer, and which is not written by or at the direction of the industry member or retailer.

(b) For purposes of this rule, "minor" or "minors" shall mean persons under the age of 21 years.

(3) Application.

(a) This rule shall govern the regulation of advertising of alcoholic beverages sold within the state, except where the regulation of interstate electronic media advertising is preempted by federal law. This rule incorporates by reference the Federal Alcohol Administration Act, 27 U.S.C. 205(f), and Subchapter A, Parts 4, 5, 6 and 7 of the regulations of the Bureau of Alcohol, Tobacco and Firearms, United States Department of the Treasury in 27 CFR 4, 5, 6 and 7 (1993 Edition). These provisions shall regulate the labeling and advertising of alcoholic beverages sold within this state, except where federal statutes and regulations are found to be contrary to or inconsistent with the provisions of the statutes and rules of this state.

(b) 27 CFR Section 7.50 provides that federal laws apply only to the extent that the laws of a state impose similar requirements with respect to advertisements of malt beverages manufactured and sold or otherwise disposed of in the state. This rule, therefore, adopts and incorporates by reference federal laws, previously referenced in subparagraph (a), relating to the advertising of malt beverage products.

(4) Current statutes and rules restricting the advertising, display, or display of price lists of liquor products, as defined in 32A-1-105(29), by the department, state stores, or type 1, 2 or 3 package agencies as defined in R81-3-1, are applicable.

(5) All advertising of liquor and beer by manufacturers, suppliers, importers, local industry representatives, wholesalers, permittees, and licensed retailers of such products, and type 4 and 5 package agencies as defined in R81-3-1 shall comply with the advertising requirements listed in Section (6) of this rule.

(6) Advertising Requirements. Any advertising or advertisement authorized by this rule:

(a) May not violate any federal laws referenced in Subparagraph (3);

(b) May not contain any statement, design, device, or representation that is false or misleading;

(c) May not contain any statement, design, device, or representation that is obscene or indecent;

(d) May not refer to, portray or imply illegal conduct, illegal activity, abusive or violent relationships or situations, or anti-social behavior, except in the context of public service advertisements or announcements to educate and inform people of the dangers, hazards and risks associated with irresponsible drinking or drinking by persons under the age of 21 years;

(e) May not encourage over-consumption or intoxication, promote the intoxicating effects of alcohol consumption, or overtly promote increased consumption of alcoholic products;

(f) May not advertise any unlawful discounting practice such as "happy hour", "two drinks for the price of one", "free alcohol", or "all you can drink for $...".

(g) May not encourage or condone drunk driving;

(h) May not depict the act of drinking;

(i) May not promote or encourage the sale to or use of alcohol by minors;

(j) May not be directed or appeal primarily to minors by:

(i) using any symbol, language, music, gesture, cartoon character, or childhood figure such as Santa Claus that primarily appeals to minors;

(ii) employing any entertainment figure or group that appeals primarily to minors;

(iii) placing advertising in magazines, newspapers, television programs, radio programs, or other media where most of the audience is reasonably expected to be minors, or placing advertising on the comic pages of magazines, newspapers, or other publications;

(iv) placing advertising in any school, college or university magazine, newspaper, program, television program, radio program, or other media, or sponsoring any school, college or university activity;

(v) using models or actors in the advertising that are or reasonably appear to be minors;

(vi) advertising at an event where most of the audience is reasonably expected to be minors; or

(vii) using alcoholic beverage identification, including logos, trademarks, or names on clothing, toys, games or game equipment, or other materials intended for use primarily by minors.

(k) May not portray use of alcohol by a person while that person is engaged in, or is immediately about to engage in, any activity that requires a high degree of alertness or physical coordination;

(l) May not contain claims or representations that individuals can obtain social, professional, educational, athletic, or financial success or status as a result of alcoholic beverage consumption, or claim or represent that individuals can solve social, personal, or physical problems as a result of such consumption;

(m) May not offer alcoholic beverages without charge;

(n) May not require the purchase, sale, or consumption of an alcoholic beverage in order to participate in any promotion, program, or other activity; and

(o) May provide information regarding product availability and price, and factual information regarding product qualities, but may not imply by use of appealing characters or life-enhancing images that consumption of the product will benefit the consumer's health, physical prowess, sexual prowess, athletic ability, social welfare, or capacity to enjoy life's activities.

(7) Violations. Any violation of this rule may result in the imposition of any administrative penalties authorized by 32A-1-119(5), (6) and (7), and may result in the imposition of the criminal penalty of a class B misdemeanor pursuant to 32A-12-104 and -401.

R81-1-19. Emergency Meetings.

(1) Purpose. The commission recognizes that there may be times when, due to the necessity of considering matters of an emergency or urgent nature, the public notice provisions of Utah Code Sections 52-4-6(1), (2) and (3) cannot be met. Pursuant to Utah Code Section 52-4-6(5), under such circumstances those notice requirements need not be followed but rather the "best notice practicable" shall be given.

(2) Authority. This rule is enacted under the authority of Sections 63G-3-201 and 32A-1-107.

(3) Procedure. The following procedure shall govern any emergency meeting:

(a) No emergency meeting shall be held unless an attempt has been made to notify all of the members of the commission of the proposed meeting and a majority of the convened commission votes in the affirmative to hold such an emergency meeting.

(b) Public notice of the emergency meeting shall be provided as soon as practicable and shall include at a minimum the following:

(i) Written posting of the agenda and notice at the offices of the department;

(ii) If members of the commission may appear electronically or telephonically, all such notices shall specify the anchor location for the meeting at which interested persons and members of the public may attend, monitor, and participate in the open portions of the meeting;

(iii) Notice to the commissioners shall advise how they may participate telephonically or electronically and be counted as present for all purposes, including the determination of a quorum.

(iv) Written, electronic or telephonic notice shall be provided to at least one newspaper of general circulation within the state and at least one local media correspondent.

(c) If one or more members of the commission appear electronically or telephonically, the procedures governing electronic meetings shall be followed, except for the notice requirements which shall be governed by these provisions.

(d) In convening the meeting and voting in the affirmative to hold such an emergency meeting, the commission shall affirmatively state and find what unforeseen circumstances have rendered it necessary for the commission to hold an emergency meeting to consider matters of an emergency or urgent nature such that the ordinary public notice of meetings provisions of Utah Code Section 52-4-6 could not be followed.

R81-1-20. Electronic Meetings.

(1) Purpose. Utah Code Section 52-4-207 requires any public body that convenes or conducts an electronic meeting to establish written procedures for such meetings. This rule establishes procedures for conducting commission meetings by electronic means.

(2) Authority. This rule is enacted under the authority of Sections 52-4-207, 63G-3-201 and 32A-1-107.

(3) Procedure. The following provisions govern any meeting at which one or more commissioners appear telephonically or electronically pursuant to Utah Code Section 52-4-207:

(a) If one or more members of the commission may participate electronically or telephonically, public notices of the meeting shall so indicate. In addition, the notice shall specify the anchor location where the members of the commission not participating electronically or telephonically will be meeting and where interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

(b) Notice of the meeting and the agenda shall be posted at the anchor location. Written or electronic notice shall also be

provided to at least one newspaper of general circulation within the state and to a local media correspondent. These notices shall be provided at least 24 hours before the meetings.

(c) Notice of the possibility of an electronic meeting shall be given to the commissioners at least 24 hours before the meeting. In addition, the notice shall describe how a commissioner may participate in the meeting electronically or telephonically.

(d) When notice is given of the possibility of a commissioner appearing electronically or telephonically, any commissioner may do so and shall be counted as present for purposes of a quorum and may fully participate and vote on any matter coming before the commission. At the commencement of the meeting, or at such time as any commissioner initially appears electronically or telephonically, the chair shall identify for the record all those who are appearing telephonically or electronically. Votes by members of the commission who are not at the physical location of the meeting shall be confirmed by the chair.

(e) The anchor location, unless otherwise designated in the notice, shall be at the offices of the Department of Alcoholic Beverage Control, 1625 South 900 West, Salt Lake City, Utah. The anchor location is the physical location from which the electronic meeting originates or from which the participants are connected. In addition, the anchor location shall have space and facilities so that interested persons and the public may attend, monitor, and participate in the open portions of the meeting.

R81-1-21. Beer Advertising in Event Venues.

(1) Authority. This rule is pursuant to the commission's powers and duties as the plenary policymaking body on the subject of alcoholic beverage control under 32A-1-107, and its authority to establish guidelines for the advertising of alcoholic beverages under 32A-12-401(4).

(2) Purpose.

(a) This rule establishes a "safe harbor" from administrative action being taken against beer manufacturers and retailers under the circumstances and conditions below. This rule is necessary to allow certain advertising relations to occur even though they have the appearance of violating the "tied-house" provisions of 32A-12-603, but where the reasons and purposes for the "tied-house" provisions do not apply.

(b) "Tied-house" provisions have been enacted at both the federal and state level in response to historical forces and concerns. The thrust of the laws is to prevent two particular dangers: the ability and potential ability of large firms to dominate local markets through vertical and horizontal integration, and excessive sales of alcoholic beverages produced by overly aggressive marketing techniques. The principle method used to avoid these developments was the establishment of a triple-tiered distribution system and licensing scheme where separate and distinct business enterprises engaged in the production, handling, and final sale of alcoholic beverages. The laws also prohibited certain economic arrangements and agreements between each of the three tiers of the distribution system.

(c) Utah's "tied-house" and trade practice laws prohibit a beer industry member, directly or indirectly or through an affiliate, from inducing any beer retailer to purchase alcoholic beverages from the industry member to the exclusion in whole or in part of any of those products sold or offered for sale by other persons by furnishing the retailer signs, money or other things of value except to the extent allowed under 32A-12-603. The laws prohibit a beer industry member, directly or indirectly or through an affiliate, from paying or crediting a beer retailer for any advertising, display, or distribution service. 32A-12-603(5). This includes the purchase, by an industry member, of advertising on signs, scoreboards, programs, scorecards, and the like at ballparks, racetracks or stadiums, from the retail concessionaire. See 27 C.F.R. Sec. 6.53 as referenced in 32A-12-603(5)(a). The laws also prohibit an industry member from making payments for advertising to a retailer association or a display company where the resulting benefits flow to the individual retailers. 32A-12-603(3)(b)(i)(B).

(d) Throughout the state, there are a number of large facilities which put on or allow events to occur on their premises. This includes sports arenas, ballparks, raceways, fairgrounds, equestrian facilities and the like. These facilities have a recognized area of advertising for sale in connection with the events and which is standard for their events, e.g., fence signage at ballparks. Many of these facilities are or have associated with their on-premise beer retailer, either on an annual basis, or as a temporary event permit holder. The issue is thus raised as to the legality of the advertising of beer products as part of the general advertising where other items are advertised and the facility is or has within it an on-premise beer retailer.

(3) Application of the Rule. If the conditions listed below are met, the reasons and purposes behind the "tied-house" provisions restricting relations between manufacturers and retailers do no apply or are not significantly impacted. In addition, an event facility may be unduly restricted in its ability to sell advertising and be competitive. This is based upon the facility's primary purpose being other than the sale of food and beverages, that advertising is a normal and accepted part of the business of the facility and the events that occur at the facility, that beer advertisers would be on equal footing with other advertisers, and that there is little, if any, likelihood of the purchasing of advertising space or time either having an impact on the beer retailing decisions of the retailer or of allowing the manufacturer to obtain or assert control over the retailer. Therefore, if the following conditions are met, the sale of advertising space or time to a beer manufacturer for display at the facility does not constitute the payment to a retailer for advertising, display or distribution service, and does not otherwise constitute the furnishing of any signs, money, or other things of value to a retailer in violation of the "tied-house" provisions of 32A-12-603:

(a) The primary purpose of the facility is the hosting or putting on events, and not the sale or service of food and beverages, including alcoholic beverages;

(b) The retail licensee operates with a fixed seating capacity of more than 2,000 persons;

(c) The advertising space or time is purchased only in connection with events to be held on the premises, and not as point-of-sale advertising. The advertising space or time is not located near the beer concession area and does not reference the on-premise retailer or the availability of beer;

(d) Sales of event advertising space or time and retail beer sales are handled by different entities or divisions, that are separate and do not influence each other, and no preference in terms of beer sales or facilities are extended to a beer advertiser;

(e) The retail licensee serves other brands of malt beverages or beer than the brand manufactured or sold by the manufacturer purchasing advertising space or time. Unless demonstrated for sound business reasons unrelated to "tied-house" laws, the percentage of taps in a facility may not exceed by 10% the actual percentage of sales, by brand, in that facility or the community in the previous year;

(f) The advertising space or time is available to all types of advertisers, is not limited to any type of product, such as beer, is pursuant to an established rate card that sets forth the advertising rates equally available to any other industry member or (and at rates substantially similar for any) non-industry advertiser, and the advertising agreement does not provide for an exclusive right to an advertiser or a right to exclude other advertisers;

(g) The industry member may not share in the costs or

contribute to the costs of the advertising or promotion of the beer retailer or the facility, or obtain or have any interest in the retailer or the facility; and

(h) The purchase of advertising space or time is by written agreement, a copy of which shall be provided to the department as a confidential business document, non-public, and only to be used for enforcement purposes, and the term of the agreement may not be for a period in excess of three years, including any right of renewal.

(4) This "safe harbor" is limited to its express terms, does not undermine or infringe upon general "tied-house" prohibitions, and shall be strictly construed against its applicability. This "safe harbor" also does not limit or abrogate any exception to "tied-house" prohibitions.

R81-1-22. Diplomatic Embassy Shipments and Purchases.

(1) Purpose. The Vienna Conventions on Diplomatic and Consular Relations grant foreign diplomatic missions certain exemptions from federal, state and local taxes. The United States, by treaty, is a party to the Vienna Conventions, and is obligated under international law to grant these exemptions under these agreements to accredited diplomatic missions of those countries that grant the United States reciprocal privileges. These privileges include the purchase of alcoholic beverages duty and tax free subject to certain exceptions such as indirect taxes normally incorporated in the price of goods or services, and charges levied for specific services rendered to benefit the mission.

This rule establishes department guidelines for shipments and purchases of alcohol by a foreign diplomatic mission with an accredited embassy having full diplomatic privileges under the Vienna Conventions that establishes an embassy presence in the state of Utah (hereafter "accredited foreign diplomatic mission").

(2) Application of Rule.

(a) Shipments. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may have or possess, for official diplomatic use, and not for sale or resale, alcoholic beverages that have not been purchased in the state of Utah. Such products may be shipped or transported into the state of Utah under the following conditions:

(i) The embassy must first obtain the approval of this department prior to shipping or transporting its alcoholic beverages into the state.

(ii) Alcoholic beverages shipped or transported into the state must clear U.S. Customs duty free.

(iii) The department shall affix the official state label to the alcoholic beverages.

(iv) The embassy shall pay the department an administrative handling fee of $1.00 per smallest unit (bottle, can, or keg). Payment of handling fees shall be made by the embassy using an official embassy check or embassy credit card.

(v) The alcoholic beverages may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(b) Purchases.

(i) Special Orders. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may special order from the department alcoholic beverage products not presently sold in the state of Utah under the following procedures:

(A) The company or importer supplying the product must submit a price quotation to the department indicating the case price (in US dollars) for which it will sell the product to the state.

(B) The quoted case price must be reasonable (a minimum of $10.00 per case).

(C) The product will be marked up using the department=s standard pricing formula (less the state sales tax).

(D) Special orders must be placed by the embassy at least two months in advance to allow the department sufficient time to purchase and receive the product for the embassy.

(E) The product must be paid for by the embassy using an official embassy check or embassy credit card.

(F) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

(ii) Presently Available Merchandise. An accredited foreign diplomatic mission that establishes an embassy presence in Utah may purchase alcoholic beverages that are presently sold in the state of Utah under the following procedures:

(A) Alcoholic beverage product purchases, other than large quantity purchases, may be made by the embassy at any state store. The store shall deduct state sales tax from the purchase price.

(B) Large quantity purchase orders must be placed by the embassy at the department's licensee warehouse. The warehouse shall deduct state sales tax from the purchase price.

(C) The products must be paid for by the embassy using an official embassy check or embassy credit card.

(D) The product may be used by the embassy only for official diplomatic functions, and may not be sold or resold.

R81-1-23. Sales Restrictions on Products of Limited Availability.

(1) Purpose. Some alcoholic beverage products, especially wines, are of very limited availability from their manufacturers and suppliers to retailers including the department. When the department perceives that customer demand for these limited products may exceed the department=s current and future stock levels, the department, as a public agency, may place restrictions on their sales to ensure their fair distribution to all consumers. This also encourages manufacturers and suppliers to continue to provide their products to the department. This rule establishes the procedure for allocating products of limited availability.

(2) Application of Rule.

(a) The purchasing and wine divisions of the department shall identify those products that are of limited availability and designate them as "Limited /Allocated Status" ("L Status") items. The products shall be given a special "L Status" product code designation.

(b) "L Status" products on the department's price list, in stock, or on order, do not have to be sold on demand. Their sales to the general public and to licensees and permittees may be restricted. The purchasing and wine divisions of the department may issue system-wide restrictions directing the allocation of such products which may include placing limits on the number of bottles sold per customer.

(c) Signs noting this rule shall be posted in state stores and package agencies that carry "L Status" products.

R81-1-24. Responsible Alcohol Service Plan.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control; set policy by written rules that establish criteria and procedures for suspending or revoking licenses; and prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored.

(2) Purpose. This rule allows the commission to require a business licensed by the commission to sell, serve or store alcoholic beverages for consumption on the licensed premises that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, to have a written Responsible Alcohol Service Plan.

(3) Definitions.

(a) "Commission" means the Alcoholic Beverage Control

Commission.

(b) "Department" means the Department of Alcoholic Beverage Control.

(c) "Intoxication" and "intoxicated" means a person who is actually, apparently, or obviously under the influence of an alcoholic beverage, a controlled substance, a substance having the property of releasing toxic vapors, or a combination of alcoholic beverages or said substances, to a degree that the person may endanger himself or another.

(d) "Licensed Business" is a person or business entity licensed by the commission to sell, serve, and store alcoholic beverages for consumption on the premises of the business.

(e) "Manager" means a person chosen or appointed to manage, direct, or administer the operations at a licensed business. A manager may also be a supervisor.

(f) "Responsible Alcohol Service Plan" or "Plan" means a written set of policies and procedures of a licensed business that outline measures that will be taken by the business to prevent employees of the licensed business from:

(i) over-serving alcoholic beverages to customers;

(ii) serving alcoholic beverages to customers who are actually, apparently, or obviously intoxicated; and

(iii) serving alcoholic beverages to persons under the age of 21.

(h) "Server" means an employee who actually makes available, serves to, or provides an alcoholic beverage to a customer for consumption on the business premises.

(i) "Supervisor" means an employee who, under the direction of a manager or owner, directs or has the responsibility to direct, transfer, or assign duties to employees who actually provide alcoholic beverages to customers on the premises of the business.

(4) Application of Rule.

(a)(i) The commission may direct that a licensed business that has been found by the commission to have violated any provision of the Alcoholic Beverage Control Act relating to the sale, service, or furnishing of alcoholic beverages to an intoxicated person, or to a person under the age of 21, submit to the department a Responsible Alcohol Service Plan.

(ii) The licensee thereafter shall maintain a Plan as a condition of continued licensing and relicensing by the commission.

(b) Any Plan at a minimum shall:

(i) outline the policies and procedures of the licensed business to:

(A) prevent over-service of alcohol;

(B) prevent service of alcohol to persons who are intoxicated;

(C) prevent service of alcohol to persons under the age of 21;

(D) provide alternate transportation options for problem customers; and

(E) deal with hostile customers;

(ii) require that all managers, supervisors, servers, security personnel, and others who are involved in the sale, service or furnishing of alcohol, agree to follow the policies and procedures of the Plan;

(iii) require adherence to the Plan as a condition of employment;

(iv) require a commitment by management to monitor employee compliance with the Plan;

(v) require periodic training sessions on the house policies and procedures in the Plan, and on the techniques of responsible service of alcohol taught in the Alcohol Training and Education Seminar required by 62A-15-401, such as:

(A) identifying legal forms of ID, checking ID, and recognizing fake ID;

(B) identifying persons under the age of 21;

(C) discussing the legal definition of intoxication;

(D) identifying behavioral signs of intoxication;

(E) discussing techniques for monitoring and controlling consumption such as:

(1) drink counting;

(2) slowing down alcohol service;

(3) offering food or nonalcoholic beverages; and

(4) cutting off alcohol service;

(F) discussing third party or "dram shop" liability for the unlawful service of alcohol to intoxicated persons and persons under the age of 21 as outlined in 32A-14a-101 through -105; and

(G) discussing the potential criminal, civil and administrative penalties for over-serving alcohol, selling, serving, or otherwise furnishing alcohol to persons who are intoxicated, or to persons who are under the age of 21.

(c) The licensed business may choose to include in the Plan incentives for those employees who deserve special recognition for their responsible service of alcohol.

(d) The Plan shall be available on the premises of the licensed business so as to be accessible to all employees of the licensed business who are involved in the sale, service or furnishing of alcohol.

(e) The Plan shall be available on the premises of the licensed business for inspection by representatives of the commission, department and by law enforcement officers.

(f) Any licensed business that fails to submit to the department a Plan as directed by the commission pursuant to Subsection (4)(a), or to have a Plan available for inspection as required by Subsection (4)(e), shall be subject to the immediate suspension or revocation of its current license, and shall not be granted a renewal of its license by the commission.

(g) The department, at the request of a licensed business, may provide assistance in the preparation of a Plan.

R81-1-25. Sexually-Oriented Entertainers and Stage Approvals.

(1) Authority. This rule is pursuant to:

(a) the police powers of the state under 32A-1-103 to regulate the sale, service and consumption of alcoholic beverages in a manner that protects the public health, peace, safety, welfare, and morals;

(b) the commission's powers and duties under 32A-1-107 to prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored; and

(c) 32A-1-601 through -604 that prescribe the attire and conduct of sexually-oriented entertainers in premises regulated by the commission and require them to appear or perform only in a tavern or class D private club and only upon a stage or in a designated area approved by the commission in accordance with commission rule.

(2) Purpose. This rule establishes guidelines used by the commission to approve stages and designated performance areas in a tavern or class D private club where sexually-oriented entertainers may appear or perform in a state of seminudity.

(3) Definitions.

(a) "Seminude", "seminudity, or "state of seminudity"means a state of dress as defined in 32A-1- 105(54).

(b) "Sexually-oriented entertainer" means a person defined in 32A-1-105(55).

(4) Application of Rule.

(a) A sexually-oriented entertainer may appear or perform seminude only on the premises of a tavern or class D private club.

(b) A tavern or class D private club licensee, or an employee, independent contractor, or agent of the licensee shall not allow:

(i) a sexually-oriented entertainer to appear or perform seminude except in compliance with the conditions and attire

and conduct restrictions of 32A-1-602 and -603;

(ii) a patron to be on the stage or in the performance area while a sexually-oriented entertainer is appearing or performing on the stage or in the performance area; and

(iii) a sexually-oriented entertainer to appear or perform seminude except on a stage or in a designated performance area that has been approved by the commission.

(c) Stage and designated performance area requirements.

(i) The following shall submit for commission approval a floor-plan containing the location of any stage or designated performance area where sexually-oriented entertainers appear or perform:

(A) an applicant for a tavern or class D private club license from the commission who intends to have sexually-oriented entertainment on the premises;

(B) a current tavern or class D private club licensee of the commission that did not have sexually-oriented entertainment on the premises when application was made for the license or permit, but now intends to have such entertainment on the premises; or

(C) a current tavern or class D private club licensee of the commission that has sexually-oriented entertainment on the premises, but has not previously had the stage or performance area approved by the commission.

(ii) The commission may approve a stage or performance area where sexually-oriented entertainers may perform in a state of seminudity only if the stage or performance area:

(A) is horizontally separated from the portion of the premises on which patrons are allowed by a minimum of three (3) feet, which separation shall be delineated by a physical barrier or railing that is at least three (3) feet high from the floor;

(B) is configured so as to preclude a patron from:

(I) touching the sexually-oriented entertainer;

(II) placing any money or object on or within the costume or the person of any sexually-oriented entertainer;

(III) is configured so as to preclude a sexually-oriented entertainer from touching a patron; and

(IV) conforms to the requirements of any local ordinance of the jurisdiction where the premise is located relating to distance separation requirements between sexually-oriented entertainers and patrons that may be more restrictive than the requirements of Sections (4)(c)(i) and (ii) of this rule.

(iii) The person applying for approval of a stage or performance area shall submit with their application:

(A) a diagram, drawn to scale, of the premises of the business including the location of any stage or performance area where sexually-oriented entertainers will appear or perform;

(B) a copy of any applicable local ordinance relating to distance separation requirements between sexually-oriented entertainers and patrons; and

(C) evidence of compliance with any such applicable local ordinance.

R81-1-26. Criminal History Background Checks.

(1) Authority. This rule is pursuant to:

(a) the commission's powers and duties under 32A-1-107 to set policy by written rules that establish criteria and procedures for granting, denying, suspending, or revoking permits, licenses, and package agencies;

(b) 32A-1-111, 32A-2-101(1)(b),32A-3-103, 32A-4-103, 32A-4-203, 32A-4-304, 32A-4-403, 32A-5-103, 32A-6-103, 32A-7-103, 32A-8-103, 32A-8-503, 32A-9-103, 32A-10-203, 32A-10-303, and 32A-11-103 that prohibit certain persons who have been convicted of certain criminal offenses from being employed by the department or from holding or being employed by the holder of an alcoholic beverage license, permit, or package agency; and

(c) 32A-1-701 through 704 that allow for the department to require criminal history background check reports on certain individuals.

(2) Purpose. This rule:

(a) establishes the circumstances under which a person identified in the statutory sections enumerated in Subparagraph (1)(b), must provide the department with a criminal history background report that shows the person meets the qualifications of those statutory sections as a condition of employment with the department, or as a condition of the commission granting a license, permit, or package agency to an applicant for a license, permit, or package agency; and

(b) establishes the procedures for the filing and processing of criminal history background reports.

(3) Application of Rule.

(a)(i) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii) a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for at least two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by Utah Bureau of Criminal Identification, Department of Public Safety (hereafter "B.C.I.").

(ii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), (vi), and (vii), and (3)(b) through (h), a person identified in Subparagraph (1)(b) who has been a resident of the state of Utah for less than two years, shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the Federal Bureau of Investigation (hereafter "F.B.I.").

(iii) Except to the extent provided in Subparagraphs (3)(a)(iv), (v), and (vi), and (vii), (3)(b) through (h), a person identified in Subparagraph (1)(b) who currently resides outside the state of Utah shall submit a fingerprint card to the department, and consent to a fingerprint criminal background check by the F.B.I.

(iv) A person identified in Subparagraph (1)(b) who previously submitted a criminal background check as part of the application process for a different license, permit, or package agency that was issued by the commission shall not be required to submit a fingerprint card with the department or provide a new criminal history background report as part of the application process for a new license, permit, or package agency if the person attests that he or she has not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(v) An applicant for a single event permit under Title 32A, Chapter 7 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense.

(vi) An applicant for a temporary special event beer permit under 32A-10-301 to -306 shall not be required to submit a fingerprint card or provide a criminal history background report if the applicant attests that the persons identified in Subparagraph (1)(b) have not been convicted of any disqualifying criminal offense identified in Subparagraph (1)(b).

(vii) An applicant for employment with benefits with the department shall be required to submit a fingerprint card and consent to a fingerprint criminal background check only if the department has made the decision to offer the applicant employment with the department.

(b) An application that requires B.C.I. or F.B.I. criminal history background report(s) may be included on a commission meeting agenda, and may be considered by the commission for issuance of a license, permit, or package agency if:

(i) the applicant has completed all requirements to apply for the license, permit, or package agency other than the department receiving the required B.C.I. or F.B.I. criminal history background report(s);

(ii) the applicant attests in writing that he or she is not aware of any criminal conviction of any person identified in Subparagraph (1)(b) that would disqualify the applicant from

applying for and holding the license, permit, or package agency;

(iii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I.;

(iv) the applicant at the time of application supplies the department with a current criminal history background report conducted by a third-party background check reporting service on any person for which a B.C.I. or an F.B.I. background check is required; and

(v) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from holding the license, permit, or package agency, the applicant shall immediately surrender the license, permit, or package agency to the department.

(c) The commission may issue a license, permit, or package agency to an applicant that has met the requirements of Subparagraph (3)(b), and the license, permit, or package agency shall be valid during the period the B.C.I. or F.B.I. is processing the criminal history report(s).

(d) The department shall use a unique file tracking system for such licenses, permits, and package agencies.

(e) If the required B.C.I. or F.B.I. report(s) are not received by the department within six (6) months of the date the license, permit, or package agency is issued by the commission, the licensee, permittee, or package agent shall appear at the next regular meeting of the commission for a status report, and the commission may either order the surrender of the license, permit, or package agency, or may extend the reporting period.

(f) Upon the department's receipt of the B.C.I. or F.B.I. report(s):

(i) if there is no disqualifying criminal history, the license, permit, or package agency shall continue for the balance the license or permit period, or the package agency contract period; or

(ii) if there is a disqualifying criminal history, the license, permit, or package agency shall be immediately surrendered, and the commission may enter an order accepting the surrender, or an order revoking the license, permit, or package agency depending on the circumstances.

(g) In the case of a license or permit, if the statutory deadline for renewing the license or permit occurs before receipt of the B.C.I. or F.B.I. report(s), the licensee or permittee may file for renewal of the license or permit subject to meeting all of the requirements in Subparagraphs (3)(b) through (f).

(h) An applicant for employment with benefits with the department that requires a B.C.I. or an F.B.I. criminal history background report may be conditionally hired by the department prior to receipt of the report if:

(i) the applicant attests in writing that he or she is not aware of any criminal conviction that would disqualify the applicant from employment with the department;

(ii) the applicant has submitted to the department the necessary fingerprint card(s) required for the application, and consented to the fingerprint criminal background check(s) by the B.C.I. or F.B.I;

(iii) the applicant stipulates in writing that if a B.C.I. or an F.B.I. report shows a criminal conviction that would disqualify the applicant from employment with the department, the applicant shall terminate his or her employment with the department.

R81-1-27. Label Approvals.

(1) Authority. This rule is pursuant to 32A-1-806(2)(c) and (d) and 32A-1-807 which give the commission the authority to adopt rules necessary to fully implement certain aspects of the Malted Beverages Act, 32A-1-801 to -809.

(2) Purpose.

(a) Pursuant to 32A-1-804, effective October 1, 2008, a manufacturer may not distribute or sell in this state any malted beverage including beer, heavy beer, and flavored malt beverage unless the label and packaging of the beverage has been first approved by the department.

(b) The requirements and procedures for applying for label and packaging approval are set forth in 32A-1-804 to -806.

(c) This rule:

(i) establishes administrative fees that may be assessed by the department to process applications for the approval of malt beverage labels and packaging;

(ii) provides supplemental procedures for applying for and processing label and package approvals;

(iii) defines the meaning of certain terms in the Malted Beverages Act; and

(iv) establishes the format of certain words and phrases required on the containers and packaging of certain flavored malt beverages.

(3) Application of Rule.

(a) The department shall assess a fee of $30.00 made payable to the "Department of Alcoholic Beverage Control" for each application submitted for label and packaging approval.

(b) A complete set of original labels for each size of container must accompany each application for label and packaging approval.

(i) This includes all band, strip, front and back labels appearing on any individual container.

(ii) Original containers will not be accepted.

(iii) If original labels cannot be obtained, the following will be accepted:

(A) color reproductions that are exact size; or

(B) a copy of the federal certificate of label approval (COLA) from the Department of Treasury, Tax and Trade Bureau (Form TTB F5100.31) with the exact size label if printed in color.

(c) Because a heavy beer and flavored malt beverage product may be sold only by the department to consumers and on-premise retailers in this state, label approval for a heavy beer or flavored malt beverage need not be applied for until the department has decided to list the product for sale in this state. Any listing will be contingent on label and packaging approval.

(d) An application for approval is required for any revision of a previously approved label.

(e) An application for approval is required for any revision to packaging that significantly modifies the notice that the product is an alcoholic beverage.

(f) An application for approval is not required for any revision to packaging that relates to subject matter other than the required notice that the product is an alcoholic beverage such as temporary seasonal or promotional themes.

(g) Pursuant to 32A-1-805(6):

(i) the department may revoke any label and packaging approved by the department prior to October 1, 2008, that does not comply with the label and packaging requirements of the Malted Beverage Act;

(ii) the department may delist any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that does not meet the label and packaging requirements of the Malted Beverage Act;

(iii) any heavy beer or flavored malt beverage product listed by the department prior to October 1, 2008, that did not receive prior label and packaging approval need not submit an application for label and packaging approval if the label and packaging meet the requirements of the Malted Beverage Act.

(h) Pursuant to 32A-1-806, effective October 1, 2008, a flavored malt beverage that is packaged in a manner that is similar to a label or package used for a nonalcoholic beverage must bear a prominently displayed label or a firmly affixed sticker on the container that includes the statement "alcoholic beverage" or "contains alcohol". Any packaging of a flavored

malt beverage must also prominently include, either imprinted on the packaging or imprinted on a sticker firmly affixed to the packaging the statement "alcoholic beverage" or "contains alcohol". The words in the statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) on the front of the container and packaging;

(iv) in a format that is readily legible;

(v) separate and apart from any descriptive or explanatory information; and

(vi) in a type size no smaller than 3 millimeters wide and 3 millimeters high.

(i) Pursuant to 32A-1-806, effective October 1, 2008, the label on a flavored malt beverage container shall state the alcohol content as a percentage of alcohol by volume or by weight. The alcohol content statement may not be abbreviated, but shall use the complete words "alcohol," "volume," or "weight". The words in the alcohol content statement must appear:

(i) in capital letters and bold type;

(ii) in a solid contrasting background;

(iii) in a format that is readily legible; and

(iv) separate and apart from any descriptive or explanatory information.

KEY: alcoholic beverages

October 23, 2008 **32A-1-107**

Notice of Continuation August 31, 2006 **32A-1-119(5)(c)**
32A-1-702
32-1-703
32A-1-704
32A-1-807
32A-3-103(1)(a)
32A-4-103(1)(a)
32A-4-106(1)(a)
32A-4-203(1)(a)
32A-4-304(1)(a)
32A-4-307(1)(a)
32A-4-401(1)(a)
32A-5-103(1)(a)
32A-6-103(2)(a)
32A-7-103(2)(a)
32A-7-106(5)
32A-8-103(1)(a)
32A-8-503(1)(a)
32A-9-103(1)(a)
32A-10-203(1)(a)
32A-10-206(14)
32A-10-303(1)(a)
32A-10-306(5)
32A-11-103(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-40. Recreational Therapy Practice Act Rule.
R156-40-101. Title.

This rule is known as the "Recreational Therapy Practice Act Rule".

R156-40-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 40, as used in Title 58, Chapters 1 and 40 or this rule:

(1) "Approved graduate degree in recreation therapy or a graduate degree with an approved emphasis in recreation therapy", as used in Subsection 58-40-5(1)(a)(i), means an earned graduate degree which includes a minimum of nine semester hours or 12 quarter hours of upper division or graduate level course work in recreation therapy.

(2) "CTRS" means a person certified as a Certified Therapeutic Recreation Specialist by the National Council for Therapeutic Recreation Certification.

(3) "Full-time, on-site", as used in Subsections 58-40-5(3)(c), 58-40-6(3)(a)(i) and (3)(b)(i), means an individual who is employed on the premises with the hiring agency for a minimum of 30 hours per week.

(4) "Maintain the on-going documentation", as used in Subsection 58-40-6(3)(b), means:

(a) collecting data for the assessment process;

(b) documenting the on-going treatment or intervention provided to clients according to the treatment plan; and

(c) providing periodic review of client status according to agency regulations.

(5) "MTRS" means a person licensed as a master therapeutic recreation specialist.

(6) "NCTRC" means the National Council for Therapeutic Recreation Certification.

(7) "Supervision", as used in Subsections 58-40-5(3)(c), 58-40-6(1)(a), (2)(b), (3)(a)(i) and (3)(b)(i), means full-time, on-site oversight by a MTRS or TRS of the recreation therapy services offered.

(8) "Supervision of a temporary TRS", as used in Subsection R156-40-302e(d), means that the MTRS or TRS supervisor is responsible for the recreation therapy activities performed by the temporary TRS and will review and approve the treatment plans as well as any modifications to the treatment plans as evidenced by the signature of the MTRS or TRS in the treatment plan.

(9) "TRS" means a person licensed as a therapeutic recreation specialist.

(10) "TRT" means a person licensed as a therapeutic recreation technician.

(11) "Unprofessional conduct" is defined in Title 58, Chapters 1 and 40.

R156-40-103. Authority - Purpose.

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 40.

R156-40-104. Organization - Relationship to Rule R156-1.

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

R156-40-302a. Qualifications for Licensure - Education Requirements.

In accordance with Section 58-40-5, the educational requirements for licensure include:

(1) A MTRS applicant shall:

(a) have a current NCTRC certification as a CTRS or a current license as a TRS; and

(b) document completion of the education and 4000 hours of paid experience while nationally certified as a CTRS or licensed as a TRS.

(2) A TRS applicant shall:

(a) have a current NCTRC certification as a CTRS; and

(b) document completion of the education and practicum requirements for licensure as a TRS.

(3) A TRT applicant shall:

(a) have an approved educational course in therapeutic recreation taught by a MTRS, as required by Subsection 58-40-5(3)(b)(i), which shall consist of 90 hours of structured education under the instruction and direction of a licensed MTRS, or if completed out of state, under the direction of a nationally certified CTRS, which includes:

(i) theories and concepts of recreation therapy;

(ii) the therapeutic recreation process;

(iii) characteristics of illness and disability and their effects on leisure;

(iv) medical and psychiatric terminology including psychiatric, pharmacology and abbreviations;

(v) ethics;

(vi) role and function of other health and human service professionals, including: agencies, medical specialists and allied health professionals; and

(vii) health and safety.

R156-40-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Section 58-40-5, the experience requirements for licensure include:

(1) A MTRS is required to complete 4000 hours of paid experience, as required by Subsection 58-40-5(1)(a)(ii), which means an individual must work as a TRS in Utah in a paid position practicing recreation therapy and/or work outside of Utah as a CTRS in a paid position practicing recreation therapy as defined in Subsection 58-40-2(4)(a) and (b) for 4000 hours.

(2) A TRS is required to complete an approved practicum, as required by Subsection 58-40-5(2)(b), which means a practicum verified on the degree transcript.

(3) A TRT is required to complete an approved practicum, as required by Subsection 58-40-5(3)(c), which means 125 hours of field work experience to be completed over a duration of not more than nine months under the direction of a licensed MTRS or TRS supervisor, that includes:

(a) a minimum of ten hours of face to face supervision by the MTRS or TRS supervisor;

(b) training in the therapeutic recreation process as defined in Subsections 58-40-2(4)(a) and (b);

(c) interdisciplinary contact;

(d) administration contact; and

(e) community relations.

R156-40-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-40-5(1)(e), 58-40-5(2)(f) and 58-40-5(3)(g), applicants for licensure shall pass the following examinations:

(1) Applicants for licensure as a MTRS or TRS shall pass the NCTRC certification examination as evidenced by a current NCTRC certification as a CTRS.

(2) Applicants for licensure as a TRT shall pass the Utah Recreation Therapy Theory Examination for TRT with a minimum passing score of 70%.

R156-40-302d. Time Limitation for TRT applicants.

(1) In accordance with Subsection 58-40-5(3) and Sections R156-40-302a, R156-40-302b and R156-40-302c, a TRT applicant shall pass the examination and apply for licensure after completion of the 125 practicum hours required under Subsection R156-40-302b(3) and must do so within the same nine month period referred to in that Subsection.

(2) A TRT applicant who does not complete the education, practicum and examination within nine months is not eligible to be employed as a TRT in a therapeutic recreation department.

(3) A TRT student who does not seek licensure within two years after completion of the education course shall retake the education, practicum and pass the examination prior to applying for licensure.

R156-40-302e. Qualifications for Supervision.

"Supervision of a therapeutic recreation technician", as used in Subsection 58-40-6(3)(a)(i) and (3)(b)(i), means that the MTRS or TRS supervisor is responsible for:

(1) providing on-site training, observation, direction and evaluation, as defined in Subsection 58-40-2(4)(b), to include:

(a) reviewing the recreation therapy intervention performed by the TRT as defined by the treatment plan;

(b) demonstrating periodic review and evaluation of ongoing documentation;

(c) reviewing the recreation therapy program according to administrative and governing regulations; and

(d) reviewing and evaluating adherence to the standards of the profession.

R156-40-302f. Qualifications for Temporary License as a TRS - Supervision Required.

(1) In accordance with Section 58-1-303, an applicant for temporary licensure as a TRS shall:

(a) submit an application for temporary license in the form prescribed by the division which includes a verification that the applicant has registered and been approved to take the next available NCTRC examination;

(b) pay a fee determined by the department under Section 63J-1-303;

(c) meet all the requirements for licensure, except passing the NCTRC examination; and

(d) practice recreation therapy under the supervision of a Utah licensed TRS or MTRS as defined in Subsection R156-40-102(8).

(2) The temporary license will not be issued for a period greater than ten months.

(3) The temporary license will not be renewed or extended for any purpose.

R156-40-303. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two-year renewal cycle applicable to licenses under Title 58, Chapter 40 is established by rule in Section R156-1-308.

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

KEY: licensing, recreational therapy, recreation therapy
December 22, 2008 58-40-1
Notice of Continuation September 19, 2006 58-1-106(1)(a)
58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-46a. Hearing Instrument Specialist Licensing Act Rule.
R156-46a-101. Title.

This rule is known as the "Hearing Instrument Specialist Licensing Act Rule."

R156-46a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 46a, as used in Title 58, Chapters 1 and 46a or this rule:

(1) "Analog" means a continuous variable physical signal.

(2) "Digital" means using or involving numerical digits, expressed in a scale of notation to represent discreetly all variables occurring.

(3) "Programmable" means the electronic technology in the hearing instrument can be modified independently.

(4) "Unprofessional conduct," as defined in Title 58 Chapters 1 and 46a, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-46a-502.

R156-46a-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 46a.

R156-46a-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.

R156-46a-302a. Qualifications for Licensure - Hearing Instrument Specialist Certification Requirement.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), an applicant shall submit a notarized copy of his current certificate documenting National Board for Certification in Hearing Instrument Sciences (NBC-HIS) to satisfy the certification requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(e).

R156-46a-302b. Qualifications for Licensure - Hearing Instrument Specialist Experience Requirement.

In accordance with Subsections 58-1-203(1)(b) and 58-1-301(3), the experience requirement for licensure as a hearing instrument specialist in Subsection 58-46a-302(1)(d) is defined and clarified as follows.

An applicant shall document successful completion of 4000 hours of acceptable practice as a hearing instrument intern by submitting a notarized Completion of Internship form provided by the division.

R156-46a-302c. Qualifications for Licensure - Examination Requirements.

In accordance with Subsections 58-46a-302(1)(f) and 58-46a-302.5(2)(a), the requirements for the examination of a hearing instrument intern are defined as clarified as follows:

(1) In order to qualify to take the Utah Practical Examination for Hearing Instrument Interns, an applicant as a hearing instrument intern shall have been licensed, have completed 500 hours of the 4,000 hour hearing instrument internship under direct supervision and have completed the National Institute for Hearing instrument studies education and examination program.

(2) In order to pass the Utah Law and Rules Examination for Hearing Instrument Specialists, an applicant as a hearing instrument specialist or hearing instrument intern shall achieve a score of at least 85%.

R156-46a-302d. Qualifications for Licensure - Internship Supervision Requirements.

In accordance with Subsections 58-46a-102(7) and 58-1-203(1)(b), the requirements for supervision of a hearing instrument intern are defined and clarified as follows. The hearing instrument intern supervisor shall:

(1) not have been disciplined for any unprofessional or unlawful conduct within five years of the start of any internship program;

(2) supervise no more than one hearing instrument intern on direct supervision;

(3) supervise no more than two hearing instrument interns at one time;

(4) not begin an internship program until:

(a) the hearing instrument intern is properly licensed as a hearing instrument intern; and

(b) the supervisor is approved by the Division in collaboration with the Board;

(5) keep a daily record on forms available from the Division, during the direct supervision period, which shall include the hours of instruction, the duties assigned, the total hours worked each week and the type of services performed;

(6) make available to the Division, upon request, upon completion of direct supervision and upon completion of the internship, the intern's training records;

(7) notify the Division immediately when the intern has completed direct supervision on forms available from the Division; and

(8) notify the Division within ten working days if the internship program is terminated.

R156-46a-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 46a is established by rule in Section R156-1-308.

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

R156-46a-304. Continuing Education.

In accordance with Section 58-46a-304, the continuing education requirement for renewal of licensure as a hearing instrument specialist is defined and clarified as follows:

(1) Continuing education courses shall be offered in the following areas:

(a) acoustics;

(b) nature of the ear (normal ear, hearing process, disorders of hearing);

(c) hearing measurement;

(d) hearing aid technology;

(e) selection of hearing aids;

(f) marketing and customer relations;

(g) client counseling;

(h) ethical practice;

(i) state laws and regulations regarding the dispensing of hearing aids; and

(j) other areas deemed appropriate by the Division in collaboration with the Board.

(2) Only contact hours from the American Speech-Language-Hearing Association (ASHA) or the International Hearing Society (IHS) shall be applied towards meeting the minimum requirements set forth in Subsection R156-46a-304(4).

(3) As verification of contact hours earned, the Division will accept copies of transcripts or certificates of completion from continuing education courses approved by ASHA or IHS.

(4) A minimum of 20 contact hours shall be obtained by a hearing instrument specialist in order to have the license renewed every two years.

R156-46a-502a. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) violating any state or federal law applicable to persons practicing as a hearing instrument specialist or hearing instrument intern;

(2) failure to perform the minimum components of an evaluation for a hearing aid as set forth in Section R156-46a-502b;

(3) aiding or abetting any person other than a Utah licensed hearing instrument specialist, a licensed hearing instrument intern, a licensed audiologist, or a licensed physician to perform a hearing aid examination;

(4) dispensing a hearing aid without the purchaser having:

(a) received a medical evaluation by a licensed physician within the preceding six months prior to the purchase of a hearing aid; or

(b) a document signed by the purchaser being a fully informed adult waiving the medical evaluation in accordance with Food and Drug Administration (FDA) required disclosures, except a person under the age of 18 years may not waive the medical evaluation;

(5) using or causing or promoting the use of any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia, or other representation, however disseminated or published, which is misleading, deceiving, or untruthful;

(6) quoting prices of competitive hearing instruments or devices without disclosing that they are not the current prices or to show, demonstrate, or represent competitive models as being current when such is not the fact;

(7) using the word digital in any advertising matter, promotional literature, testimonial, guarantee, warranty, label, brand, insignia or other representation when the hearing instrument circuit is less than 100% digital, unless the word digital is accompanied by the word analog, as in "digitally programmable analog hearing aid";

(8) using stalling tactics, excuses, arguing or attempting to dissuade the purchaser to avoid or delay the customer from exercising the 30-day right to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1);

(9) failing to start the reimbursement process within 48 hours of the purchaser's request to cancel a hearing aid purchase pursuant to Subsection 58-46a-503(1);

(10) failure to perform a prepurchase hearing evaluation;

(11) supervising more than two hearing instrument interns at one time;

(12) failing as a hearing instrument intern supervisor to comply with any of the requirements of Section R156-46a-302d; and

(13) failing to conform to the generally accepted and recognized standards and ethics of the profession including those established in the Hearing Health Care Providers of Utah Association, "Utah Code of Ethics and Standards of Practice", adopted September 6, 2006, and the Code of Ethics of the International Hearing Society, adopted April 2007, which are hereby incorporated by reference.

R156-46a-502b. Minimum Components of an Evaluation for a Hearing Aid and Dispensing of a Hearing Aid.

(1) The minimum components of a hearing aid examination are the following:

(a) air conduction tests at frequencies of 250, 500, 1000, 2000, and 4000 Hertz;

(b) appropriate masking if the air conduction threshold at any one frequency differs from the bone conduction threshold of the contralateral or nontest ear by 40 decibels at the same frequency;

(c) bone conduction tests at 500, 1000, and 2000 Hertz on every client with proper masking;

(d) speech audiometry by live voice or recorded voice, including speech discrimination testing, most comfortable loudness (MCL) measurements and measurements of uncomfortable levels of loudness (UCL); and

(e) recording and interpretation of audiograms and speech audiometry and other appropriate tests for the sole purpose of determining proper selection and adaptation of a hearing aid.

(2) Only when the above procedures are clearly impractical may the selection of the best instrument to compensate for the loss be made by trial of one or more instruments.

(3) Tests performed by a physician specializing in diseases of the ear, a clinical audiologist or another licensed hearing instrument specialist shall be accepted if they were performed within six months prior to the dispensing of the hearing aid.

R156-46a-502c. Calibration of Technical Instruments.

The requirement in Subsection 58-46a-303(3)(c) for calibration of all appropriate technical instruments used in practice is defined, clarified, and established as follows:

(1) any audiometer used in the fitting of hearing aids shall be calibrated when necessary, but not less than annually;

(2) the calibration shall include to ANSI standards calibration of frequency accuracy, acoustic output, attenuator linearity, and harmonic distortion; and

(3) calibration shall be accomplished by the manufacturer, or a properly trained person, or an institution of higher learning equipped with proper instruments for calibration of an audiometer.

KEY: licensing, hearing aids, hearing instrument specialist, hearing instrument intern

December 22, 2008	**58-1-106(1)(a)**
Notice of Continuation June 24, 2004	**58-1-202(1)(a)**
	58-46a-101
	58-46a-304

R162. Commerce, Real Estate.
R162-2. Exam and License Application Requirements.
R162-2-1. Qualifications for Licensure and Exam Application.

2.1.1 Minimum Age. All applicants shall be at least 18 years of age.

2.1.2 Formal Education Minimum. All applicants shall have at least a high school diploma, G.E.D., or equivalent as determined by the Commission.

2.1.3 Prelicensing Education. All applicants shall have completed any required prelicensing education before applying to sit for a licensing examination.

2.1.4 Exam application. All applicants who desire to sit for a licensing examination shall deliver an application to sit for the examination, together with the applicable examination fee, to the testing service designated by the Division. If the applicant fails to take the examination when scheduled, the fee will be forfeited.

2.1.4.1. Applicants previously licensed out-of-state.

(a) If an applicant is now and has been actively licensed for the preceding two years in another state which has substantially equivalent licensing requirements and is either a new resident or a non-resident of this state, the Division shall waive the national portion of the exam.

(b) If an applicant has been on an inactive status for any portion of the past two years he may be required to take both the national and Utah state portions of the exam.

R162-2-2. Licensing Procedure.

2.2. Within 90 days after successful completion of the exam, the applicant shall return to the Division each of the following:

2.2.1. A report of the examination indicating that both portions of the exam have been passed within a six-month period of time.

2.2.2. The license application form required by the Division. The application form shall include the licensee's business and home address. 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.

2.2.3. The non-refundable fees which will include the appropriate license fee as authorized by Section 61-2-9(5) and the Recovery Fund fee as authorized by Section 61-2a-4.

2.2.4. Documentation indicating successful completion of the required education taken within the year prior to licensing. If the applicant has been previously licensed in another state which has substantially equivalent licensing requirements, he may apply to the Division for a waiver of all or part of the educational requirement.

2.2.4.1. Candidates for the license of sales agent will successfully complete 90 classroom hours of approved study in principles and practices of real estate. Experience will not satisfy the education requirement. Membership in the Utah State Bar will waive this requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.

2.2.4.2. Candidates for the license of associate broker or principal broker will successfully complete 120 classroom hours of study curriculum approved by the Commission consisting of 45 hours of broker principles, 45 hours of broker practices, and 30 hours of Utah law and testing. Experience will not satisfy the education requirement. The Division may waive all or part of the educational requirement by virtue of equivalent education taken while completing a college undergraduate or postgraduate degree program, regardless of the date of the degree, or by virtue of other equivalent real estate education if the other real estate education was taken within 12 months prior to application.

2.2.5. The principal broker and associate broker applicant will submit the forms required by the Division documenting a minimum of three years licensed real estate experience and a total of at least 60 points accumulated within the five years prior to licensing. A minimum of two years (24 months) and at least 45 points will be accumulated from Tables I and/or II. The remaining 15 points may be accumulated from Tables I, II or III.

TABLE I - REAL ESTATE TRANSACTIONS

RESIDENTIAL - points can be accumulated from either the selling or the listing side of a real estate closing:	
(a) One unit dwelling	2.5 points
(b) Two- to four-unit dwellings	5 points
(c) Apartments, 5 units or over	10 points
(d) Improved lot	2 points
(e) Vacant land/subdivision	10 points
COMMERCIAL	
(f) Hotel or motel	10 points
(g) Industrial or warehouse	10 points
(h) Office building	10 points
(i) Retail building	10 points
(j) Leasing of commercial space	5 points

TABLE II - PROPERTY MANAGEMENT

RESIDENTIAL	
(a) Each unit managed	.25 pt/month
COMMERCIAL - hotel/motel, industrial/warehouse, office, or retail building	
(b) Each contract OR each separate property address or location for which licensee has direct responsibility	1 pt/month

2.2.6. The Principal Broker may accumulate additional experience points by having participated in real estate related activities such as the following:

TABLE III - OPTIONAL

Real Estate Attorney	1 pt/month
CPA-Certified Public Accountant	1 pt/month
Mortgage Loan Officer	1 pt/month
Licensed Escrow Officer	1 pt/month
Licensed Title Agent	1 pt/month
Designated Appraiser	1 pt/month
Licensed General Contractor	1 pt/month
Bank Officer in Real Estate Loans	1 pt/month
Certified Real Estate Prelicensing Instructor	.5 pt/month

2.2.7. If the review of an application has been performed by the Division and the Division has denied the application based on insufficient experience, and if the applicant believes that the Experience Points Tables do not adequately reflect the amount of the applicant's experience, the applicant may petition the Real Estate Commission for reevaluation by making a written request within 30 days after the denial stating specific grounds upon which relief is requested. The Commission shall thereafter consider the request and issue a written decision.

2.2.8. An applicant previously licensed in another state will provide a written record of his license history from that state and documentation of disciplinary action, if any, against his license.

2.2.9. Qualifications of License Applicants. An applicant for a new license may not:

(a) have been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any felony within five years preceding the application; or

(b) have been convicted of, entered a plea in abeyance to, or completed any sentence of confinement on account of, any misdemeanor involving fraud, misrepresentation, theft, or dishonesty within three years preceding the application.

2.2.10 Qualifications for Renewal. An applicant for license renewal, or for reinstatement of an expired license, may not have:

(a) been convicted of or entered a plea in abeyance to a felony during the term of the last license or during the period between license expiration and application to reinstate an expired license; or

(b) a finding of fraud, misrepresentation or deceit entered against the applicant, related to activities requiring a real estate 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.

2.2.11 Determining fitness for licensure. In determining whether an applicant who has not been disqualified by Subsections 2.2.9 or 2.2.10 meet the requirements of honesty, integrity, truthfulness, reputation and competency required for a new or a renewed license, the Commission and the Division will consider information they consider necessary to make this determination, including the following:

2.2.11.1. Whether an applicant has been denied a license to practice real estate, property management, or any regulated profession, business, or vocation, or whether any license has been suspended or revoked or subjected to any other disciplinary sanction by this or another jurisdiction;

2.2.11.2. Whether an applicant has been guilty of conduct or practices which would have been grounds for revocation or suspension of license under Utah law had the applicant then been licensed;

2.2.11.3. Whether a civil judgment has been entered against the applicant based on a real estate transaction, and whether the judgment has been fully satisfied;

2.2.11.4. Whether a civil judgment has been entered against the applicant based on fraud, misrepresentation or deceit, and whether the judgment has been fully satisfied.

2.2.11.5 Whether an applicant has ever been convicted of, or entered a plea in abeyance to, any criminal offense, or whether any criminal charges against the applicant have ever been resolved by a diversion agreement or similar disposition;

2.2.11.6. Whether restitution ordered by a court in a criminal case has been fully satisfied;

2.2.11.7. Whether the parole or probation in a criminal case or the probation in a licensing action has been completed and fully served; and

2.2.11.8. Whether there has been subsequent good conduct on the part of the applicant. If, because of lapse of time and subsequent good conduct and reputation or other reason deemed sufficient, it shall appear to the Commission and the Division that the interest of the public will not likely be in danger by the granting of a license, the Commission and the Division may approve the applicant relating to honesty, integrity, truthfulness, reputation and competency.

R162-2-3. Company Registration.

2.3.1. A Principal Broker shall register with the Division the name under which his real estate brokerage or property management company will operate. Registration will require payment of applicable non-refundable fees and evidence that the name of the new company has been approved by the Division of Corporations, Department of Commerce.

2.3.1.1. The real estate brokerage shall at all times have affiliated with it a principal broker who shall demonstrate that he is authorized to use the company name.

2.3.1.2. Misleading or deceptive business names. The Division will not accept a proposed business name when there is a substantial likelihood that the public will be misled by the name into thinking that they are not dealing with a licensed real estate brokerage or property management company.

2.3.2. Registration of Entities Operating a Principal Brokerage.

2.3.2.1. A corporation, partnership, Limited Liability Company, association or other entity which operates a principal brokerage shall comply with R162-2.3 and the following conditions:

2.3.2.2. Individuals associated with the entity shall not engage in activity which requires a real estate license unless they are affiliated with the principal broker and licensed with the Division. Upon a change of principal broker, the entity shall be responsible to insure that the outgoing and incoming principal brokers immediately provide to the Division, on forms required by the Division, evidence of the change.

2.3.2.2.1. If the outgoing principal broker is not available to properly execute the form required to effect the change of principal brokers, the change may still be made provided a letter advising of the change is mailed by the entity by certified mail to the last known address of the outgoing principal broker. A verified copy of the letter and proof of mailing by certified mail shall be attached to the form when it is submitted to the Division.

2.3.2.3. If the change of members in a partnership either by the addition or withdrawal of a partner creates a new legal entity, the new entity cannot operate under the authority of the registration of the previous partnership. The dissolution of a corporation, partnership, Limited Liability Company, association or other entity which has been registered terminates the registration. The Division shall be notified of any change in a partnership or dissolution of a corporation which has registered prior to the effective date of the change.

R162-2-4. Licensing of Non-Residents.

2.4. In addition to meeting the requirements of rules 2.1 and 2.2, an applicant living outside of the state of Utah may be issued a license in Utah by successfully completing specific educational hours required by the Division with the concurrence of the Commission, and by passing the real estate licensing examination. The applicant shall also meet each of the following requirements:

2.4.1. If the applicant is an associate broker or sales agent, the principal broker with whom he will be affiliated shall hold an active license in Utah.

2.4.2. If the applicant is a principal broker, he shall establish a real estate trust account in this state. He shall also maintain all office records in this state at a principle business location as outlined in R162-4.1.

2.4.3. The application for licensure in Utah shall be accompanied by an irrevocable written consent allowing service of process on the Commission or the Division.

2.4.4. The applicant shall provide a written record of his license history, if any, and documentation of disciplinary action, if any, against his license.

R162-2-5. Reciprocity.

2.5. The Division, with the concurrence of the Commission, may enter into specific reciprocity agreements with other states on the same basis as Utah licensees are granted licenses by those states.

KEY: real estate business
January 8, 2009 61-2-5.5
Notice of Continuation April 18, 2007

R164. Commerce, Securities.
R164-15. Federal Covered Securities.
R164-15-1. Notice Filings for Offerings of Investment Company Securities.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing prior to the offer or sale of securities described in Subsection 61-1-15.5(1) and sets forth the filing procedure.

(3) The rule also authorizes optional electronic filing of notices.

(B) Definitions

(1) "Designee" means any person or entity authorized and recognized by the Division in this rule to accept filings on behalf of the Division by electronic or other means of communication.

(2) "Division" means the Division of Securities, Utah Department of Commerce.

(3) "NASAA" means the North American Securities Administrators Association, Inc.

(4) "SEC" means the United States Securities and Exchange Commission.

(C) Filing requirements

(1) Prior to the offer or sale of a security which is a covered security under Section 18(b)(2) of the Securities Act of 1933, the issuer must submit to the Division or its designee the following:

(1)(a) A completed manually signed NASAA Form NF;

(1)(b) A completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process; and

(1)(c) A fee as specified in the Division's fee schedule.

(2) The issuer may submit a copy of all documents that are part of the federal registration statement filed with the SEC as a substitute for NASAA Form NF.

(3) Upon written request of the Division and within the time period set forth in the request, the issuer must submit to the Division a copy of any document, identified in the request, that is part of the federal registration statement filed with the SEC or is part of an amendment to such federal registration statement.

(4) All securities included in the same prospectus may be covered under a single notice filing.

(5) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

(D) Term of notice filing

(1) Except as provided in Subparagraph (D)(2), a notice filing under Paragraph (C) is effective for one year from the date filed with the Division or its designee.

(2) A notice filing under Paragraph (C) for a unit investment trust is for an indefinite period of time from the date filed with the Division or its designee.

(3) To facilitate the coordination of expiration dates with other states, the issuer may request a specific term of effectiveness which does not exceed one year.

(E) Renewal

A notice filing, for which the term is about to expire, may be renewed by submitting to the Division or its designee, another notice and payment of the applicable fee in accordance with Paragraph (C).

(F) Amendments

(1) The materials filed pursuant to Paragraph (C) may be amended by forwarding the corrected information to the Division or its designee and requesting that the file be amended accordingly.

(2) No fee is required for an amendment.

(G) Recognized designee

(1) The Division authorizes and recognizes the Securities Registration Depository, Inc. as a designee to receive notice filings under this rule on behalf of the Division, including but not limited to notices, fees, and all documents that are part of a federal registration statement filed with the SEC under the Securities Act of 1933.

(2) The designation provided in this rule is for the sole purpose of receiving filings on behalf of the Division and then transmitting those documents to the Division, or for any other purpose which the Division may prescribe by order or release.

(H) Sales Report

Within 30 days of the close of the offering or when the issuer ceases to rely upon the notice, whichever occurs first, unit investment trusts shall file a sales report on NASAA Form NF. No sales report is required for open-end management investment companies.

R164-15-2. Notice Filings for Rule 506 Offerings.

(A) Authority and purpose.

(1) The Division enacts this rule under authority granted by Sections 61-1-15.5 and 61-1-24.

(2) The rule requires a notice filing within 15 days after the first sale in this state of securities described in Subsection 61-1-15.5(2) and sets forth the filing procedure.

(3) This rule has been amended in recognition of the amendment of Regulation D by the Securities and Exchange Commission (SEC) to authorize the filing of Form D in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) as described in Securities and Exchange Commission Securities Act Release No. 8891.

(4) This rule authorizes an issuer to file Temporary Form D while that form remains in effect or a copy of the notice of sales on Form D filed electronically with the SEC until an electronic filing system acceptable to the Division is implemented that permits the electronic filing of Form D with the Division or its designee.

(B) Definitions

(1) "Division" means the Division of Securities, Utah Department of Commerce.

(2) "NASAA" means the North American Securities Administrators Association, Inc.

(C) Filing requirements

(1) An issuer offering a security that is a covered security under section 18(b)(4)(D) of the Securities Act of 1933 must file with the Division or its designee, no later than 15 days after the first sale of such federal covered security in this state, an initial notice and a filing fee as follows:

(1)(a) The issuer shall file an initial notice on SEC Form D. For Purposes of Subsection 61-1-15.5(2), the initial notice on SEC Form D shall consist of either,

(1)(a)(i) the Temporary Form D (17 CFR 239.500T), including Part E and the Appendix, as adopted by the SEC while that form remains in effect from September 15, 2008 through March 15, 2009; or

(1)(a)(ii) a copy of the notice of sales on Form D filed in electronic format with the SEC through the Electronic Data Gathering, Analysis, and Retrieval System (EDGAR) in accordance with EDGAR rules set forth in Regulation S-T (17 CFR Part 232) and in effect on September 15, 2008.

(1)(b) Regardless of whether the issuer files a notice of sales on Temporary Form D or a copy of the notice of sales on Form D filed in electronic format with the SEC, such form shall be manually signed by a person duly authorized by the issuer;

(1)(c) If the issuer files a notice on Temporary Form D, it shall also furnish a completed manually signed NASAA Form U-2 - Uniform Consent to Service of Process;

(1)(d) The issuer shall include with the initial notice a statement indicating:

(1)(d)(i) The date of the first sale of securities in the state of Utah; or

(1)(d)(ii) That sales have yet to occur in the state of Utah; and

(1)(e) The issuer shall submit a fee as specified in the Division's fee schedule.

(2) An issuer who has filed a Form U-2 in connection with a previous notice filing need not file another.

(3) An issuer may file an amendment to a previously filed notice of sales on Form D at any time and must file such an amendment to correct a material mistake of fact or error in the previously filed notice of sales on Form D, as soon as practicable after discovery of the mistake or error.

(4) An issuer that files an amendment to a previously filed notice of sales on Form D must provide current information in response to all requirements of the notice of sales on Form D regardless of why the amendment is filed.

KEY: mutual funds, securities, securities regulation
January 12, 2009 61-1-15.5
Notice of Continuation July 30, 2007 61-1-24

R212. Community and Culture, History.
R212-1. Adjudicative Proceedings.
R212-1-1. Scope and Applicability.

This rule is enacted in compliance with the Utah Administrative Procedures Act, Section 63G-4-102 et seq. and applies only to actions which are governed by the Act.

R212-1-2. Definitions.

A. Terms, used in this rule are defined in Section 63G-4-103.

B. In Addition:

1. "agency" means the Division of State History;

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

3. "director" means the director of the Division of State History; and

4. "board" means the Board of State History.

5. "presiding officer" means the Board or its designee, which may be a subcommittee of the board.

6. "petitioner" means any person aggrieved by a decision or determination of the Division of State History.

R212-1-3. Designation.

The Agency designates all agency actions subject to the scope and applicability of the Utah Administrative Procedures Act, Section 63G-4-102 as formal proceedings.

R212-1-4. Adjudicative Hearings.

A. Any person aggrieved by a decision or determination of the Division of State History may request a hearing before the Board. That person, hereinafter "the petitioner," shall request the hearing by filing a request in writing with the Chairman of the Board and providing a copy to the director of the Division. The petition shall set forth the reason for the request, including the following:

1. a description of the decision which the petitioner requests a hearing on;

2. the date of the decision, who made the decision, and, if in writing, attach a copy of the decision;

3. the relief sought by the petitioner; and

4. the reason the petitioner is entitled to the relief requested.

B. Upon receipt of the Request for Hearing, the Division shall file a written response within 21 days with the Chairman of the Board and send a copy to the petitioner. The Division response shall include any facts or matters not included in the Request for Hearing that may be necessary for the determination, and set forth the reasons and basis for the decision for which the petitioner is seeking a hearing.

C. After the filing of the response, a meeting shall be scheduled with the petitioner, representative of the agency, and council for the Board as a pre-hearing conference. The purpose of the conference is to have the agency and the petitioner meet to determine what factual and legal matters are in dispute, what discovery may be needed by anyone to process the case, and the best manner for presentation or hearing for the Board. Counsel for the Board shall prepare a discovery and hearing schedule based upon the meeting, which shall govern the proceedings.

D. The Board may act as a presiding officer and conduct the hearing, may appoint a subcommittee of its Board or may appoint an individual or group of individuals to act as the presiding officer to conduct the hearing. If the presiding officer is other than the entire Board, the presiding officer shall make recommended findings of fact, conclusions of law, and proposed order on the petitioner's request for a hearing. That proposed order shall be placed upon and acted upon by the Board at its next scheduled meeting. The Board may adopt, reject or modify the proposed order of the presiding officer.

R212-1-5. Request for Declarative Orders.

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

B. In order of importance, procedures governing declaratory orders are:

1. procedures specified in this rule pursuant to 63G-4-102;

2. the applicable procedures of 63G-4-102;

3. applicable procedures of other governing state and federal law;

4. the Utah Rules of Civil Procedure.

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

1. The petition shall:

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

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

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

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

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

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

g. be signed by the petitioner.

D. The agency will not issue a declaratory order that deals with a question or request that the director determines is:

1. Not within the jurisdiction and competence of the agency;

2. Trivial, irrelevant, or immaterial;

3. Not one that is ripe or appropriate for determination;

4. Currently pending or will be determined in an on-going judicial proceeding;

5. Not in the best interest of the division or the public to consider; or

6. Prohibited by state or federal law.

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

F. Petitions shall be reviewed under the following procedure:

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

a. meet with the petitioner;

b. consult with counsel or the Attorney General; and

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

d. the Petitioner shall be advised as to the status or procedures to be used concerning the Petitioner's request.

2. The director may issue an order in accordance with Section 63G-4-503.

3. The director may order that an adjudicative proceeding be held in accordance with Section 63G-4-503 in connection with review of a petition.

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

KEY: administrative procedures, adjudicative proceedings
January 6, 2003 63G-4-102
Notice of Continuation July 17, 2007

R212. Community and Culture, History.
R212-6. State Register for Historic Resources and Archaeological Sites.
R212-6-1. Scope and Applicability.

Purpose: To establish compatibility between the State and National Register. To establish standards for state landmarks consistent with Sections 9-8-306, 9-8-401, 9-8-402 and 9-8-403.

R212-6-2. Definitions.

A. Terms used in this rule are defined in Sections 9-8-302 and 9-8-402(1).

B. In addition:

1. "division" means the Division of State History;

2. "director" means the director of the Division of State History;

3. "board" means the Board of State History.

R212-6-3. State Register for Historic Resources and Archaeological Sites.

1. The State Register for properties and sites incorporates by reference, within this rule, 36 CFR 60.4, 1996 Edition for the selecting of properties and sites as historical places within Utah.

2. Properties or sites recommended for National Register consideration shall automatically be listed on the State Register after they have been recommended by the Board of State History for National Register listing and after the State Historic Preservation Officer has nominated them for listing on the National Register.

3. Should a property or site be found to be ineligible for the National Register by the Keeper of the National Register, National Park Service, that property may be reviewed for removal from the State Register.

4. Properties or sites may be removed from Century and State Registers only after notification to the owner and a hearing by the board, unless they have been entirely demolished, in which case they may be removed administratively by division staff following state procedures for removal.

R212-6-4. State Landmark Listing for Archaeological and Anthropological Sites and Localities.

Archaeological and anthropological sites and localities listed on the State Register may be listed as "State Landmarks" after nomination by the property owners and review and acceptance by the Board of State History.

KEY: historic sites, national register, state register

February 21, 2002	**9-8-302**
Notice of Continuation August 1, 2006	**9-8-306**
	9-8-401
	9-8-402
	9-8-403
	63G-4-102

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.

A. 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.

B. The Reparation Officer may allow up to $5000 for medically necessary items such as eyeglasses, hearing aids, and wheelchairs. The board may approve expenses for medically necessary items in excess of $5000 where extenuating circumstances exist.

C. The Reparation Officer may allow up to $1500 for essential personal property not included in Subsection (B) such as burglar alarms, door locks, crime scene cleanup, repair of walls and broken windows, etc. The board may approve expenses for essential person property in excess of $1500 where extenuating circumstances exist.

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.a. If the claimant has no medical insurance or other collateral source for payment of the victim's medical bill, the Office of Crime Victim Reparations shall pay 70% of billed charges for eligible medical bills.

b. If the claimant has medical insurance or another collateral source for payment of the victim's medical bills, the Office of Crime Victim Reparations shall pay the portion of the eligible medical bills that the claimant is obligated to pay pursuant to the insurance agreement.

c. This subsection (4) does not apply to expenses governed by R270-1-4 or R270-1-22.

5. This rule supersedes any other agreements regarding payment of medical bills by the Office of Crime Victim Reparations.

6. 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 two months, not to exceed a maximum rent award of $1500, 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 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
January 21, 2009 63M-7-501 et seq.
Notice of Continuation July 3, 2006

R270. Crime Victim Reparations, Administration.
R270-2. Crime Victim Reparations Adjudicative Proceedings.
R270-2-1. Contested Determinations.

Pursuant to Section 63M-7-515(1), the Director shall review contested determinations by a reparation officer or designate the CVR Board to review the contested determination. The Director will keep the CVR Board apprised of all contested determinations. The decision of the Director or the CVR Board is final and may not be appealed.

KEY: appellate procedures, administrative procedures
September 15, 2000 63G-3
Notice of Continuation July 3, 2006

R270. Crime Victim Reparations, Administration.
R270-3. ADA Complaint Procedure.
R270-3-1. Authority and Purpose.

(1) The Office of Crime Victim Reparations adopts this grievance procedures rule to provide for prompt and equitable resolution of complaints alleging any action prohibited by Title II of the Americans with Disabilities Act, pursuant to 28 CFR 35.107, 1992 edition.

(2) No qualified individual with a disability shall, by reason of such disability, be excluded from or be denied the benefits of the services, programs, or activities or be subjected to discrimination by the Office of Crime Victim Reparations.

R270-3-2. Definitions.

(1) "ADA Coordinator" means the Support Services Coordinator of the Office of Crime Victim Reparations.

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

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

(4) "Qualified individual with a disability" means an individual with a disability, who with or without reasonable modifications to rules, policies, or practices, the removal of architectural, communication, or transportation barriers, or the provision of auxiliary aids and services, meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Office of Crime Victim Reparations.

R270-3-3. Filing of Complaints.

(1) Any qualified individual with a disability may file a complaint within 180 days of the alleged noncompliance with the provision to Title II of the Americans with Disabilities Act of 1990 or the regulations promulgated thereunder. Complaints should be filed within 60 days to assure prompt, effective assessment and consideration of the facts and to allow time to pursue other available remedies, if necessary. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 180 days of the effective date of this rule. The filing of a complaint or of a subsequent appeal is authorization by the complainant to allow necessary parties to review all relevant information, including records classified as private or controlled under the Government Records Access and Management Act and information otherwise protected by statute, rule, regulation, or other law.

(2) The complaint shall be filed with the ADA Coordinator in writing or in another accessible format suitable to the complainant.

(3) Each complaint shall:

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

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

(c) describe the office's alleged discriminatory action in sufficient detail to inform the office of the nature and date of the alleged violation;

(d) describe the action and accommodation desired; and

(e) be signed by the complainant or by the complainant's legal representative.

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

(5) If the complaint is not in writing, the ADA Coordinator shall transcribe or otherwise reduce the complaint to writing upon receipt of the complaint.

R270-3-4. Investigation of Complaints.

(1) The ADA Coordinator shall investigate complaints to the extent necessary to assure all relevant facts are collected and documented. This may include gathering all information listed in Subsection R270-3-3(3) of this rule if it is not made available by the complainant.

(2) The ADA Coordinator may seek assistance from the State of Utah Attorney General's Office, Department of Human Resource Management, and budget staff, in determining what action, if any, should be taken on the complaint. The ADA Coordinator may also consult with the Director of the Office of Crime Victim Reparations in reaching a recommendation. The ADA Coordinator shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General, before making any recommendation that would involve:

(a) an expenditure of funds beyond what is reasonably able to be accommodated within the applicable line item such that it would require a separate appropriation;

(b) facility modifications; or

(c) reclassification or reallocation in grade.

R270-3-5. Recommendation and Decision.

(1) Within 15 business days after receiving the complaint, the ADA Coordinator shall recommend to the Director what action, if any, should be taken on the complaint. The recommendation shall be in writing or in another accessible format suitable to the complainant.

(2) If the ADA Coordinator is unable to make a recommendation within the 15 business day period, he/she shall notify the complainant in writing or in another accessible format suitable to the complainant stating why the recommendation is delayed and what additional time is needed.

(3) The Director may confer with the ADA Coordinator and the complainant and may accept or modify the recommendation to resolve the cause of the complaint. The Director shall make a decision within 15 business days. The Director shall take all reasonable steps to implement the decision. The decision shall be in writing or in another accessible format suitable to the complainant.

R270-3-6. Appeals.

(1) The complainant may appeal the Director's decision to the Executive Director of the Commission on Criminal and Juvenile Justice within ten business days from the receipt of the decision.

(2) The appeal shall be in writing or in another accessible format reasonably suited to the complainant's ability.

(3) The Executive Director may name a designee to assist on the appeal. The ADA Coordinator may not be the Executive Director's designee for the appeal.

(4) The appeal shall describe in sufficient detail why the decision does not meet the complainant's needs without causing undue hardship to the office.

(5) The Executive Director or designee shall review the ADA Coordinator's recommendation, the Director's decision, the points raised on appeal, and may direct additional investigation as necessary, prior to reaching a decision. The Executive Director shall consult with representatives from other state agencies that could be affected by the decision, including the Office of Planning and Budget, the Department of Human Resource Management, the Division of Risk Management, the Division of Facilities Construction Management, and the Office of the Attorney General, before making any decision that would involve:

(a) an expenditure of funds beyond what is reasonably able

to be accommodated within the applicable line item such that it would require a separate appropriation;

(b) facility modifications; or

(c) reclassification or reallocation in grade.

(6) The Executive Director shall issue a decision within 15 business days after receiving the appeal. It shall be in writing or in another accessible format suitable to the complainant.

(7) If the Executive Director or the Executive Director's designee is unable to reach a decision within the 15 business day period, that person shall notify the complainant in writing or by another accessible format suitable to the complainant stating why the decision is being delayed and the additional time needed to reach a decision.

R270-3-7. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the State of Utah Antidiscrimination Complaint Procedures, the Federal ADA Complaint Procedures, or any other State of Utah or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: ADA complaint procedures
1994 34-35
Notice of Continuation September 30, 2004

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. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

D. "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.

E. "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.

F. "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
January 7, 2009 **Art X Sec 3**
53A-1-401(3)
53A-17a-153(6)

R277. Education, Administration.
R277-110. Legislative Supplemental Salary Adjustment.
R277-110-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

C. "District or charter school" means a public school funded by the Utah State Legislature through the Minimum School Program.

D. "Educator" means a teacher or other individual as defined by the Utah State Legislature in 53A-17a-153.

E. "Educator Salary Adjustments" means salary increases paid annually in equal amounts to educators as defined in 53A-17a-153(1). The adjustment amount for 2007-08 was $2500. The adjustment amount for 2008-09 is $1700.

F. "USOE" means the Utah State Office of Education.

G. "USDB" means Utah Schools for the Deaf and the Blind.

R277-110-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of Public Education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-17a-153(6) which authorizes the Board to make rules regarding educator salary adjustments.

B. The purpose of this rule is to outline a consistent method for enacting educator salary adjustments in accordance with Section 53A-17a-153, Educator Salary Adjustments.

R277-110-3. Procedures.

A. Each school district, charter school and USDB shall:

(1) have employee evaluation procedures consistent with Title 53A, Chapter 10; schools exempt from Title 53A, Chapter 10 shall have employee evaluation procedures in place to participate in the Program and receive funds under Section 53A-17a-153.

(2) put the Educator Salary Adjustment appropriation into the school district's, charter school's or USDB's salary schedule each year that an educator salary adjustment is appropriated by the Legislature;

(3) ensure the amount of the Educator Salary Adjustment is the same for each full-time-equivalent educator position in the school district, charter school, or the USDB;

(4) ensure that each person who is not a full-time educator receives a proportional salary adjustment based on the number of hours the person works in his current assignment as an educator;

(5) ensure that each educator who receives a salary adjustment for school year 2007-08 or 2008-09 or both has received a satisfactory or above job performance rating in his most recent evaluation concluded in the school year prior to the year for which the adjustment is made; new hires are considered to have met this requirement by successfully completing the position hiring process and being selected for an educator position.

B. Once an educator qualifies for an adjustment in a designated school year, the adjustment becomes an ongoing part of the educator's salary.

C. The educator shall be:

(1) a classroom teacher (2007-08 and 2008-09);
(2) speech pathologist (2007-08 and 2008-09);
(3) librarian or media specialist (2007-08 and 2008-09);
(4) preschool teacher (2007-08 and 2008-09);
(5) school building level administrator (2007-08);
(6) mentor teacher (2007-08 and 2008-09);
(7) teacher specialist (2007-08 and 2008-09);
(8) teacher leader (2007-08 and 2008-09);
(9) guidance counselor (2007-08 and 2008-09);
(10) audiologist (2007-08 and 2008-09);
(11) psychologist (2007-08 and 2008-09); or
(12) social worker as defined in 53A-17a-153 (1) (2007-08 and 2008-09).

D. The educator shall be licensed, employed by a school district, charter school, or the Utah Schools for the Deaf and the Blind and hold a current license issued under Title 53A, Chapter 6, Educator Licensing and Professional Practices Act.

E. Each school district, charter school, and the USDB shall annually note on the appropriate salary schedule:

(1) the amount of the Educator Salary Adjustment;
(2) the positions qualifying for the adjustment;
(3) that a satisfactory or better performance rating is required to receive the adjustment; and

F. For the 2008-09 school year, school districts, charter schools and the USDB shall note satisfactory performance ratings.

G. The USOE shall remit to school districts, charter schools and USDB, through monthly bank transfers and allotment memos beginning in July of each year, an estimated educator salary adjustment amount to be adjusted in November of each year to match the number of qualified educators in the CACTUS data base system.

H. Adjustments to CACTUS after November 15 of each year shall not count towards the amount for Educator Salary Adjustments until the following year.

I. Educator Salary Adjustments may not be included when calculating the weighted average compensation adjustment for non-administrative licensed staff.

R277-110-4. Reports.

A. School districts, charter schools and USDB shall maintain adequate accounting records to submit an annual report summarizing the uses and recipients of Educator Salary Adjustment funds to USOE each year by November 1 on USOE-designated forms.

(1) School districts, charter schools and USDB, shall
(a) Maintain the information by program and;
(b) Carry over any unused balances within the program for use in the following year.

(2) Reports shall balance with amounts reported on the AFR (Annual Financial Report) and the APR (Annual Program Report).

(3) Failure to submit the required reports on a timely basis may result in withholding of school district, charter school or USDB funds until the report is submitted in an acceptable format and is complete, or may render the school district, charter school or USDB, ineligible for participation in the Educator Salary Adjustment program the following year.

(4) Failure to remedy allocation of funds not in accordance with Section 53A-17a-153, Educator Salary Adjustment, and R277-110, Legislative Supplemental Salary Adjustment, shall also result in withholding of school district, charter school or USDB funds for the Educator Salary Adjustment program until an appropriate remedy is implemented and verified.

KEY: educators, salary adjustments
January 7, 2009 **Art X Sec 3**
53A-1-401(3)
53A-17a-153(6)

R277. Education, Administration.
R277-437. Student Enrollment Options.
R277-437-1. Definitions.

A. "Available school or program" means a school or program currently designated under the law and this rule by a district as open to nonresident students.

B. "Board" means the Utah State Board of Education.

C. "District of residence" means a student's school district of residence under Section 53A-2-201.

D. "Nonresident student" means a student attending or seeking to attend a school other than the designated school of residence.

E. "Residual per student expenditure" means the expenditure based on the most recent State Superintendent's Annual Report according to the following formula:

(1) Take total expenditures before interfund transfer for:

(a) maintenance and operation;

(b) tort liability; and

(c) capital projects.

(2) Subtract from the sum of (1), above:

(a) resident district's taxes collected under the Minimum School Program;

(b) state revenue;

(c) federal revenue; and

(d) expenditures for site acquisition or new facility construction (new facility construction includes remodeling that increases building square footage or other major remodeling, if approved by the USOE Director of Finance).

(3) Divide the remainder of (1) and (2) above by the total student membership of the district as reported in the most recent State Superintendent's Annual Report.

F. "Safety emergency" means a situation in which:

(1) enrollment in a specific school is necessary to protect the health of the student as determined by a specific medical recommendation from a medical doctor; or

(2) enrollment in a specific school is necessary to protect the emotional or physical safety of a student, based on documentation/evidence provided by the student's previous school, the parent(s)/guardian(s), a clinical psychologist who is tracking the student, or cumulative information.

G. "School of residence" means the school which a student would normally attend in the student's district of residence.

H. "School into which the school's students feed" for purposes of this rule means school boundaries and feeder systems as determined by the local board of education which may change over time.

I. "Serious infraction of the law or school rules" means chronic misbehavior by a student which is likely, if it were to continue after the student was admitted, to endanger persons or property, cause serious disruptions in the school, or to place unreasonable burdens on school staff.

J. "USOE" means the Utah State Office of Education.

R277-437-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which places general control and supervision of the public school system under the Board, by 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by 53A-2-210 which directs the Board to provide a formula by rule for resident students who attend school districts under Section 53A-2-206.5 et seq. This rule is consistent with federal laws and regulations, including the Individuals with Disabilities Act (IDEA), 20 U.S.C., Chapter 33, Section 1412 as amended by Public Law 102-119, and the Elementary and Secondary Education Act of 2001 (ESEA), P.L. 107-110.

B. The purpose of this rule is:

(1) to establish necessary definitions;

(2) to establish a formula for the residual per pupil expenditure for school districts to reimburse each other for full and part-time nonresident students;

(3) to summarize school, school district, and state responsibilities under Section 53A-2-206.5; and

(4) to provide a standard statewide open enrollment form required under Section 53A-2-207(4)(b).

R277-437-3. Local School Board and District Responsibilities.

A. Prior to September 30, 2008, a local board shall announce policies describing procedures for students to follow in applying to attend schools other than their respective schools of residence. Local school boards shall designate which schools and programs will be available for open enrollment during the coming school year consistent with the definitions and timelines of Section 53A-2-206.5 et seq.

B. If construction, remodeling, or other circumstances beyond the control of the local board do not reasonably permit the local board to make sufficiently accurate enrollment projections for a given school to determine whether the school should be designated as available for open enrollment for the coming year, the local board shall designate delays and procedures consistent with Section 53A-2-207(4)(c).

C. As required under Subsection 53A-2-210(2), a resident district shall pay to a nonresident district one-half of the resident district's residual per student expenditure for each resident student properly registered in the nonresident district.

D. Each local board shall establish a procedure to consider appeals of any denial of initial or continued enrollment of a nonresident student under Subsection 53A-2-209(1).

E. A local board of education may deny enrollment of nonresident students for reasons identified in R277-437-1I.

F. There shall be no presumption of eligibility for students to participate in activities governed by the Utah High School Activities Association (UHSAA) if students transfer under Section 53A-2-206.5.

R277-437-4. State Board of Education Responsibilities.

A. Capacity for special education classrooms shall:

(1) be consistent with Utah Special Education Caseload Guidelines; and

(2) depend on staffing and funding constraints of the receiving school district.

B. A standard enrollment options application form shall be available on the USOE website by May 15, 2008.

R277-437-5. Transportation.

A school district may transport its students to schools in other districts under Subsection 53A-2-210(3)(b)(i).

KEY: public education, enrollment options
August 7, 2008 **Art X Sec 3**
Notice of Continuation January 5, 2009 **53A-1-401(1)(b)**
53A-2-210
53A-2-206.5 et seq.

R277. Education, Administration.
R277-464. Highly Impacted Schools.
R277-464-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Data Clearinghouse" means the electronic data collection system used by the USOE to collect information required by law from LEAs about individual students at certain points throughout the school year to support the allocation of funds and accountability reporting.

C. "School" means a public school, other than a special purpose school, primarily intended to serve students from a specific geographical area in any of grades K through 12.

D. "Special purpose school" means a school primarily intended to serve a special population of students such as students at risk, students with disabilities, or other special designation.

E. The "student mobility" factor means the proportion of students who move and have a change in school assignment during a school year. It is a percent, calculated as follows:

(1) stable students (SS), those who are reported as enrolled in the same school for the entire school year; divided by

(2) unduplicated cumulative enrollment (CE) in a school over a given school year; subtracted from

(3) 1, and multiplied by 100; or (1 - (SS/CE))100.

F. The "students who are eligible for free school lunch" factor means the total number of students in a school reported as economically disadvantaged using federal child nutrition income eligibility guidelines.

G. The "English Language Learner (ELL)" factor means the total number of ELL students in a school reported as having proficiency in the English language at or below the level of intermediate on the basis of the Utah Academic Language Proficiency Assessment (UALPA).

H. The "ethnic minority students" factor means the total number of students in a school reported as:

(1) American Indian or Alaskan native;

(2) Hispanic;

(3) Asian;

(4) Pacific Islander; or

(5) Black, using federal guidelines.

I. The "students from single parent families" factor means the total number of students in a school who live in a household headed by a male without a wife present or by a female without a husband present derived from data on persons age 5 through 17 in a geographic area approximating the service area of the school who live in a household with a similar composition.

J. "USOE" means the Utah State Office of Education.

R277-464-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, Section 53A-15-701(3) which directs the State Superintendent of Public Instruction and the Board to develop a formula, administer the program, distribute the appropriation and monitor the effectiveness of highly impacted school programs, Section 53A-17a-121(2) which directs the Board to develop rules to implement programs for at risk students and distribute funds for at risk programs, 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 establish criteria and procedures for distributing funds to highly impacted schools. The intent of this appropriation is to provide students with increased educational contact with qualified staff.

R277-464-3. Applications and Distribution of Funds.

A. Awards shall be made to individual schools and funds allocated to school districts or charter schools shall be fully distributed to designated schools.

B. Applications shall be provided through the USOE.

C. Schools shall be selected for funding based on an analysis of the eligibility factors designated in Section 53A-15-701(2)(a). Those factors shall be equally weighted.

(1) Beginning with the FY 2009 funding cycle, statistics for school eligibility determination and allocations shall be based on the latest available data from the Year End upload of the Data Clearinghouse consistent with the funding schedule, except for the single parent status statistic, which shall be derived from Census Bureau data sources.

(2) Schools may use funds for learning programs identified by the school, if the school provides:

(a) goals;

(b) activities; and

(c) outcomes, consistent with the proposed activities that are directly tied to the school's plan to increase student achievement.

(2) Each school selected for funding shall receive a base allocation.

D. Based on available funds, schools shall be funded on a three-year funding cycle, beginning in FY 2009.

E. In the event of closure of a school funded under this rule, the school district to which the school belongs may designate another school within the school district as highly impacted.

(1) A school district may reallocate funds from operating highly impacted schools within the school district to fund a newly designated highly impacted school; the reallocation shall be accomplished consistent with the standards, procedures and timelines of this rule.

(2) In designating a new or different highly impacted school within the school district, the school district cannot exceed its total original number of highly impacted schools by more than one school per three-year funding cycle.

(3) In requesting to change the designation of a school or in adding one additional highly impacted school within a school district, the school district has the burden of demonstrating a rationale to the USOE for the change consistent with the criteria of Section 53A-15-701(2).

(4) The student at-risk factors in a newly designated school or in a realigned school shall be comparable to the at-risk factors in other highly impacted schools within the school district.

(5) In realigning highly impacted schools within a school district or adding one additional school, the school district shall not receive additional funding for highly impacted schools from other school districts.

(6) School districts that desire to realign schools within the school district to change or add designated schools shall notify the USOE of changes in school boundaries or newly designated schools no later than June 1 of the year before funding is expected.

(7) Recommendations and decisions by school districts and the Board to realign highly impacted school boundaries or designate new schools as highly impacted shall retain the focus of the appropriation and this rule on schools that serve students who meet the highly impacted criteria.

F. The school district shall provide an application for reallocating highly impacted funds from a closed school to a different school within the school district prior to the school district distributing the funds to the newly designated school. Failure to properly apply to the USOE in a timely manner for reallocation of highly impacted funding from a closed school to a newly designated school within the school district may result in recapture of funds from the school district or the newly designated school by the USOE.

G. Schools receiving funding shall be notified by June 30.

H. Variances - School districts and charter schools may apply for a variance to this rule provided the school district or

charter school:

(1) maintains the focus on schools;

(2) does not disadvantage other school districts or charter schools that receive highly impacted schools funding; and

(3) requests the variance in writing within required timelines.

R277-464-4. Oversight Monitoring, Evaluation and Reports.

A. The Board may designate no more than two percent of the total appropriation for highly impacted schools to be used specifically by the USOE for oversight, monitoring and final evaluation of highly impacted schools and their compliance with the law and this rule.

B. Each school selected for funding shall be required to submit an annual evaluation report to the USOE consistent with Section 53A-15-701(6).

KEY: students at risk

October 8, 2008	**Art X Sec 3**
Notice of Continuation July 6, 2005	**53A-17a-121(2)**
	53A-1-401(3)
	53A-15-701(3)
	53A-15-701(2)(a)

R277. Education, Administration.
R277-486. Professional Staff Cost Program.
R277-486-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;

(2) educational background;

(3) endorsements;

(4) employment history;

(5) professional development information; and

(6) a record of disciplinary action taken against the educator.

C. "ESEA" means the Elementary and Secondary Education Act, also known as the No Child Left Behind Act, P.L. 107-110, Title I, Part A, Subpart 1, Sec. 1119, January 8, 2002.

D. "FTE" means full time equivalent.

E. "Local Education Agency (LEA)" means any organizational unit of the public education system existing under state law as either a traditional school district or a charter school authorized under Section 53A-1a-502.

F. "National Board certified educator" means an educator who has been certified by the National Board for Professional Teaching Standards (NBPTS) by successfully completing a three-year process that may include national content-area assessment, an extensive portfolio, and assessment of video-taped classroom teaching experience.

G. "USOE" means Utah State Office of Education.

H. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of determining the costs of a program on a uniform basis for each school district.

R277-486-2. 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-17a-107(2) which authorizes the Board to adopt a rule to require a certain percentage of a district's professional staff to be licensed in the area in which the teacher teaches in order for the district to receive full funding under the state statutory formula, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to satisfy statutory percentages of licensed staff and support LEAs in recruiting and retaining highly educated and experienced educators for instructional, administrative and other types of professional employment in public schools.

R277-486-3. Eligibility to Receive WPUs for Professional Staff.

A. LEAs shall receive WPUs in accordance with the formula provided in Section 53A-17a-107(1)(a):

(1) only for those educators who hold at least a bachelors degree; and

(2) only to the extent that such educators are qualified to work in the area to which they are assigned consistent with R277-520. For example, an educator who is employed full time but is appropriately qualified in only 75% of his assignments would count for only 0.75 FTEs in the calculation of WPUs.

(3) In order to receive full (100%) funding, an LEA shall have an appropriately qualified educator in every assignment.

B. An educator who is identified as qualified under R277-520 is not necessarily highly qualified for ESEA purposes.

C. LEAs shall not receive WPUs for interns in their second or subsequent years nor for paraprofessionals in any assignment.

R277-486-4. Acceptable Experience.

A. Educator experience for purposes of this rule shall be measured in one-year increments.

B. An educator shall be credited with one year of experience for every school year in which he is employed at least half-time (0.5 FTE) in an instructional or administrative position in any public school in the State of Utah or in any regionally accredited:

(1) public school outside of the State of Utah;

(2) private school; or

(3) institution of higher education.

C. To obtain credit under Subsection B(1) through (3), the LEA which employs the educator shall submit to the USOE acceptable documentation verifying such experience, including documentation of the school's or institution's regional accreditation.

D. Employment in a prekindergarten position shall not be acceptable for this purpose, unless the educator is employed in a special education position in an accredited school.

E. Unpaid volunteer service, paid consulting, employment in non-instructional or non-administrative positions in a school setting, and time as a school intern shall not be acceptable experience under this rule.

F. Documentation of an educator's experience in a private school or institution of higher education may be required by USOE staff to determine relevance of experience.

R277-486-5. Acceptable Training.

Acceptable training under this rule may include:

A. Any degree at the bachelors level or above or credit beyond the current degree from a:

(1) regionally accredited institution of higher education; or

(2) postsecondary degree-granting institution accredited by any of the national accrediting agencies recognized by the United States Department of Education.

B. Any professional development activity consistent with R277-501 and approved in writing by the USOE.

R277-486-6. Mapping Degree Summary Data to Statutory Formula.

A. To ensure consistency in applying data from CACTUS to the formula, the following mapping of the relevant two-digit CACTUS Degree Summary codes to the five columns of the Professional Staff Cost formula table in Section 53A-17a-107(1)(a) shall be used:

(1) 03 = Bachelor's Degree;

(2) 04 or 05 = Bachelors + 30 quarter hours or 20 semester hours;

(3) 06 = Master's Degree;

(4) 07 or 08 = Master's Degree + 45 quarter hours or 30 semester hours;

(5) 09 = Doctorate.

B. A district shall be credited for an individual with National Board certification at the doctorate level.

R277-486-7. Data Sources.

A. For LEAs that were in operation in the prior year, data shall be used from June 30 update of CACTUS as required by R277-484-3(c).

B. For LEAs that were not in operation in the prior year, data shall be used from November 1 update of CACTUS as required by R277-484-3(I).

KEY: professional staff

January 15, 2004	**Art X Sec 3**
Notice of Continuation January 5, 2009	**53A-17a-107(3)**
	53A-1-401(3)

R277. Education, Administration.
R277-494. Charter School and Online Student Participation in Extracurricular or Co-curricular School Activities.
R277-494-1. Definitions.

A. "Activity fees" means fees that are approved by a local board and charged to all students to participate in any or all activities sponsored by or through the public school. Fees vary among districts and schools and entitle a public school student to participate in regular school activities, to try out for extracurricular or co-curricular school activities, to receive transportation to activities, and to attend regularly scheduled public school activities.

B. "Board" means the Utah State Board of Education.

C. "Charter school" means a school acknowledged as a charter school by a local board of education under Section 53A-1a-515 and R277-470 or by the Board under Section 53A-1a-505.

D. "Co-curricular activity" means an activity that includes practices or events outside the regular school day and a specific required class enrollment as a condition of participation.

E. "District enrollment levels" means districts divided by size as outlined in the Schedule as part of this rule.

F. "Extracurricular activity" means an athletic program or activity sponsored by the public school and offered, competitively or otherwise, to public school students outside of the regular school day or program.

G. "Online school" means a school:

(1) that provides the same number of classes consistent with the requirement of similar resident schools;

(2) that delivers course work via the internet;

(3) that has designated a readily accessible contact person; and

(4) that provides the range of services to public education students required by state and federal law.

H. "Pay to play fees" means the fees charged to a student to participate in a specific school-sponsored extracurricular or co-curricular activity. All fees shall be approved annually by the local board of education.

I. "Student's boundary school" means the school the student is designated to attend according to where the student's legal guardian lives or the school where the student is enrolled under Section 53A-2-206.5 et seq.

J. "Student's school of enrollment" means the public school in which the student is enrolled consistent with Section 53A-11-101 et seq.

K. "Student fee waivers" means all expenses for an activity that are waived for student participation in the activity consistent with Section 53A-12-103 et seq. and R277-407.

L. "School participation fee" means the fee paid by the charter/online school to the traditional school consistent with the fee schedule of R277-494-4 for student participation in extracurricular or co-curricular activities.

M. "Student participation fee" means the fee charged to all participating charter/online and traditional school students by the resident school for designated extracurricular or co-curricular activities consistent with R277-407.

N. "Tier activities" means extracurricular activities (both boys and girls, as offered) divided by type and expense to sponsoring schools/school districts as outlined in the Schedule as part of this rule. The activities that fall into each tier are as follows:

(1) Tier 1 activity: football.

(2) Tier 2 activities: baseball, softball, basketball, swimming and diving, wrestling, soccer, volleyball, and drill team.

(3) Tier 3 activities: golf, tennis, cross-country, track, and all other extracurricular and co-curricular activities.

R277-494-2. 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, Section 53A-1a-519(5) that directs to the Board to make rules establishing fees for charter school students' participation in extracurricular or co-curricular activities at school district schools, and Section 53A-2-214(6) which directs the Board to make rules establishing fees for charter/online students' participation in extracurricular or co-curricular activities at school district schools.

B. The purpose of this rule is to establish a Tier Activities Participation Fee Schedule and provide information to school districts, charter and online schools, and parents that fairly inform districts, schools, and parents of the Schedule and requirements integral to the Schedule.

R277-494-3. Requirements for Payment and Participation Integral to the Schedule.

A. A charter or online school may allow student participation in activities designated under R277-494-1K.

B. The school participation fee identified in the Schedule shall be paid by the student's school of enrollment to the boundary school at which the student desires to participate.

C. The fees in this Schedule do not include student participation fees or required activity fees. Student participation fees or required activity fees shall be paid to the boundary school by the participating student.

D. All fees, including school participation fees and student participation fees shall be paid prior to student participation.

E. If a participating charter or online school student qualifies for fee waivers, all waived student participation fees shall be paid to the boundary school by the student's school of enrollment prior to student participation.

R277-494-4. Tier Activities Participation Fee Schedule (Schedule).

A. Fee schedule

TABLE 1
School Fee Per Student Participation

District Enrollment	Tier 1	Tier 2	Tier 3
less than 1,000	$600	$300	$150
1,001 to 6,000	$500	$250	$125
6,001 to 18,000	$400	$200	$100
18,000 to 45,000	$300	$150	$ 75
+45,000	$200	$100	$ 75

B. Charter and online students participating under this rule shall meet all eligibility requirements and timelines of the receiving schools.

R277-494-5. Additional Provisions.

A. Neither this rule nor the Schedule applies to student participation in school activities which require student enrollment in a regularly scheduled class at the boundary school.

B. Despite the provisions of R277-494-5A, charter, online and traditional schools may negotiate to allow student participation in co-curricular activities such as debate, drama, or choral programs. Participating charter/online students shall be required to meet all attendance requirements of all traditional public school students.

C. This rule shall be effective beginning with the 2008-09 school year.

KEY: extracurricular, co-curricular, activities, student participation
October 8, 2008 **Art X Sec 3**
53A-1-401(3)

53A-1a-519(5)
53A-2-214(6)

R277. Education, Administration.
R277-495. Required Policies for Electronic Devices in Public Schools.
R277-495-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Electronic device" means a privately owned device that is used for audio, video, or text communication or any other type of computer or computer-like instrument.

C. "Public school" means all schools and public school programs, grades kindergarten through 12, that are part of the Utah Public School system, including charter schools, distance learning programs, and alternative programs.

D. "USOE" means the Utah State Office of Education.

R277-495-2. 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 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and Section 53A-11-901(2)(c)(i) directs the State Superintendent of Public Instruction to develop a conduct and discipline policy model for elementary and secondary public schools.

B. The purpose of this rule is to direct all public school districts or public schools, including charter schools, to adopt policies, individually or collectively as school districts or consortia of charter schools, governing the possession and use of electronic devices while on public school premises.

R277-495-3. Local Board and Charter School Responsibilities.

A. Local boards of education and local charter governing boards shall establish a timeline that requires all schools under their supervision have a policy governing the use of electronic devices in schools approved by local boards, effective and posted for students, employees, parents and community member access no later than April 1, 2009.

B. Local boards and charter governing boards shall encourage schools to involve teachers, parents, students, school employees and community members in developing local policies; school community councils could provide helpful information and guidance within various school communities and neighborhoods.

C. Local boards and charter governing boards shall provide copies of their policies or clear electronic links to policies.

D. School districts and schools within school districts shall work together to ensure that all policies within a school or school district are consistent and understandable for parents.

R277-495-4. Policy Requirements.

A. Local policies shall include the following;

(1) scope of coverage of the policy, including clear rules for school premises, school hours, school activities, after school activities, school sponsored activities at remote sites, vehicles transporting students to and from school activities.

(2) definitions of devices covered by policy;

(3) prohibitions against use of electronic devices during Utah Performance Assessment System for Students (U-PASS) assessments unless specifically allowed by statute, regulation, student IEP, or assessment directions;

(4) clear information about restrictions, if any, on when or where possession of electronic devices, active or deactivated, are strictly prohibited or allowed, such as the use of an electronic calculator by a student consistent with a current and valid IEP, as determined by the school district/school;

(5) prohibitions on the use of electronic devices in a way that threatens, humiliates, harasses, or intimidates school-related individuals, including students, employees, and invitees, or violates local, state, or federal laws; and

(6) procedures, if any, and due process, for the confiscation and recovery of electronic devices used in violation of local policies.

B. Local policies may also include the following:

(1) prohibitions or restrictions on unauthorized audio recordings, capture of images, transmissions of recordings or images, or invasions of reasonable expectations of student and employee privacy;

(2) procedures to report the misuse of electronic devices;

(3) potential disciplinary actions toward students or employees or both for violation of local policies regarding the use of electronic devices;

(4) exceptions to the policy for special circumstances, health-related reasons and emergencies, if any;

(5) strategies for use of technology that enhance instruction; and

(6) directives, protections, and requirements, if any, for school employees or invitees, or both.

C. The USOE shall receive an annual assurance from the school district or charter school governing board as required under R277-108 that the local board has presented and implemented an electronic device policy consistent with the timelines and provisions of this rule.

D. School districts or traditional school and charter schools shall post their duly enacted electronic device policies on their district or school websites.

R277-495-5. USOE Responsibilities.

A. The USOE shall provide resources, upon request, for school districts and schools as they develop electronic device policies, including sources for successful policies, assistance with reviewing draft policies, and information about bullying, harassing, and discrimination via electronic devices.

B. The USOE shall develop a model policy or a policy framework to assist school districts and individual schools in developing and implementing their policies.

C. The USOE shall promote the use of effective strategies to enhance instruction and professional development through technology.

D. The USOE shall ensure that parents and school employees are involved in the development and implementation of policies.

E. The USOE shall work and cooperate with other education entities, such as the PTA, the Utah School Boards Association, the Utah Education Association, the State Charter School Board and the Utah High School Activities Association to provide consistent information to parents and community members about electronic device policies and to provide for appropriate and consistent penalties for violation of policies, including violations that take place at public school extracurricular and athletic events.

KEY: electronic devices, policy
January 7, 2009

Art X Sec 3
53A-1-401(3)
53A-11-901(2)(c)(I)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "Accredited school" for purposes of this rule, means public or private school that meets standards essential for the operation of a quality school program and has received formal approval through a regional accrediting association.

C. "Authorized staff" for purposes of this rule means an individual designated by the USOE or an LEA and approved by the USOE and who has completed CACTUS training.

D. "Board" means the Utah State Board of Education.

E. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

F. "LEA" means a local education agency, including local school boards/public school districts and charter schools.

G. "Letter of Authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by an LEA.

H. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

I. "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.

J. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate from an accredited institution.

K. "License areas of concentration" means designations to licenses obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies to include the following: Early Childhood (K-3), Elementary (K-6), Elementary (1-8), Middle (still valid, but not issued after 1988, 5-9), Secondary (6-12), Administrative, Career and Technical Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders, Speech-Language Pathologist, Speech-Language Technician. License areas of concentration may also bear endorsements relating to subjects or specific assignments.

L. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

M. "Professional development plan" means a plan developed by an educator and approved by the educator's supervisor that includes locally or Board-approved education-related training or activities that enhance an educator's background. Professional development points are required for periodic educator license renewal.

N. "Renewal" means reissuing or extending the length of a license consistent with R277-501.

O. "State Approved Endorsement Program (SAEP)" means a professional development plan on which an educator is working to obtain an endorsement.

R277-502-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public school system under the Board, by Section 53A-6-104 which gives the Board power to issue licenses, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule specifies the types of license levels and license areas of concentration available and procedures for obtaining a license, required for employment as a licensed educator in the public schools of Utah. The rule provides a process of criteria for educators whose licenses have lapsed and return to the teaching profession. All licensed educators employed in the Utah public schools shall be licensed consistent with this rule in order for the district to receive full funding under Section 53A-17a-107(2).

R277-502-3. Program Approval.

A. The Board shall accept educator license recommendations from NCATE accredited, TEAC accredited or competency-based regionally accredited organizations.

B. The Board, or its designee, shall establish deadlines and uniform forms and procedures for all aspects of licensing.

R277-502-4. License Levels, Procedures, and Periods of Validity.

A. An initial license, the Level 1 license, is issued to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program, or an educator with a professional educator license from another state.

(1) LEAs and educator preparation institutions shall cooperate in preparing candidates for the educator Level 1 license. The resources of both may be used to assist candidates in preparation for licensing.

(2) The recommendation indicates that the individual has satisfactorily completed the programs of study required for the preparation of educators and has met licensing standards in the license areas of concentration for which the individual is recommended.

(3) The Level 1 license is issued for three years.

(4) An educator shall satisfy all requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

(5) An educator shall satisfy all federal requirements for an educator license prior to moving from Level 1 to Level 2.

(6) A license applicant who has received or completed license preparation activities or coursework inconsistent with this rule may present compelling information and documentation for review and approval by the USOE to satisfy the licensing requirements.

B. A Level 2 license may be issued by the Board to a Level 1 license holder upon satisfaction of all USOE requirements for the Level 2 license and upon the recommendation of the employing LEA.

(1) The recommendation shall be made following the completion of three years of successful, professional growth and

educator experience, satisfaction of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, any additional requirements imposed by the employing LEA, and before the Level 1 license expires.

(2) A Level 2 license shall be issued for five years and shall be valid unless suspended or revoked for cause by the Board.

(3) The Level 2 license may be renewed for successive five year periods consistent with R277-501, Educator Licensing Renewal.

(4) A Level 2 license holder shall satisfy all federal requirements for an educator license holder prior to renewal after June 30, 2006 to remain highly qualified.

C. A Level 3 license may be issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification, who holds a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association (ASHA), or who holds a doctorate in the educator's field of practice.

(1) A Level 3 license is valid for seven years unless suspended or revoked for cause by the Board.

(2) The Level 3 license may be renewed for successive seven year periods consistent with R277-501.

D. Licenses expire on June 30 of the year of expiration recorded on CACTUS and may be renewed any time after January of that year. Responsibility for securing renewal of the license rests solely with the holder.

R277-502-5. Professional Educator License Areas of Concentration, and Endorsements and Under-Qualified Employees.

A. Unless excepted under rules of the Board, to be employed in the public schools in a capacity covered by the following license areas of concentration, a person shall hold a valid license issued by the Board in the respective license areas of concentration:

(1) Early Childhood (K-3);
(2) Elementary (1-8);
(3) Elementary (K-6);
(4) Middle (still valid, but not issued after 1988, 5-9);
(5) Secondary (6-12);
(6) Administrative;
(7) Career and Technical Education;
(8) School Counselor;
(9) School Psychologist;
(10) School Social Worker;
(11) Special Education (K-12);
(12) Preschool Special Education (Birth-Age 5);
(13) Communication Disorders;
(14) Speech-Language Pathologist;
(15) Speech-Language Technician.

B. Under-qualified educators:

(1) Educators who are licensed but working out of their endorsement area(s) shall request and prepare an SAEP to complete the requirements of an endorsement with a USOE education specialist; or

(2) Letters of Authorization

(a) Local boards may request from the Board a Letter of Authorization for educators employed by the local board who have not completed requirements for areas of concentration or endorsements.

(b) An approved Letter of Authorization is valid for one year and may be renewed for a total of three years.

(c) Educators working under letters of authorization shall not be considered highly qualified.

(d) Following the expiration of the Letter of Authorization, the educator who has still not been completely approved for licensing shall be considered under qualified.

C. Licenses may be endorsed to indicate qualification in a subject or content area. An endorsement is not valid for employment purposes without a current license.

R277-502-6. Returning Educator Relicensure.

A. A previously licensed educator with an expired license may renew an expired license upon satisfaction of the following:

(1) Completion of criminal background check including review of any criminal offenses and approval by the Utah Professional Practices Advisory Commission;

(2) Employment by a school district/charter school;

(3) A professional development plan developed jointly by the school principal or charter school director and the returning educator that considers the following:

(a) previous successful public school teaching experience;

(b) formal educational preparation;

(c) period of time between last public teaching experience and the present;

(d) school goals for student achievement within the employing school and the educator's role in accomplishing those goals;

(e) returning educator's professional abilities, as determined by a formal discussion and observation process completed within the first 30 days of employment; and

(f) completion of additional necessary professional development for the educator, as determined jointly by the principal/school district and educator.

(4) The plan filed with the USOE;

(5) Successful completion of required Board-approved exams for licensure;

(6) Satisfactory experience as determined by the school district with a trained mentor; and

(7) Work with a trained mentor.

B. Returning educators who previously held a Level 2 or Level 3 license shall be issued a Level 1 license during the first year of employment. Upon completion of the requirements listed in R277-502-6A and a satisfactory school district evaluation, if available, the employing LEA may recommend reinstatement of licensure at a Level 2 or 3. This license shall be valid for five years.

C. Returning educators who taught less than three consecutive years in a public or accredited private school shall complete the Early Years Enhancement requirements before moving from Level 1 to Level 2 licensure.

R277-502-7. Professional Educator License Reciprocity.

A. Utah is a member of the Compact for Interstate Qualification of Educational Personnel under Section 53A-6-201.

B. A Level 1 license may be issued to a graduate of an educator preparation program from an accredited institution of higher education in another state.

(1) If the applicant has three or more continuous years of previous educator experience in a public or accredited private school, a Level 2 license may be issued upon the recommendation of the employing Utah LEA after at least one year.

(2) If the applicant has less than three years of previous educator experience in a public or accredited private school, a Level 2 license may be issued following satisfaction of the requirements of R277-522, Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers.

R277-502-8. Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS).

A. CACTUS maintains public, protected and private information on licensed Utah educators. Private or protected information includes such items as home address, date of birth, social security number, and any disciplinary action taken against an individual's license.

B. A CACTUS file shall be opened on a licensed Utah educator when:

(1) the individual initiates a USOE background check, or

(2) the USOE receives an application for a license from an individual seeking licensing in Utah.

C. The data in CACTUS may only be changed as follows:

(1) Authorized USOE staff or authorized LEA staff may change demographic data.

(2) Authorized USOE staff may change licensing data such as endorsements, degrees, license areas of concentration and licensed work experience.

(3) Authorized employing LEA staff may update data on educator assignments for the current school year only.

D. A licensed individual may view his own personal data. An individual may not change or add data except under the following circumstances:

(1) A licensed individual may change his demographic data when renewing his license.

(2) A licensed individual may contact his employing LEA for the purpose of correcting demographic or current educator assignment data.

(3) A licensed individual may petition the USOE for the purpose of correcting any errors in his personal file.

E. Individuals currently employed by public or private schools under letters of authorization or as interns are included in CACTUS.

F. Individuals working in LEAs as student teachers are included in CACTUS.

G. Designated individuals have access to CACTUS data:

(1) Training shall be provided to designated individuals prior to granting access.

(2) Authorized USOE staff may view or change CACTUS files on a limited basis with specific authorization.

(3) For employment or assignment purposes only, authorized LEA staff members may access data on individuals employed by their own LEA or data on licensed individuals who do not have a current assignment in CACTUS.

(4) Authorized LEA staff may also view specific limited information on job applicants if the applicant has provided the LEA with a CACTUS identification number.

(5) CACTUS information belongs solely to the USOE. The USOE shall make the final determination of information included in or deleted from CACTUS.

(6) CACTUS data consistent with Section 63G-2-301(1) under the Government Records Access and Management Act are public information and shall be released by the USOE.

R277-502-9. Professional Educator License Fees.

A. The Board, or its designee, shall establish a fee schedule for the issuance and renewal of licenses and endorsements consistent with 53A-6-105. All endorsements to which the applicant is entitled may be issued or renewed with the same expiration date for one licensing fee.

B. A fee may be charged for a valid license to be reprinted or for an endorsement to be added.

C. All costs of testing, evaluation, and course work shall be borne by the applicant unless other arrangements are agreed to in advance by the employing LEA.

D. Costs to review nonresident educator applications may exceed the cost to review resident applications due to the following:

(1) The review is necessary to ensure that nonresident applicants' training satisfies Utah's course and curriculum standards.

(2) The review of nonresident licensing applications is time consuming and potentially labor intensive;

(3) Differentiated fees shall be set consistent with the time and resources required to adequately review all applicants for educator licenses.

E. Costs may include an expediting fee if an applicant seeks to have a license application reviewed before applications received earlier.

KEY: professional competency, educator licensing

January 7, 2009	**Art X Sec 3**
Notice of Continuation September 6, 2007	**53A-6-104**
	53A-1-401(3)

R277. Education, Administration.
R277-518. Career and Technical Education Licenses.
R277-518-1. Definitions.

A. "Career and technical education (CTE)" means organized educational programs or competencies which directly or indirectly prepare students for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. The programs provide all students a continuous education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Occupational categories include agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; trade and technical education; technology and engineering education; and work-based learning, consistent with R277-916.

B. "CTE Alternative Preparation Program (APP) license area of concentration (license area)" means the provisional license area of concentration issued by the Board for a three year period which enables the holder to teach only in a specific CTE or technical field in the public school system and may require educational coursework.

C. "Board" means the Utah State Board of Education.

D. "Level 1 license" means the initial provisional license issued by the Board to an individual who is recommended by a Board-approved educator preparation program or approved alternative preparation program. A complete Utah educator license requires both a level and a specified license area.

E. "Level 2 license" means a license issued by the Board to a Level 1 license holder upon completion of the Entry Years Enhancement (EYE) Program consistent with R277-522. A complete Utah educator license requires both a level and a specified license area.

F. "Level 3 license" means a license issued by the Board to a Level 2 license holder who has achieved National Board Professional Teaching Standards Certification or who holds a doctorate in the educator's field of practice. A complete Utah educator license requires both a level and a specified license area.

G. "A license area of concentration (license area)" is obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, CTE, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

H. "USOE" means the Utah State Office of Education.

R277-518-2. 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-6-104 which permits the Board to issue licenses for educators, and Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify standards for a CTE license area and endorsements. An appropriate CTE or secondary license area and appropriate endorsement(s) are required for all persons teaching CTE programs at the secondary and adult level where high school credit is earned.

R277-518-3. CTE License Required.

An CTE or secondary license area with appropriate endorsements is required for all persons teaching CTE programs at the secondary and adult level where high school credit is earned.

R277-518-4. Level 1 CTE (APP) License.

A. A Level 1 CTE (APP) license area may be issued to an applicant who:

(1) has six years of related occupational experience or documented evidence of a bachelor's degree in a related area and two years of full-time related work experience or documented evidence of an associate's degree in a related area and four years of full-time related work experience with an appropriate endorsement in any of the following program areas:

(a) agriculture;
(b) business;
(c) marketing;
(d) trade and technical;
(e) technology and engineering;
(f) family and consumer sciences;
(g) health science and technology;
(h) information technology; and
(i) work-based learning.

(2) has been offered a teaching assignment directly related to the applicant's occupational experience and which is in an approved area of endorsement.

B. A Level 1 CTE (APP) license area for the Disabled, which is restricted to teaching in workshop centers for the handicapped, may be issued to an applicant who has 18 months of related occupational experience in business or industry related to the teaching assignment offered the applicant.

C. Verification of related occupational experience shall accompany an application for a Level 1 CTE (APP) license area.

(1) Periods of employment lasting less than one month and periods of employment prior to 18 years of age are not accepted for purposes of calculating the occupational experience requirement.

(2) All work experience shall be within 10 years of application.

D. State-approved testing:

The occupational experience requirement may be waived by the appropriate USOE CTE Program Specialist if the applicant has passed a state-approved competency examination in the respective field at or above the USOE established cut-off scores. Individual applicant scores may be used for licensing purposes up to five years after completion of the respective examination(s).

E. Besides meeting the requirements of Subsection 4(A)(1), an applicant for a Level 1 CTE (APP) license area to instruct in:

(1) barbering, cosmetology, or building trades shall also hold a valid license in the respective area issued by the Utah State Department of Commerce, Division of Occupational and Professional Licensing;

(2) a nurse assistant course shall also be a licensed practical nurse or a registered nurse;

(3) a licensed practical nurse course shall also be a registered nurse;

(4) a health science medical anatomy and physiology course shall also have a minimum of an associate's degree in a health care related area.

F. A CTE (APP) license area applicant shall complete pedagogical coursework or satisfy pedagogical standards consistent with R277-503-4. A Level 1 CTE (APP) license area applicant shall provide evidence of mastery of the following areas:

(1) concepts, principles, and methods of teaching;
(2) human relations or educational psychology;
(3) curriculum development related to the program area;
(4) development and use of instructional materials and aids;
(5) facility management and safety;
(6) measurement and evaluation;
(7) Career and Technical Student Organizations (CTSO),

equity education, work-based learning, and comprehensive guidance.

G. In addition to satisfaction of the pedagogical areas of R277-518-4F, a CTE (APP) license area applicant is strongly encouraged to and may be required by an employing school district to complete a USOE-approved program or assessment that demonstrates mastery of beginning teaching skills and competency.

H. A person shall be employed under a CTE (APP) license area for one three year period. It is expected that a CTE (APP) license area holder shall complete requirements for a Level 1 CTE license area within three years or satisfy the employing district's/charter school's requirement for a district-specific license under Section 53A-6-104.5 in subsequent years.

I. A person teaching a CTE program up to one-half day in relation to the respective school schedule, whose regular employment is or has been in any CTE program area, may, in lieu of the requirements of R277-518-4(F), have the Level 1 CTE (APP) license area renewed for subsequent three-year periods upon the recommendation of the employing agency and with the approval of the appropriate USOE CTE Program Specialist.

J. Secondary License: A Level 1 CTE (APP) license area holder with a bachelor's degree may obtain a Level 2 CTE license area and secondary license area by successfully completing the following requirements within a three-year period:

(1) if the applicant's bachelor's degree is not related to the subject area he would like to teach, he shall document at least six years of work experience in the desired teaching area;

(2) has satisfied the requirements of R277-518-4F;

(3) is strongly encouraged to and may be required by an employing school district to complete a USOE-approved program or assessment that demonstrates mastery of beginning teaching skills and competency

(4) provide documentation of any additional content area coursework as advised by the appropriate USOE CTE Program Specialist; and

(5) have completed the Entry Years Enhancement (EYE) Program consistent with R277-522.

R277-518-5. Level 1 CTE License.

An applicant for a Level 1 CTE license area with endorsement(s) shall have:

A. a baccalaureate degree in an approved teacher educational program, including 16 semester hours of course work in the endorsement area in which the applicant desires to teach, and at least two years of successful related occupational experience; or,

B. a baccalaureate degree with a major in the related occupational field in which the applicant desires to teach, including satisfaction of 15 semester hours or competency in USOE-approved education course work and two years of related occupational experience.

C. An applicant without public school teaching experience is strongly encouraged to and may be required by an employing school district to complete a USOE-approved program or assessment that enhances or demonstrates mastery of beginning teaching skills and competencies.

R277-518-6. Level 2 CTE License.

An applicant for the Level 2 CTE license area with endorsements shall have:

A. completed at least three years of successful teaching experience under a Level 1 CTE (APP) license area or Level 1 CTE license area; and

B. completed the Entry Years Enhancement (EYE) Program consistent with R277-522.

R277-518-7. Level 3 CTE License.

A. An applicant for the Level 3 CTE license area with endorsements shall have a Level 2 CTE license area and have achieved National Board Professional Teaching Standards Certification or hold a doctorate in the educator's field of practice.

B. The Level 3 CTE license area shall be renewed for successive seven year periods consistent with R277-501, Educator Licensing Renewal.

KEY: educator licensing, professional education, career and technical education

January 7, 2009	**Art X Sec 3**
Notice of Continuation January 8, 2008	**53A-6-104**
	53A-1-401(3)

R277. Education, Administration.
R277-520. Appropriate Licensing and Assignment of Teachers.
R277-520-1. Definitions.

A. "At will employment" means employment that may be terminated for any reason or no reason with minimum notice to the employee consistent with the employer's designated payroll cycle.

B. "Board" means the Utah State Board of Education.

C. "Comprehensive Administration of Credentials for Teachers in Utah Schools (CACTUS)" means the electronic file maintained on all licensed Utah educators. The file includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information; and
(6) a record of disciplinary action taken against the educator.

D. "Composite major" means credits earned in two or more related subjects, as determined by an accredited higher education institution.

E. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB), Title IX, Part A, 20 U.S.C. 7801, Section 9101(11).

F. "Demonstrated competency" means that a teacher shall demonstrate current expertise to teach a specific class or course through the use of lines of evidence which may include completed USOE-approved course work, content test(s), or years of successful experience including evidence of student performance.

G. "Eminence" means distinguished ability in rank, in attainment of superior knowledge and skill in comparison with the generally accepted standards and achievements in the area in which the authorization is sought as provided in R277-520-5.

H. "Highly qualified" means a teacher has met the specific requirements of ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23).

I. "HOUSSE" means high, objective, uniform state standard of evaluation permitted under ESEA, NCLB, Title IX, Part A, 20 U.S.C. 7801, Section 9101(23)(C)(ii).

J. J-1 Visa means a visa issued by the U.S. Department of State to an international exchange visitor who has qualified by training and experience to work in U.S. schools for a period not to exceed three years. Such international exchange visitors may qualify for "highly qualified" status under NCLB only if assigned within their subject matter competency.

K. "LEA" means a school district or charter school.

L. "Letter of authorization" means a designation given to an individual for one year, such as an out-of-state candidate or individual pursuing an alternative license, who has not completed the requirements for a Level 1, 2, or 3 license or who has not completed necessary endorsement requirements and who is employed by a school district. A teacher working under a letter of authorization who is not an alternative routes to licensing (ARL) candidate, cannot be designated highly qualified under R277-520-1G.

M. "Level 1 license" means a Utah professional educator license issued upon completion of an approved preparation program or an alternative preparation program, or pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have also met all ancillary requirements established by law or rule.

N. "Level 2 license" means a Utah professional educator license issued after satisfaction of all requirements for a Level 1 license as well as completion of Entry Years Enhancements (EYE) for Quality Teaching - Level 1 Utah Teachers, as provided in R277-522, a minimum of three years of successful teaching in a public or accredited private school, and completion of all NCLB requirements at the time the applicant is licensed.

O. "Level 3 license" means a Utah professional educator license issued to an educator who holds a current Utah Level 2 license and has also received, in the educator's field of practice, National Board certification or a doctorate in education or in a field related to a content area under R277-501-1M from an accredited institution.

P. "License areas of concentration" are obtained by completing an approved preparation program or an alternative preparation program in a specific area of educational studies such as Early Childhood (K-3), Elementary 1-8, Middle (5-9), Secondary (6-12), Administrative/Supervisory, Applied Technology Education, School Counselor, School Psychologist, School Social Worker, Special Education (K-12), Preschool Special Education (Birth-Age 5), Communication Disorders.

Q. "License endorsement (endorsement)" means a specialty field or area earned through course work equivalent to at least an academic minor (with pedagogy) or through demonstrated competency; the endorsement shall be listed on the Professional Educator License indicating the specific qualification(s) of the holder.

R. "Major equivalency" means 30 semester hours of USOE and local board-approved postsecondary education credit or CACTUS-recorded professional development in NCLB core academic subjects as appropriate to satisfy NCLB highly qualified status.

S. "No Child Left Behind Act (NCLB)" means the federal Elementary and Secondary Education Act, P.L. 107-110, Title IX, Part A, Section 9101(11).

T. "Professional staff cost program funds" means funding provided to school districts based on the percentage of a district's professional staff that is appropriately licensed in the areas in which staff members teach.

U. "State qualified" means that an individual has met the Board-approved requirements to teach core or non-core courses in Utah public schools.

V. "SAEP" means State Approved Endorsement Program. This identifies an educator working on a professional development plan to obtain an endorsement.

W. "USOE" means the Utah State Office of Education.

R277-520-2. 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 gives the Board authority to adopt rules in accordance with its responsibilities, and Section 53A-6-104(2)(a) which authorizes the Board to rank, endorse, or classify licenses. This rule is also necessary in response to ESEA NCLB.

B. The purpose of this rule is to provide criteria for local boards to employ educators in appropriate assignments, for the Board to provide state funding to local school boards for appropriately qualified and assigned staff, and for the Board and local boards to satisfy the requirements of ESEA in order for local boards to receive federal funds.

R277-520-3. Appropriate Licenses with Areas of Concentration and Endorsements.

A. An early childhood teacher (kindergarten through 3) shall hold a Level 1, 2, or 3 license with an early childhood license area of concentration.

B. An elementary teacher (one through 8) shall hold a Level 1, 2, or 3 license with an elementary license area of concentration.

C. A secondary teacher (grades 6-12) including high school, middle-level, intermediate, and junior high schools, shall hold a Level 1, 2, or 3 license with a secondary license area of concentration with endorsements in all teaching assignment(s).

D. A teacher with a subject-specific assignment in grades 6, 7 or 8 shall hold a secondary license area of concentration with endorsement(s) for the specific teaching assignment(s) or an elementary license area of concentration with the appropriate subject/content endorsement(s).

E. An elementary (grades 7-8), a secondary or middle-level teacher may be assigned temporarily in a core or non-core academic area for which the teacher is not endorsed if the local board requests and receives a letter of authorization from the Board and the teacher is placed on an approved SAEP.

F. Secondary educators with special education areas of concentration may add content endorsement(s) to their educator licenses consistent with R277-520-10 (SAEP).

G. Educators who have qualified for a J-1 Visa as an international visitor and have provided documentation of holding the equivalent of a bachelors degree, subject content mastery, and appropriate work/graduate training may qualify for a Utah Level 1 license. Such temporary visitors may be exempted, at the employer's discretion, from subject content testing, license renewal requirements, and EYE requirements for the duration of their visa eligibility.

R277-520-4. Routes to Utah Educator Licensing.

A. In order to receive a license, an educator shall have completed a bachelors degree at an approved higher education institution and:

(1) completed an approved institution of higher education teacher preparation program in the desired area of concentration; or

(2) completed an approved alternative preparation for licensing program, under alternative routes to licensing, consistent with R277-503.

B. An individual may receive a Utah license with an applied technology area of concentration following successful completion of a USOE-approved professional development program for teacher preparation in applied technology education.

C. An individual may receive a district-specific, competency-based license under Section 53A-6-104.5 and R277-520-8.

R277-520-5. Eminence.

A. The purpose of an eminence authorization is to allow individuals with exceptional training or expertise, consistent with R277-520-1F, to teach or work in the public schools on a limited basis. Documentation of the exceptional training, skill(s) or expertise may be required by the USOE prior to the approval of the eminence authorization.

B. Teachers with an eminence authorization may teach no more than 37 percent of the regular instructional load.

C. Teachers working under an eminence authorization shall never be considered highly qualified.

D. Local boards shall require an individual teaching with an eminence authorization to have a criminal background check consistent with Section 53A-3-410(1) prior to employment by the local board.

E. The local board of education that employs the teacher with an eminence authorization shall determine the amount and type of professional development required of the teacher.

F. A local board of education that employs teachers with eminence authorizations shall apply for renewal of the authorization(s) annually.

G. Eminence authorizations may apply to individuals without teaching licenses or to unusual and infrequent teacher situations where a license-holder is needed to teach in a subject area for which he is not endorsed, but in which he may be eminently qualified.

R277-520-6. State Qualified Teachers (Teachers Who Satisfy HOUSSE Rules).

A. A teacher has a Utah Level 1, 2 or 3 license or a district-specific competency-based license.

B. A teacher has an appropriate area of concentration.

C. A teacher in grades 6-12 has the required endorsement for the course(s) the teacher is teaching by means of:

(1) an academic teaching major from an accredited postsecondary institution, or a passing score on content test(s) and pedagogy test(s), if available, or USOE-approved pedagogy courses; or

(2) an academic major or minor from an accredited postsecondary institution; or

(3) completion of a personal development plan under an SAEP in the appropriate subject area(s) as explained under R277-520-10 with approval from the USOE specialist(s) in the endorsement subject areas.

D. On an annual basis, local boards/charter school boards shall request letters of authorization for teachers who are teaching classes for which they are not endorsed.

R277-520-7. Highly Qualified Teachers.

A. A secondary teacher (7-12) is considered highly qualified if the teacher meets the requirements of R277-501-4.

B. An elementary/early childhood teacher (grades K-8) is considered highly qualified if the teacher meets the requirements of R277-501-5.

R277-520-8. School District/Charter School Specific Competency-based Licensed Teachers.

A. The following procedures and timelines apply to the employment of educators who have not completed the traditional licensing process under R277-520-5A, B, or C:

(1) A local board/charter school board may apply to the Board for a school district/charter school specific competency-based license to fill a position in the district.

(2) The employing school district shall request a school district/charter school specific competency-based license no later than 60 days after the date of the individual's first day of employment.

(3) The application for the school district/charter school specific competency-based license for an individual to teach one or more core academic subjects shall provide documentation of:

(a) the individual's bachelors degree; and

(b) for a K-6 grade teacher, the satisfactory results of the rigorous state test including subject knowledge and teaching skills in the required core academic subjects under Section 53A-6-104.5(3)(ii) as approved by the Board; or

(c) for the teacher in grades 7-12, demonstration of a high Level of competency in each of the core academic subjects in which the teacher teaches by completion of an academic major, a graduate degree, course work equivalent to an undergraduate academic major, advanced certification or credentialing, results or scores of a rigorous state core academic subject test in each of the core academic subjects in which the teacher teaches.

(4) The application for the school district/charter school specific competency-based license for non-core teachers in grades K-12 shall provide documentation of:

(a) a bachelors degree, associates degree or skill certification; and

(b) skills, talents or abilities specific to the teaching assignment, as determined by the local board/charter school board.

(5) Following receipt of documentation, the USOE shall approve a district/charter school specific competency-based license.

(6) If an individual employed under a school district/charter school specific competency-based license leaves the district before the end of the employment period, the district shall notify the USOE Licensing Section regarding the end-of-employment date.

(7) The school district/charter school specific competency-based license for an individual's district/charter school specific competency-based license shall be valid only in the district/charter school that originally requested the school district/charter school specific competency-based license and for the individual originally employed under the school district/charter school specific competency-based license.

B. The written copy of the state-issued district-specific competency-based license shall prominently state the name of the school district/charter school followed by DISTRICT/CHARTER SCHOOL-SPECIFIC COMPETENCY-BASED LICENSE.

C. A school district/charter school may change the assignment of a school district/charter school-specific competency-based license holder but notice to USOE shall be required and additional competency-based documentation may be required for the teacher to remain qualified or highly qualified.

D. School district/charter school specific competency-based license holders are at-will employees consistent with Section 53A-8-106(5).

R277-520-9. Routes to Appropriate Endorsements for Teachers.

Teachers shall be appropriately endorsed for their teaching assignment(s). To be highly qualified:

A. teachers may obtain the required endorsement(s) with a major or composite major or major equivalency consistent with their teaching assignment(s), including appropriate pedagogical competencies; or

B. teachers who have satisfactorily completed a minimum of nine semester hours of USOE-approved university level courses may complete a professional development plan under an SAEP in the appropriate subject area(s) with approval from USOE Curriculum specialists; or

C. teachers may demonstrate competency in the subject area(s) of their teaching assignment(s). In order to be endorsed through demonstrated competency, the educator shall pass designated Board-approved content knowledge and pedagogical knowledge assessments as they become available.

D. individuals shall be properly endorsed consistent with R277-520-3 or have USOE-approved SAEPs. Otherwise, the Board may withhold professional staff cost program funds.

R277-520-10. Board-Approved Endorsement Program (SAEP).

A. Teachers in any educational program who are assigned to teach out of their area(s) of endorsement and who have at least nine hours of USOE-approved university level courses shall participate in an SAEP and make satisfactory progress within the period of the SAEP as determined by USOE specialists.

B. The employing school district shall identify teachers who do not meet the state qualified definition and provide a written justification to the USOE.

C. Individuals participating in SAEPs shall demonstrate progress toward completion of the required endorsement(s) annually, as determined jointly by the school district/charter school and the USOE.

D. An SAEP may be granted for one two-year period and may be renewed by the USOE, upon written justification from the school district, for one additional two-year period.

R277-520-11. Background Check Requirement and Withholding of State Funds for Non-Compliance.

A. Educators qualified under any provision of this rule shall also satisfy the criminal background requirement of Section 53A-3-410 prior to unsupervised access to students.

B. If LEAs do not appropriately employ and assign teachers consistent with this rule, they may have state appropriated professional staff cost program funds withheld pursuant to R277-486, Professional Staff Cost Formula.

C. Local boards/charter school boards shall report highly qualified educators in core academic subjects and educators who do not meet the requirements of highly qualified educators in core academic subjects beginning July 1, 2003.

KEY: educators, licenses, assignments

January 7, 2009	**Art X Sec 3**
Notice of Continuation July 6, 2005	**53A-1-401(3)**
	53A-6-104(2)(a)

R277. Education, Administration.
R277-524. Paraprofessional Qualifications.
R277-524-1. Definitions.

A. "Core academic subjects or areas" means English, reading or language arts, mathematics, science, foreign languages, civics and government, economics, arts, history, and geography under the Elementary and Secondary Education Act (ESEA), also known as the No Child Left Behind Act (NCLB).

B. "Direct supervision of a licensed teacher" means:

(1) the teacher prepares the lesson and plans the instruction support activities the paraprofessional carries out, and the teacher evaluates the achievement of the students with whom the paraprofessional works; and

(2) the paraprofessional works in close and frequent proximity with the teacher.

C. "No Child Left Behind (NCLB)" means the federal law under the Elementary and Secondary Education Act, Title IX, Part A, 20 U.S.C. 7801.

D. "Paraprofessional" means an individual who works under the supervision of a teacher or other licensed/certificated professional who has identified responsibilities in the public school classroom.

R277-524-2. 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 gives the Board authority to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(a)(i)which requires the Board to establish rules and minimum standards for the public schools regarding the qualification and certification of educators and ancillary personnel who provide direct student services, and NCLB, P.L. 107-110, Title 1, Sec, 1119 which requires that each local education agency receiving assistance under this part shall ensure that all paraprofessionals shall be appropriately qualified.

B. The purpose of this rule is to designate appropriate assignments of paraprofessionals and qualifications for paraprofessionals hired before and after January 6, 2002 consistent with NCLB requirements.

R277-524-3. Appropriate Assignments or Duties for Paraprofessionals.

Paraprofessionals may:

A. provide individual or small group assistance or tutoring to students under the direct supervision of a licensed teacher during times when students would not otherwise be receiving instruction from a teacher.

B. assist with classroom organization and management, such as organizing instructional or other materials;

C. provide assistance in computer laboratories;

D. conduct parental involvement activities;

E. provide support in library or media centers;

F. act as translators;

G. provide supervision for students in non-instructional settings.

R277-524-4. Requirements for Paraprofessionals.

A. Paraprofessionals hired before January 6, 2002 who function under R277-504-3A, and working in programs supported by Title I funds shall satisfy one of the following prior to January 6, 2006:

(1) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(2) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(3) The individual has satisfied a rigorous state assessment, approved by the Board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate; or

(4) The individual has satisfied a rigorous local assessment, approved by the local board, that demonstrates:

(a) knowledge of, and the ability to assist in instructing, reading, writing, and mathematics; or

(b) knowledge of, and the ability to assist in instructing, reading readiness, writing readiness, and mathematics readiness, as appropriate.

B. Paraprofessionals hired after January 6, 2002 in programs supported by Title I funds shall satisfy R277-524-4B(1)(2)(3) or (4).

(1) Individual shall have earned a secondary school diploma or a recognized equivalent; and

(2) The individual has completed at least two years (minimum of 48 semester hours) at an accredited higher education institution; or

(3) The individual has obtained an associates (or higher) degree from an accredited higher education institution; or

(4) The individual has satisfied a rigorous state or local assessment about the individual's knowledge of an ability to assist students in core courses under NCLB.

C. The individual shall satisfactorily complete a criminal background check if he will have significant unsupervised access to students consistent with Section 53A-3-410.

R277-524-5. Variances.

The provisions of this rule do not apply to:

A. paraprofessionals who are proficient in English and a language other than English who provide translator services; or

B. paraprofessionals who have only parental involvement or similar responsibilities.

R277-524-6. Use of Funds.

Local education agencies may use Title I funds in addition to other funds available and identified by the local education agency to support ongoing training and professional development for paraprofessionals.

KEY: paraprofessional qualifications, NCLB
February 5, 2004 **Art X Sec 3**
Notice of Continuation January 5, 2009 **53A-1-401(3)**
53A-1-402(1)(a)(I)
P.L. 107-110, Title 1, Sec. 1119

R277. Education, Administration.
R277-527. International Guest Teachers.
R277-527-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "International guest teacher (guest teacher)" means a foreign educator who has earned a public teaching credential or license in a foreign country and who is currently legally residing in the United States and the state of Utah with the specific purpose to teach in Utah public schools. For this definition to apply, the international guest teacher shall be a resident of a foreign country that has a Memorandum of Understanding with the Board.

C. "USOE" means the Utah State Office of Education.

R277-527-2. 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-1-402(1)(a) which directs the Board to establish rules and minimum standards for the qualification and licensing of educators and ancillary personnel who provide direct student services.

B. The purpose of this rule is to establish procedures for qualified international guest teachers who meet the definition of R277-527-1B to be effectively hired and placed by Utah school districts/charter schools with assistance and direction from the USOE to encourage cultural exchange and foreign language development among Utah public school students.

R277-527-3. Utah State Board of Education/USOE Responsibilities.

A. The Board shall develop and State Superintendent shall sign a Memorandum of Understanding between the Board and the appropriate government agency of the country of origin of guest teachers, as identified by the Board.

B. The USOE shall work with guest teachers and their resident countries and the United States Department of State, if necessary, to secure appropriate visas or travel and work documents for guest teachers to legally teach in the public schools in Utah.

C. The USOE shall verify that guest teachers have appropriate licenses or credentials from the guest teachers' resident countries that satisfy the requirements of Utah law and any applicable federal requirements.

D. The USOE shall work with interested school districts and charter schools to make schools aware of guest teachers with specific credentials and language skills and to inform guest teachers about openings in specific grade levels and curriculum areas in various geographic locations in Utah.

E. The USOE shall require and review a guest teacher's criminal background checks required under Section 53A-4-410 and a criminal background clearance from the guest teacher's resident country or both prior to authorizing the guest teacher to work in Utah.

F. The Board may determine that it will seek guest teachers only from foreign countries that provide transportation or per diem expenses or both for USOE representatives to screen and interview potential guest teachers.

G. Following review and approval of a guest teacher's credentials and background, a guest teacher may receive an International Guest Teacher license equivalent to a Level 1 license.

R277-527-4. International Guest Teacher Requirements.

A. Guest teachers shall have a United States issued social security number prior to a school district/charter school processing any payment to the guest teacher.

B. Guest teachers shall cooperate with the USOE in required submission of information including criminal background check information, copies of credentials, copies of transcripts in the language and format designated by the USOE.

C. Guest teachers shall assume all responsibility for living and transportation expenses while participating in the International Guest Teachers Program.

D. Guest teachers shall be responsible for compliance with all state of Utah/Board and employing school district professional and ethical public school educator requirements.

E. Guest teachers who violate district employment or state or district professional practices may have their employment contract terminated consistent with at will employment provisions; the conduct of individual guest teachers may influence continued participation in the International Guest Teacher Program between the Board and a guest teacher's resident country.

R277-527-5. Other Provisions.

A. The opportunity for teachers from outside the United States to be licensed to teach in Utah schools with assistance provided by the USOE under this rule shall be available only to individuals from countries with which the Board has signed a Memorandum of Understanding.

B. A business or third party may not facilitate a Memorandum of Understanding between a foreign country and the Board, but may facilitate the hiring process at the request of the school district/charter school.

C. Internationally credentialed educators may seek appropriate licensing to teach in Utah schools. Those educators from countries that do not have Memoranda of Understanding with the Board shall be licensed under R277-502.

D. It is the responsibility of the prospective guest teacher or the guest teacher's home country to ensure that the guest teacher has the appropriate visa or authorization or both to live and teach in the United States for the agreed upon time period and teaching assignment.

KEY: international guest teachers
January 7, 2009 **Art X Sec 3**
53A-1-401(3)
53A-1-402(1)(a)

R277. Education, Administration.
R277-609. Standards for School District, School and Charter School Discipline Plans.
R277-609-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Bullying" means behavior that:

(1) is intended to cause harm or distress;

(2) exists in a relationship in which there is an imbalance of power;

(3) may be repeated over time; and

(4) may also include definitions provided in Section 53A-11a-102.

C. "Discipline" means:

(1) Imposed discipline: Code of conduct prescribed for the highest welfare of the individual and of the society in which the individual lives; and

(2) Self-Discipline: A personal system of organized behavior designed to promote self-interest while contributing to the welfare of others.

D. "Disruptive student behavior" includes:

(1) the grounds for suspension or expulsion described in Section 53A-11-904; and

(2) the conduct described in Section 53A-11-908(2)(b).

E. "Plan" means a school district-wide and school-wide written model for prevention and intervention for student behavior management and discipline procedures for students who habitually disrupt school environments and processes.

F. "Qualifying minor" means a school-age minor who:

(1) is at least nine years old; or

(2) turns nine years old at any time during the school year.

G. "USOE" means the Utah State Office of Education.

R277-609-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, Section 53A-1-402(1)(b) which requires the Board to establish rules concerning discipline and control, and Section 53A-11-901 which directs local school boards and charter school governing boards to adopt conduct and discipline policies and directs the Board to develop model policies to assist local school boards and charter school governing boards.

B. The purpose of this rule is to define bullying and outline requirements for school discipline plans and policies which school districts and charter schools shall meet to qualify for funding.

R277-609-3. School District, School and Charter School Responsibility to Develop Plans.

A. Each school district, or school and each charter school shall develop and implement a board approved comprehensive school district, school or charter school plan or policy for student and classroom management, and school discipline. The plan shall include:

(1) the definitions of Section 53A-11-910;

(2) written standards for student behavior expectations, including school and classroom management;

(3) effective instructional practices for teaching student expectations, including self-discipline, citizenship, civic skills, and social skills;

(4) systematic methods for reinforcement of expected behaviors and uniform methods for correction of student behavior;

(5) uniform methods for at least annual school level data-based evaluations of efficiency and effectiveness;

(6) an ongoing staff development program related to development of student behavior expectations, effective instructional practices for teaching and reinforcing behavior expectations, effective intervention strategies, and effective strategies for evaluation of the efficiency and effectiveness of interventions;

(7) policies and procedures relating to the use and abuse of alcohol and controlled substances by students;

(8) policies to define, prohibit, and intervene in bullying, including the requirement of awareness and intervention strategies, including training for social skills, for students, parents, and school staff. The policies shall:

(a) provide for training specific to overt aggression that may include physical fighting such as punching, shoving, kicking, and verbal threatening behavior, such as name calling, or both physical and verbal aggression or threatening behavior;

(b) provide for training specific to relational aggression or indirect, covert, or social aggression, including rumor spreading, intimidation, enlisting a friend to assault a child, and social isolation;

(c) provide training and education specific to bullying based upon students':

(i) actual or perceived identities;

(ii) conformance or failure to conform with stereotypes.

(d) provide for training specific to cyber bullying, including use of email, web pages, text messaging, instant messaging, three-way calling or messaging or any other electronic means for aggression inside or outside of school;

(e) provide for student assessment of the prevalence of bullying in school districts, schools and charter schools, specifically locations where students are unsafe and additional adult supervision may be required, such as playgrounds, hallways, and lunch areas;

(f) complement existing safe and drug free school policies and school harassment and hazing policies; and

(g) include strategies for providing students and staff, including aides, custodians, kitchen and lunchroom workers, secretaries, paraprofessionals, and coaches, with awareness and intervention skills such as social skills training.

B. The plan shall also provide direction to school districts for dealing with disruptive students. This part of the plan shall:

(1) direct schools to determine the range of behaviors and establish the continuum of administrative procedures that may be used by school personnel to address the behavior of habitually disruptive students;

(2) provide for identification, by position(s), of individual(s) designated to issue notices of disruptive student behavior; and

(3) provide for documentation of disruptive student behavior prior to referral of disruptive students to juvenile court.

C. School district or school plans or sections of plans, including directives about bullying and disruptive students, shall also:

(1) include strategies to provide for necessary adult supervision;

(2) be clearly written and consistently enforced; and

(3) include administration, instruction and support staff, students, parents, community council and other community members in policy development, training and prevention implementation so as to create a community sense of participation, ownership, support and responsibility.

R277-609-4. Implementation.

A. School districts, schools and charter schools shall implement strategies and policies consistent with their plans.

B. School districts, schools and charter schools shall develop, use and monitor a continuum of intervention strategies to assist students whose behavior in school falls repeatedly short of reasonable expectations, including teaching student behavior expectations, reinforcing student behavior expectations, re-teaching behavior expectations, followed by effective, evidence-based interventions matched to student needs prior to

administrative referral.

C. As part of any suspension or expulsion process that results in court involvement, once a school district, school or charter school receives information from the courts that disruptive student behavior will result in court action, the school district, school or charter school shall provide a formal written assessment of habitually disruptive students. Assessment information shall be used to connect parents and students with supportive school and community resources.

D. Nothing in state law or this rule restricts local districts/charter schools from implementing policies to allow for suspension of students of any age consistent with due process and with all requirements of Individuals with Disabilities Education Act 2004.

R277-609-5. Parent/Guardian Notification and Court Referral.

A. Through school administrative and juvenile court referral consequences, school district, and school and charter school policies shall provide procedures for qualifying minors and their parents to participate in decisions regarding consequences for disruptive student behavior.

B. Policies shall provide for notice to parents and information about resources available to assist parents in resolving school-age minors' disruptive behavior.

C. Policies shall provide for notices of disruptive behavior to be issued by schools to qualifying minor(s) and parent(s) consistent with:

(1) numbers of disruptions and timelines in accordance with Section 53A-11-910;

(2) school resources available; and

(3) cooperation from the appropriate juvenile court in accessing student school records, including attendance, grades, behavioral reports and other available student school data.

D. Policies shall provide due process procedures for minors and parents to contest allegations and citations of disruptive student behavior.

R277-609-6. USOE Model Policies.

The USOE shall develop, review regularly, and provide to local school boards and charter school governing boards model policies to address disruptive student behavior and appropriate consequences.

KEY: disciplinary actions, disruptive students

November 10, 2008	**Art X Sec 3**
Notice of Continuation August 10, 2004	**53A-1-401(3)**
	53A-1-402(1)
	53A-11-901

R277. Education, Administration.
R277-724. Criteria for Sponsors Recruiting Day Care Facilities in the Child and Adult Care Food Program.
R277-724-1. Definitions.

A. "Child and Adult Care Food Program (CACFP)" means the section of the USOE that administers the initiation, maintenance, and expansion of non-profit food service programs for children in non-residential centers and homes which provide child care. The definition also includes the administration of food service programs for non-residential adult day care.

B. "Board" means the Utah State Board of Education.

C. "Child care center" means any public or private nonprofit organization, or any proprietary title XX center, licensed or approved to provide nonresidential child care services to enrolled children, primarily of preschool age. Child care centers may participate in the CACFP as independent centers or under the auspices of a sponsoring organization.

D. "Day care home" means an organized nonresidential child care program for children enrolled in a private home, licensed or approved as a family or group day care home and under the auspices of a sponsoring organization.

E. "Facilities" means a sponsored center or a family day care home.

F. "Institution" means an organization with whom the USOE has an agreement to accept final administrative and financial responsibility for CACFP operation.

G. "Recruited facilities" means potential daycare centers or homes that a prospective sponsor seeks to enroll in CACFP participation.

H. "Service area" means the geographic area from which a sponsoring organization draws its client facilities.

I. "Sponsoring organization" means a public or nonprofit private organization which is entirely responsible for the administration of the food program in:

(1) one or more day care homes;

(2) a child care center, outside-school-hours care center, or adult day care center which is a legally distinct entity from the sponsoring organization;

(3) two or more child care centers, outside-school-hours care centers, or adult day care centers are part of the organization; or

(4) any combination of child care centers, adult day care centers, day care homes, and outside-school-hours care centers.

J. "State agency" means the state educational agency or any other State agency that has been designated by the Governor or other appropriate executive or by the legislative authority of the state, and has been approved by the Department to administer the Program within the state.

K. "USOE" means the Utah State Office of Education.

R277-724-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, by Section 53A-1-402(3) which authorizes the Board to administer and distribute funds made available through programs of the federal government and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to establish eligibility criteria for new sponsors to recruit participants for child care centers and day care homes in unserved areas.

R277-724-3. Criteria for Recruiting Facilities.

The following criteria shall be met before a sponsor is approved:

A. The recruited facilities are not currently participating or were recently terminated for convenience by another sponsoring organization due to being outside the sponsoring organization's service area; and

B. The recruited facilities have not been terminated for cause, have no unresolved serious deficiency pending with another sponsoring organization and do not owe a refund to another sponsoring organization; and

C. The state agency certifies other sponsoring organizations are unable to accommodate the targeted facilities or the area(s) where it/they are located because:

(1) other sponsoring organizations generate insufficient resources to properly train and monitor facilities; or

(2) supervising additional facilities would threaten currently participating sponsoring organization's viability, capability or accountability.

R277-724-4. New and Renewing Institution Performance Standards.

A. The new or renewing institution shall ensure:

(1) it is financially viable and program funds are spent and accounted for consistent with the requirements of federal law and regulations;

(2) that management practices are in effect to ensure that the institution and participating facilities operate in accordance with federal law and regulations; and

(3) it has internal controls and other management systems in effect to ensure fiscal accountability and to ensure that the CACFP operates in accordance with federal law and regulations.

B. The USOE Child Nutrition Program Section shall regulate and ensure that these performance criteria are met consistent with federal law and regulations.

KEY: facilities, food programs

January 15, 2004	**Art X Sec 3**
Notice of Continuation January 5, 2009	**53A-1-402(3)**
	53A-1-401(3)

R277. Education, Administration.
R277-735. Corrections Education Programs.
R277-735-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Inmate" means an offender who is incarcerated in state or county correctional facilities. Inmates may be housed in various locations throughout the state of Utah.

C. "Custody" means the status of being legally in the control of another adult person or a public agency.

D. "English for Speakers of Other Languages (ESOL)" is an instructional program provided for non-native language speakers.

E. "Teaching of English to Speakers of Other Languages (TESOL)" means a credential for teachers of ESOL.

F. "USOE" means the Utah State Office of Education.

G. "UTopia" means Utah Online Performance Indicators for Adult Education statewide database.

R277-735-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and authority over public education in the Board, by Section 53A-1-403.5 which makes the Board directly responsible for the education of inmates in custody and Section 53A-1-401(3) which allows the Board and Board of Regents to adopt rules in accordance with its responsibilities.

B. The purpose of this rule is to specify operation standards and procedures for inmates in corrections education programs that are the responsibility of the public school system.

C. Corrections education programs shall be consistent with R277-733, Adult Education Programs.

R277-735-3. Procedures for Providing Services.

A(1) The Board may contract with local school boards, state post-secondary educational institutions, other state agencies, or private providers of the local boards' choosing to provide educational services for inmates.

(2) The respective responsibilities of the Board, local school boards, and other service providers for education shall be established by letters of agreement or contracts.

(3) A district may sub-contract with local educational service providers for the provision of educational services to students.

(4) Educational services shall be provided in the appropriate environment for the student's behavior and educational performance.

(5) Educational programs to which inmates are assigned shall meet the standards adopted by the Board for that type of program.

(6) Educational programs shall be monitored by the USOE in periodic review visits.

(7) Educational services shall be sufficiently coordinated with non-custody programs to enable inmates in custody to continue their public school education with minimal disruption following discharge from custody.

(8) Custodial status alone does not qualify an individual for services under the Individuals with Disabilities Act (IDEA), 20 U.S.C. Sec. 1400 et seq., amended in 2004.

B. When a student inmate is transferred to a new program, the sending program shall update and finalize all school records in UTopia releasing the student's records as soon as possible after receiving notice of the transfer.

C. When a student inmate is released from custody, educational records shall only be available consistent with the Family Education Rights and Privacy Act (FERPA), 20 U.S.C. Section 1232g; 34 CFR Part 99.

D. Funding

(1) Inmates receiving educational services by or though a school district become students of that school district for funding purposes.

(2) State funds appropriated to the USOE for corrections education shall be allocated to districts on the basis of annual applications.

(3) The funds distributed to a district shall be based upon criteria which include:

(a) the number of inmates in custody served in the district;

(b) the type of services provided to the inmates;

(c) the setting for providing services; and

(d) the length of the program.

E. Funds approved for corrections education projects can be expended only for the purposes described in the respective funding application.

F. Unexpended funds may only be carried over from one fiscal year to the next with specific approval of the Board or its designee.

G. The Board, or its designee, shall adopt uniform pupil and fiscal accounting procedures, forms, and deadlines for correctional education programs.

H. Program Staff

(1) Education staff assigned to provide education services shall be qualified and appropriate for their assignments.

(2) The teaching certificate and endorsement held by a staff member or a person assigned to teach in a prison or jail shall be important in evaluating the appropriateness of the teacher's assignment, but not controlling. For example, elementary teachers may teach secondary age students who are academically performing at an elementary level in certain subjects. Persons teaching an adult education high school completion course shall hold a valid Utah elementary or secondary education license and may issue adult education high school completion credits in multiple subjects. Non-licensed individuals providing instruction in ESOL, Adult Basic Education (ABE) or Adult High School Completion (AHSC) classes shall instruct under the supervision of a licensed program employee.

(3) Persons with a post-secondary degree in adult education but are not in possession of a Utah teaching certificate may be considered for employment solely in an adult education program teaching adult students following the completion of a student teaching field experience in an accredited adult education program.

(4) Persons with TESOL or ESOL credentials may be considered for employment solely in a adult education program teaching adult students following the completion of a student teaching experience in an accredited adult education program.

R277-735-4. Program, Curriculum, Outcomes and Student Mastery.

A. Adult education shall provide a program that allows students to transition between sites in a seamless manner.

B. Adult education students receiving education services in a state prison or jail education program may graduate with a school district adult education secondary diploma upon completion of the state required 24.0 units of credit required under R277-700 and satisfied through completed credits or demonstrated course competency consistent with students' SEOP career focus.

C. Graduation requirements may be changed or modified, or both, for adult students with documented disabilities through Individual Education Plans (IEPs) consistent with IDEA.

D. Modified graduation requirements for individual students shall:

(1) be consistent with the student's IEP or SEOP, or both;

(2) be maintained in the student's files;

(3) maintain the integrity and rigor expected for AHSC graduation.

R277-735-5. Confidentiality.

A. Transcripts and diplomas prepared for inmates in custody shall be issued in the name of the contracted educational agency which also provides service to non-custodial offenders and shall not bear reference to custodial status.

B. School records which refer to custodial status, inmate court records, and related matters shall be kept separate from permanent school records and shall be destroyed or may be sealed upon order of a court of competent jurisdiction.

C. Access to Student Records

(1) Staff who design and oversee individual student plans shall have access to all appropriate records relevant to the student's education.

(2) Information obtained from records remains the property of the supplying agency and shall not be transferred or shared with other persons or agencies without the permission of the supplying agency, consistent with Section 63G-2-206.

(3) Access to and provision of student records or transcripts shall be consistent with state and federal law.

KEY: public education, custody*, inmates*
October 8, 2008 **Art X Sec 3**
Notice of Continuation January 5, 2009 **53A-1-403.5**
53A-1-401(3)

R277. Education, Administration.
R277-911. Secondary Career and Technical Education.
R277-911-1. Definitions.

A. "Aggregate membership" means the sum of all days in membership during a school year for the student, program, school, LEA, or state.

B. "Approved program" means a program approved by the Board that meets or exceeds the state program standards or outcomes for career and technical education programs.

C. "Board" means the Utah State Board of Education.

D. "Bureau of Apprenticeship and Training" means a branch office for apprenticeship administered by the United States Department of Labor and located in Salt Lake City.

E. "Career and technical education (CTE)" means organized educational programs which directly or indirectly prepare individuals for employment, or for additional preparation leading to employment, in occupations where entry requirements generally do not require a baccalaureate or advanced degree. These programs provide all students an undisrupted education system, driven by a student education occupation plan (SEOP), through competency-based instruction, culminating in essential life skills, certified occupational skills, and meaningful employment. Areas of study include agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; skilled and technical sciences; and technology and engineering education.

F. "CTE pathway" means a planned CTE/academic continuum of courses within a CTE field beginning in the ninth grade and continuing with post secondary training which culminates in an associate degree, apprenticeship, certificate of completion, or baccalaureate degree.

G. "CIP code" means the Classification of Instructional Programs, a federal curriculum listing.

H. "Comprehensive counseling and guidance program" means the organization of resources to meet the priority needs of students through four delivery system components as outlined in R277-462.

I. "Course" means an individual CTE class structured by state-approved standards and CIP code. An approved course may require one or two periods for up to one year. Courses may be completed by demonstrated competencies or by course completion.

J. "Entry-level" means a set of tasks identified and validated by workers and employers in an occupation as those of a beginner in the field. Entry-level skills are a limited subset of the total set of tasks performed by an experienced worker in the occupation. Competent performance of entry-level tasks enhances employability and initial productivity.

K. "Extended year program" means CTE programs no longer than 12 weeks in duration, offered during the summer recess, and supported by extended-year or other CTE funds.

L. "Program" means a combination of CTE courses that provides the competencies for specific job placement or continued related training and is outlined in the SEOP using all available and appropriate high school courses.

M. "Program completion" means the student completion of a sequence of approved courses, work-based learning experiences, and/or other prescribed learning experiences as determined by the student education occupation plan (SEOP).

N. "Regional consortium" means the school districts, applied technology colleges, colleges and universities within the regions that approve CTE programs.

O. "Registered apprenticeship" means a training program that includes on-the-job training in a specific occupation combined with related classroom training and has approval of the Bureau of Apprenticeship and Training.

P. "Related training" means a course or program directly related to an occupation that is compatible with apprenticeship training and is taught in a classroom and approved by the Bureau of Apprenticeship and Training.

Q. "Scope and sequence" means the organization of all CTE courses and related academic courses into programs within the high school curriculum that lead to specific skill certification, job placement, continued education or training.

R. "SEOP" means student education occupation plan. An SEOP shall include:

(1) a student's education occupation plans (grades 7-12) including job placement when appropriate;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies; and

(5) identification of post secondary goals and approved sequence of courses.

S. "Skill certification" means a verification of competent task performance. Verification of the skills standard is provided by an approved state or national program certification process.

T. "USOE" means the Utah State Office of Education.

U. "WPU" means weighted pupil unit. The basic unit used to calculate the amount of state funds for which a school district is eligible.

V. "Work-based learning" means a program in which a student is trained by employment or other activity at a work site, either at place of business, a home, or a farm, supplemented by needed classroom instruction or teacher assistance.

R277-911-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of the public education system in the Board, by Section 53A-15-202 which allows the Board to establish minimum standards for CTE programs in the public education system, and Sections 53A-17a-113 and 114 which direct the Board to distribute specific amounts and percentages for specific CTE programs and facilitate administration of various programs.

B. This rule establishes standards and procedures for school districts seeking to qualify for funds administered by the Board for CTE programs in the public education system.

R277-911-3. CTE Program Approval.

A. Program Planning: CTE programs are based on verified training needs of the area and provide students with the competencies necessary for occupational opportunities. Programs are supported by a data base, including:

(1) local, regional, state, and federal manpower projections;

(2) student occupational/interest surveys;

(3) regional job profile;

(4) advisory committee information; and

(5) follow-up evaluation and reports.

B. Program Administration: School district CTE directors shall meet the requirements specified in Subsections 9(A), (B) and (C).

C. Learning Resources: Within available resources, instructional materials, including textbooks, reference materials, and media, shall reflect current technology, processes, and information for the CTE programs.

D. Student Services provided by school districts or consortia of school districts:

(1) CTE guidance, counseling, and Board approved testing shall be provided for students enrolled in CTE programs.

(2) A written plan for placement services shall be developed with the assistance of local advisory committees, business and industry and the Department of Workforce Services.

(3) An SEOP shall be developed for all students. The plan

shall include:

(a) a student's education occupation plans (grades 7-12), including job placement when appropriate;

(b) all Board, local board and local charter board graduation requirements;

(c) evidence of parent, student, and school representative involvement annually;

(d) attainment of approved workplace skill competencies;

(e) identification of a CTE post-secondary goal and an approved sequence of academic and CTE courses.

E. Instruction: Curricula and instruction shall be directly related to business and industry validated competencies. Successful completion of competencies shall be verified by a valid skill certification process. Instruction in proper and safe use of any equipment required for skill certification shall be provided within the approved program.

F. Equipment and Facilities: Equipment and facilities, consistent with the validated competencies identified in the instruction standard, shall be provided and maintained safely, consistent with applicable state and federal laws.

G. Instructional Staff: Counselors and instructional staff shall hold valid Utah teaching licenses with endorsements appropriate for the programs they teach. These may be obtained through an institutional recommendation or through occupational and educational experience verified by the USOE licensure process. CTE program instructors shall keep technical and professional skills current through business/industry involvements in order to ensure that students are provided accurate state-of-the-art information.

H. Equal Educational Opportunity: CTE programs shall be conducted consistent with the Board policies and state and federal laws and regulations on access that prohibit discrimination on the basis of race, creed, color, national origin, religion, age, sex, and disability.

I.(1) CTE advisory council: An active advisory council shall be established to review all CTE programs annually. The council may serve several school districts or a region. The council reviews the program offerings, quality of programs, and equipment needs.

(2) Program advisory committee: Each state-funded approved CTE program shall be supported at the school district/regional level by a program advisory committee made up of individuals who are working in the occupational area. Basic exploratory programs shall have an advisory committee.

J. CTE student leadership organizations: School districts are encouraged to make this training available through nationally-chartered CTE student leadership organizations in each area of study.

K. Program and instruction evaluation: Each school district, with oversight by local program advisory committee members, shall make an annual evaluation of its CTE programs.

R277-911-4. Disbursement and Expenditure of CTE Funds--General Standards.

A. To be eligible for state CTE program funds, a school district shall first expend for CTE programs an amount equivalent to the regular WPU for students in approved CTE programs, grades nine through twelve, based on prior year aggregate membership, times the current year WPU value, less an amount for indirect costs as computed by the USOE.

B. State CTE program funds may thereafter be expended only for approved CTE programs.

R277-911-5. Disbursement of Funds--Added Cost Funds.

A. Weighted pupil units shall be allocated for the added instructional costs of approved CTE programs operated or contracted by school districts. Programs and courses provided through applied technology colleges, and higher education institutions do not qualify for added cost funds except for specific contractual arrangements approved by the Board.

B. Computerized or manually produced records for CTE programs shall be kept by teacher, class, and Classification of Instructional Program (CIP) code. These records shall show clearly and accurately the entry and exit date of each student and whether a student has been absent from a CTE class ten consecutive days.

C. Added cost funds shall not be generated:

(1) during bus travel;

(2) until the student starts attending the approved CTE course;

(3) when the student has been absent, without excuse, for the previous 10 days.

D. All approved CTE programs shall receive funds determined by prior year hours of membership for approved programs.

E. Allocations are computed using grades nine through twelve aggregate membership in approved programs for the previous year with a growth factor applied to school districts experiencing growth of one percent or greater in grades nine through twelve except as provided by R277-462 and R277-916.

F. Added cost funds shall be used to cover the added CTE program instructional costs of school district programs.

R277-911-6. Disbursement of Funds--Equipment Set Aside Funds.

A. Equipment set aside funds shall pay for CTE program equipment needs.

B. Each school district is eligible for a minimum amount of equipment set aside funds.

C. Applicants for funds may submit proposals as individual school districts or as regional groups. All proposals shall show evidence of coordination within a service delivery area. A regional group shall include recommended priorities for funding in its proposal.

R277-911-7. Disbursement of Funds--Skill Certification.

A. School districts that demonstrate approved student skill certification may receive additional compensation.

B. To be eligible for skill certification compensation, a school district shall show its student completer has demonstrated mastery of standards, as established by the Board. An authorized test administrator shall verify student mastery of the skill standards.

C. Skill certification compensation shall be available only if an approved skill certification assessment is developed for the program.

R277-911-8. Disbursement of Funds--CTE Leadership Organization Funds.

A. Participating school districts sponsoring CTE leadership organizations shall be eligible for a portion of the funds set aside for this purpose.

B. Qualifying CTE leadership organizations shall be nationally chartered and include: SkillsUSA (an association of Skilled and Technical Sciences Education students), DECA (Distributive Education Clubs of America), FFA (Future Farmers of America), HOSA (Health Occupations Students of America), FBLA (Future Business Leaders of America), FCCLA (Family, Career and Community Leaders of America), and TSA (Technology Students Association).

C. Up to one percent of the state CTE appropriation for school districts shall be allocated to eligible school districts based on documented prior year student membership in approved CTE leadership organizations.

D. A portion of funds allocated to a school district for CTE leadership organizations shall be used to pay the school district's portion of statewide administrative and national competition costs. The remaining amount shall be available for

school district CTE leadership organization expenses.

R277-911-9. Disbursement of Funds--School District/Charter School WPUs.

A. WPUs for costs of administration of CTE programs shall be allocated as follows:

(1) Twenty (20) WPUs shall be allocated to each school district for costs associated with the administration of CTE. To qualify, school districts shall employ a minimum one-half time CTE director.

(2) To encourage multidistrict CTE administrative services, 25 WPUs shall be allocated to each school district that consolidates CTE administrative services with one or more other school district. To qualify, the participating school districts must employ a full-time CTE director.

(3) Twenty-five (25) WPUs shall be allocated to a single charter school acting as fiscal agent, to provide CTE administrative services to all charter schools offering CTE pathways, grades 9-12. If more than ten (10) charter schools offer CTE pathways an additional five (5) WPUs shall be allocated for each additional charter school over ten (10). To qualify, the charter school acting as fiscal agent must employ a full-time CTE director.

(4) Ten (10) WPUs shall be allocated to a small school district consisting of only necessarily existent small high school(s), and where multi-district CTE administration is not feasible. To qualify, a small school district shall assign a CTE director to a minimum of part-time CTE administration.

B. To qualify for 10, 20 or 25 CTE administrative WPUs as provided under R277-911-9A, a CTE director shall:

(1) hold or be in the process of completing requirements for a current Utah Administrative/Supervisory License specified in R277-505; and

(2)(a) have an endorsement in at least one career and technical area listed in R277-518, Career and Technical Education Licenses, and have four years of experience as a full-time career and technical educator; or

(b) complete a prescribed professional development program provided by the USOE within a period of two years following board appointment as a school district/charter school CTE director.

C. In addition to WPUs appropriated under R277-911-9A, each approved high school qualifies for funding according to the following criteria:

(1) Ten (10) WPUs are allocated to each high school that:

(a) conducts approved programs in a minimum of two CTE areas e.g. agriculture; business; family and consumer sciences; health science and technology; information technology; marketing; skilled and technical sciences; and technology and engineering education;

(b) conducts a minimum of six different state-approved CIP coded courses including at least one CTE pathway. Consolidated courses in small schools may count as more than one course as approved by the appropriate state CTE specialist(s);

(c) has at least one approved career and technical student leadership organization.

(2) Fifteen (15) WPUs shall be allocated to each high school that:

(a) conducts approved programs in a minimum of three CTE areas;

(b) conducts a minimum of nine different state-approved CIP coded courses including at least one CTE pathway. Consolidated courses in small schools may count as more than one course as approved by the appropriate state CTE specialist(s);

(c) has at least one approved CTE student leadership organization.

(3) Twenty (20) WPUs shall be allocated to each high school that:

(a) conducts approved programs in a minimum of four CTE areas;

(b) conducts a minimum of twelve different state-approved CIP coded courses including at least two CTE pathways. Consolidated courses in small schools may count more than one course as approved by the appropriate state CTE specialist(s);

(c) has at least two approved CTE student leadership organizations.

(4) Twenty-five (25) WPUs shall be allocated to each high school that:

(a) conducts approved programs in a minimum of five CTE areas;

(b) conducts a minimum of fifteen different state-approved CIP coded courses including at least two CTE pathways. Consolidated courses in small schools may count more than one course as approved by the appropriate state CTE specialist(s);

(c) has at least three approved CTE student leadership organizations.

D. Also, a maximum of one approved alternative high school, as outlined in R277-730, per school district may qualify. School districts sharing an alternative school shall receive a prorated share.

E. Programs and courses provided through school district technical centers shall not receive funding under this section.

R277-911-10. Disbursement of Funds--School District Technical Centers.

A. A maximum of forty WPUs may be computed for each school district operating an approved school district center. To qualify under the approved school district technical center provision, the school district shall:

(1) provide at least one facility other than an existing high school as a designated school district technical center;

(2) employ a full-time CTE administrator for the center;

(3) enroll a minimum of 400 students in the school district technical center;

(4) prevent unwarranted duplication by the school district technical center of courses offered in existing high schools, applied technology colleges and higher education institutions;

(5) centralize high-cost programs in the school district technical center;

(6) conduct approved programs in a minimum of five CTE areas;

(7) conduct a minimum of fifteen different state-approved CIP coded courses.

R277-911-11. Disbursement of Funds--Summer CTE Agriculture Programs.

A. To receive state summer CTE agriculture program funds, a school district shall submit to the USOE, an application for approval of the school district's program. Applications shall be received prior to the annual due date specified each year. Notification of approval of the school district's program shall be made within ten calendar days of receiving the application.

B. A teacher of a summer CTE agriculture program shall:

(1) hold a valid Utah teaching license, with an endorsement in agriculture, as outlined in R277-911-3G;

(2) develop a calendar of activities which shall be approved by school district administration and reviewed by the state specialist for CTE agricultural education;

(3) work a minimum of eight hours a day in the summer CTE agriculture program. Exceptions shall be reflected in the calendar of activities and be approved by the school district administration;

(4) not engage in other employment, including self-employment, which conflicts with the teacher's performance in the summer CTE agriculture program;

(5) develop and file a weekly schedule and a monthly

report outlining accomplishments related to the calendar of activities with the school principal, school district CTE director, and the state specialist for agricultural education; and

(6) visit the participating students a minimum of two times during the summer program with a minimum average of four on-site visits to students.

C. College interns may be approved to conduct summer CTE agriculture programs upon approval by the state specialist for CTE agricultural education.

D. Students enrolled in the summer CTE agriculture program shall:

(1) have on file in the teacher's and school district office a student education occupation plan (SEOP) goal related to agriculture;

(2) in conjunction with the student's parent or employer and the teacher, develop an individual plan of activities, including a supervised occupational experience program;

(3) have completed the eighth grade; and

(4) have not have graduated from high school.

E. The USOE CTE agricultural education specialist shall collect data from the program and staff of each school district to ensure compliance with approved standards. A final program report, on forms provided by the USOE, shall be submitted to the USOE on the annual due date specified.

F. Summer CTE agricultural funding shall be allocated to each school district conducting an approved program for a minimum of 35 students lasting nine weeks. A school district may receive funding for no more than nine weeks or 35 students.

G. School districts operating programs with fewer than 35 students per teacher or for fewer than nine weeks shall receive a prorated share of the summer CTE agricultural allocation.

R277-911-12. Disbursement of Funds - Comprehensive Counseling and Guidance; CTE Introduction, and Work-Based Learning Programs.

A. The board shall distribute funds to school districts consistent with Section 53A-17a-113(2)(3)(4) and (6).

B. School districts shall spend funds distributed for comprehensive guidance consistent with Section 53A-1a-106(2)(b) and R277-462 which explain the purpose and criteria for student education plans (SEP) and student education occupation plans (SEOP).

C. School districts may spend funds allocated under this section to fund work-based learning programs consistent with Section 53A-17a-113(1)(c), other criteria of the Section, R277-915 and R277-916.

D. School districts may spend funds allocated under this section to fund CTE Introduction programs consistent with Section 53A-17a-113 and R277-916.

KEY: career and technical education
January 7, 2009 Art X Sec 3
Notice of Continuation September 6, 2007 53A-15-202
53A-17a-113 through 115

R280. Education, Rehabilitation.
R280-201. USOR ADA Complaint Procedure.
R280-201-1. Definitions.

A. "ADA" means the Americans with Disabilities Act, 42 U.S.C. 12201, which provides that no qualified individual with a disability, by reason of such disability, be excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by this or any such entity.

B. "The ADA Coordinator" means the designee of the State Board of Education, who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans with Disabilities Act, or provisions of this rule.

C. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management; and
(5) Office of the Attorney General.

D. "Disability" means, with respect to an individual disability, a physical or mental impairment that substantially limits one or more of the major life activities of such an individual; a record of such an impairment; or being regarded as having such an impairment. The definition of "disability" specifically excludes: transvestism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, other sexual behavior disorders, compulsive gambling, kleptomania, pyromania, and psychoactive substance use disorders resulting from current illegal use of drugs.

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

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

G. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

H. "USOR" means the Utah State Office of Rehabilitation.

R280-201-2. Authority and Purpose.

A. This rule is authorized pursuant to 28 CFR 35.107, 1992 edition, which adopts, defines, and publishes complaint procedures providing for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans with Disabilities Act, 28 CFR 35, 1992 edition.

B. The purposes of this rule are:

(1) to establish a USOR procedure for filing complaints under the federal ADA law;

(2) provide an appeals procedure;

(3) provide for appropriate classification of the records of complaints and appeals; and

(4) to guarantee at this agency level that no qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits of the services, programs, or activities of the USOR, or be subjected to discrimination by the USOR.

R280-201-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but not later than 60 days from the date of the alleged act of discrimination. However, any complaint alleging an act of discrimination occurring between January 26, 1992 and the effective date of this rule may be filed within 60 days of the effective date of this rule.

B. The complaint shall be filed with the USOR's ADA Coordinator in writing or in another format suitable to the individual.

C. Each complaint shall:

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

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

(3) describe the USOR's alleged discriminatory action in sufficient detail to inform the USOR of the nature and date of the alleged violation;

(4) describe the action and accommodation desired; and

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

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

R280-201-4. Investigation of Complaint.

A. The ADA coordinator shall conduct an investigation of each complaint received. The investigation shall be conducted to the extent necessary to assure all relevant facts are determined and documented. This may include gathering all information listed in Section 3(C) of this rule if it is not made available by the individual.

B. When conducting the investigation, the coordinator may seek assistance from the USOR's legal, human resource and budget staff in determining what action, if any, shall be taken on the complaint. Before making any decision that would involve an expenditure of funds which is not absorbable within the USOR's budget and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

R280-201-5. Issuance of Decision.

A. Within 30 working days after receiving the complaint, the ADA coordinator shall issue a decision outlining in writing or in another suitable format stating what action, if any, shall be taken on the complaint.

B. If the coordinator is unable to reach a decision within the 30 working day period, he shall notify the individual with a disability in writing or by another suitable format why the decision is being delayed and what additional time is needed to reach a decision.

R280-201-6. Appeals.

A. The individual may appeal the decision of the ADA coordinator by filing an appeal within 10 working days from the receipt of the decision.

B. The appeal shall be filed in writing with the Executive Director.

C. The filing of an appeal shall be considered as authorization by the individual to allow review of all information, including information classified as private or controlled, by the Executive Director or designee.

D. The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

E. The Executive Director shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify

questions of fact before arriving at an independent conclusion. Before making any decision that would involve the Executive Director to direct an expenditure of funds which is not absorbable and would require appropriation authority, facility modifications, or reclassification or reallocation in grade, he shall also consult with the State ADA Coordinating Committee.

F. The decision shall be issued within ten working days after receiving the appeal and shall be in writing or in another suitable format to the individual.

G. If the Executive Director is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another suitable format why the decision is being delayed and the additional time needed to reach a decision.

R280-201-7. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of such actions, shall be classified as protected as defined under Section 63G-2-305 until the ADA coordinator or Executive Director issues the decision at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302 or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. Only the written decision of the coordinator or Executive Director shall be classified as public information.

R280-201-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to the individuals under the State Anti-Discrimination Complaint Procedures, Section 67-19-32; the Federal ADA Complaint Procedures (28 CFR Subpart F, beginning with Part 35.170, 1992 edition); or any other Utah state or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: complaints, disabled persons

January 5, 1999	**28 CFR 35**
Notice of Continuation January 5, 2009	**28 CFR 35.107**
	42 U.S.C. 12201
	63G-2-302
	63G-2-304
	63G-2-305
	67-19-32

R280. Education, Rehabilitation.
R280-202. USOR Procedures for Individuals with the Most Severe Disabilities.
R280-202-1. Definitions.

A. "Individual with a disability" (hereinafter individual) means a person who has a disability which limits one or more of his major life activities and who meets the essential eligibility requirement for the receipt of services or the participation in programs or activities provided by the USOR or the State Board of Education.

B. "Executive Director" means the Executive Director of the Utah State Office of Rehabilitation.

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

D. "USOR" means the Utah State Office of Rehabilitation.

E. "Board" means the Utah State Board of Education.

F. "Supplemental Security Income (SSI)" means payments to adults and children who are determined to be severely disabled or blind and whose assets and income are below the limits set by the Social Security Administration.

G. "Social Security Disability Insurance (SSDI)" means payments to disabled workers under 65 and their families, or people who become disabled before age 22, or disabled widows or widowers 50 or over who are found to be eligible under Social Security Administration criteria.

R280-202-2. Authority and Purpose.

A. This rule is authorized pursuant to PL 102-569, Title VI-C, October, 1992, which directs state agencies to define for themselves individuals with the most severe disabilities and Section 53A-24-103 which directs that the USOR shall be under the policy direction of the Board.

B. The purpose of this rule is to define "persons with the most severe disabilities" for purposes of providing services and determining order of selection for services according to federal and state law.

R280-202-3. Eligibility Criteria.

In order to be classified as an individual with the most severe disabilities an individual shall meet one of the criteria under Subsection A below or the criteria under Subsection B below:

A. The USOR shall make the determination using the following documentation:

(1) Eligible for services from Division of Services for People with Disabilities, (DSPD); or

(2) Determined severely and persistently mentally ill (SPMI) by the State Division of Mental Health or any one of the private, non-profit mental health programs certified by the State Division of Mental Health; or

(3) Found to be permanently and totally disabled by the State Labor Commission; and

(4) Individuals who are allowed SSI/SSDI blind or disabled may or may not be considered most severe. To be considered most severe there must be two or more functional limitations; and

(5) The individual will require multiple VR services over an extended period of time.

B. If an appropriate determination has not been made by another agency, the individual must exhibit functional deficits in two or more of the following areas to be considered an individual with the most severe disabilities. Examples under the seven categories include:

(1) Mobility

(a) Requires assistive devices (cane, crutches, prosthesis, walker, wheelchair) to be mobile.

(b) Is unable to climb one flight of stairs without pause.

(c) Is unable to walk 100 meters without pause.

(d) Cannot leave a building independently in less than three minutes.

(e) Other mobility deficits as defined or approved by the USOR.

(2) Communication

(a) Expressive and receptive primary mode of communication is unintelligible to non-family members.

(b) Does not demonstrate understanding of simple requests or is unable to understand one-to-two step instructions.

(c) Other communication deficits as defined or approved by the USOR.

(3) Self-care: Is unable to perform normal activities of daily living without assistance.

(4) Self direction: Is unable to provide informed consent for life issues without the assistance of a court-appointed legal representative or guardian; or has been declared legally incompetent.

(5) Learning ability and inter-personal deficits

(a) Valid psychological assessment of conceptual intelligence reflects performance approximately two standard deviations or more below the mean observed in a population of persons of a comparable background; commonly defined as an IQ of 70 or below on a standardized measure of intelligence.

(b) Disfigurement or deformity so pronounced as to cause social rejection.

(c) Demonstrated behavior such that the individual is a danger to self and others without supervision.

(d) Other learning or interpersonal deficits as defined or approved by the USOR.

(6) Capacity for Independence

(a) Unable to perform tasks such as locate and use telephone.

(b) Unable to access public transportation without assistance.

(c) Unable to understand money or change making.

(d) Unable to tell time.

(e) Other deficits in independence as defined or approved by the USOR.

(7) Work skills and work tolerance

(a) Unable to perform sustained work for more than four hours per day.

(b) Unable to perform work outside sheltered environment.

(c) Unable to perform work in an integrated setting without support;

(d) Other work related deficits as defined or approved by the USOR; and

(e) The individual will require multiple vocational rehabilitation services over an extended period of time.

C. When the determination of individuals with the most severe disabilities is made under Subsection B above, the counselor must document the functional deficits.

KEY: disabled persons, rehabilitation
January 5, 1999 **Pub. L. 102-569**
Notice of Continuation January 5, 2009 **53A-24-103**

R307. Environmental Quality, Air Quality.
R307-121. General Requirements: Clean Air and Efficient Vehicle Tax Credit.
R307-121-1. Authorization and Purpose.

This rule is authorized by Sections 59-7-605 and 59-10-1009. These statutes establish criteria and definitions used to determine eligibility for an income tax credit. R307-121 establishes procedures to provide proof of purchase to the Board for an OEM vehicle or the conversion of a motor vehicle for which an income tax credit is allowed under Sections 59-7-605 and 59-10-1009.

R307-121-2. Definitions.

Definitions. The following additional definitions apply to R307-121.

"Air quality standards" means air quality standards as defined in Subsection 59-7-605(1)(a) and 59-10-1009(1)(a).

"Clean fuel" means clean fuel as defined in Subsection 19-1-402(1).

"Clean fuel vehicle" means clean fuel vehicle as defined in Subsection 19-1-402(2).

"Conversion equipment" means a package which may include fuel, ignition, emissions control, and engine components that are modified, removed, or added to a motor vehicle or special mobile equipment to make that motor vehicle or equipment eligible.

"Fuel economy standards" means fuel economy standards as defined in Subsection 59-7-605(1)(f) and 59-10-1009(1)(f).

"Manufacturer's Statement of Origin" means a certificate showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser.

"Motor Vehicle" means a motor vehicle as defined in 41-1a-102.

"Original equipment manufacturer(OEM) vehicle" means original equipment manufacturer(OEM) as defined in Subsection 19-1-402(8).

"Original purchase" means original purchase as defined in Subsection 59-7-605(1)(i) and 59-10-1009(1)(i).

R307-121-3. Demonstration of Eligibility for OEM Compressed Natural Gas Vehicles.

To demonstrate that an OEM Compressed Natural Gas vehicle is eligible, proof of purchase shall be made by submitting the following documents to the executive secretary:

(1)(a) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation showing that the motor vehicle is an OEM Compressed Natural Gas vehicle, or

(b) a signed statement by an Automotive Service Excellence (ASE)-certified technician that includes the vehicle identification number (VIN) and states that the motor vehicle is an eligible OEM vehicle;

(2) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle; and

(3) a copy of the current Utah vehicle registration.

R307-121-4. Demonstration of Eligibility for Motor Vehicles that meet Air Quality and Fuel Economy Standards.

To demonstrate that a motor vehicle is eligible for the tax credit based on air quality and fuel economy standards, proof of purchase shall be made by submitting the following documents to the executive secretary:

(1) a copy of the Manufacturer's Statement of Origin or equivalent manufacturer's documentation;

(2) a signed statement from the taxpayer claiming the tax credit, stating that the motor vehicle was acquired as the original purchase;

(3) an original or copy of the purchase order, customer invoice, or receipt including the VIN, purchase date, and price of the motor vehicle;

(4) the underhood identification number or engine group of the motor vehicle; and

(5) a copy of the current Utah vehicle registration.

R307-121-5. Demonstration of Eligibility for Motor Vehicles Converted to Natural Gas or Propane.

To demonstrate that a conversion of a motor vehicle to be fueled by natural gas or propane is eligible for the tax credit, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) the VIN;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4)(a) a copy of the motor vehicle inspection report from an approved station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an inspection and maintenance (I/M) program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN and states that the conversion is functional;

(5) each of the following:

(a) the conversion equipment manufacturer,

(b) the conversion equipment model number,

(c) the date of the conversion, and

(d) the name, address, and phone number of the person that converted the motor vehicle;

(6) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b);

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) a copy of the current Utah vehicle registration.

R307-121-6. Demonstration of Eligibility for Motor Vehicles Converted to Electricity.

(1) To demonstrate that a conversion of a motor vehicle to be powered by electricity is eligible for the tax credit, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(a) the VIN;

(b) the fuel type before conversion;

(c) the fuel type after conversion;

(d) each of the following:

(i) the conversion equipment manufacturer,

(ii) the conversion equipment model number,

(iii) the date of the conversion, and

(iv) the name, address, and phone number of the person that converted the motor vehicle;

(e) an original or copy of the purchase order, customer invoice, or receipt; and

(f) a copy of the current Utah vehicle registration.

(2) If the converted motor vehicle does not have any auxiliary sources of combustion emissions, then the applicant shall submit a signed statement by an ASE-certified technician that includes the VIN and states that the conversion is functional, and that the converted motor vehicle does not have any auxiliary source of combustion emissions.

(3) If the converted motor vehicle has an auxiliary source of combustion emissions, then the applicant shall submit:

(a) a copy of the vehicle inspection report from an approved station showing that the converted motor vehicle meets all county emissions requirements for all installed fuel systems if the motor vehicle is registered within a county with an I/M program, or

(b) in all other areas of the State, a signed statement by an ASE-certified technician that includes the VIN and states that the conversion is functional, and

(c) proof of certification required in 59-10-1009(1)(b) or

59-7-605(1)(b).

R307-121-7. Demonstration of Eligibility for Special Mobile Equipment Converted to Clean Fuels.

To demonstrate that a conversion of special mobile equipment to be fueled by clean fuel is eligible for the tax credit, proof of purchase shall be made by submitting the following documentation to the executive secretary:

(1) a description, including serial number, of the special mobile equipment for which credit is to be claimed;

(2) the fuel type before conversion;

(3) the fuel type after conversion;

(4) the conversion equipment manufacturer and model number;

(5) the date of the conversion;

(6) the name, address and phone number of the person that converted the special mobile equipment; and

(7) an original or copy of the purchase order, customer invoice, or receipt; and

(8) proof of certification required in 59-10-1009(1)(b) or 59-7-605(1)(b).

KEY: air pollution, alternative fuels, tax credits, motor vehicles

January 1, 2009	**19-2-104**
Notice of Continuation January 6, 2009	**19-1-402**
	59-7-605
	59-10-1009

R309. Environmental Quality, Drinking Water.
R309-700. Financial Assistance: State Drinking Water State Revolving Fund (SRF) Loan Program.
R309-700-1. Purpose.

This rule establishes criteria for financial assistance to public drinking water systems in accordance with Title 73, Chapter 10c, Utah Code Annotated using funds made available by the Utah legislature from time to time for this purpose.

R309-700-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue loans to political subdivisions to finance all or part of drinking water project costs and to enter into "credit enhancement agreements", "interest buy-down agreements", and "Hardship Grants" is provided in Title 73, Chapter 10c, Utah Code.

R309-700-3. Definitions and Eligibility.

Title 73, Chapter 10c, subsection 4(2)(a) limits eligibility for financial assistance under this section to political subdivisions.

Definitions for terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities; and also includes studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary project, easement or right of way, engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; interest accruing on loans made under this program during acquisition and construction of the project; costs for studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system owned by a political subdivision of the State.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Interest" means an assessment applied to loan recipients. The assessment shall be calculated as a percentage of principal.

"Emergency" means an unexpected, serious occurrence or situation requiring urgent or immediate action resulting from the failure of equipment or other infrastructure, or contamination of the water supply, threatening the health and / or safety of the public / water users.

R309-700-4. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) The applicant is required to submit a completed application form, an engineering report listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan that includes an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project, and documents necessary to perform a financial capability assessment (when requested), and capacity assessment (when determined to be beneficial for evaluating project feasibility). Comments from the local health department and/or district engineer may accompany the application. Comments from other interested parties such as an association of governments will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) Division staff will evaluate the application and supporting documentation, calculate proposed terms of financial assistance, prepare a report for review by the Board, and present said report to the Board for its consideration.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, hardship grant or any combination thereof, is to be entered into, and approve the project schedule (see R309-700-13). The Board shall authorize a hardship grant only if it determines that other financing alternatives are unavailable or unreasonably expensive to the applicant (see R309-700-5). If the applicant seeks financial assistance in the form of a loan of amounts in the security account established pursuant to Chapter 10c, Title 73 Utah Code, which loan is intended to provide direct financing of projects costs, then the Board shall authorize such loan only if it determines that credit enhancement agreements, interest buy-down agreements and other financing alternatives are unavailable or unreasonably expensive to the applicant or that a loan represents the financing alternative most economically advantageous to the state and the applicant;

provided, that for purposes of this paragraph and for purposes of Section 73-10c-4(2), Utah Code, the term "loan" shall not include loans issued in connection with interest buy-down agreements as described in R309-700-10(2) or in connection with any other interest buy-down arrangement.

(5) Planning Grant - The applicant must submit an application provided by the Division and attach a scope of work, project schedule, cost estimates, and a draft contract for planning services.

(6) Planning Loan - The applicant requesting a Planning Loan must complete an application for a Planning Loan, prepare a plan of study, satisfactorily demonstrate procurement of planning services, and prepare a draft contract for planning services including financial evaluations and a schedule of work.

(7) Design Grant or Loan - The applicant requesting a Design Grant or Loan must have completed an engineering plan meeting program requirements.

(8) The applicant must demonstrate public support for the project. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the rate of interest, the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of a public hearing shall be forwarded to the Division of Drinking Water.

(9) For financial assistance mechanisms when the applicant's bond is purchased by the Board, the project applicant's bond documentation, including an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant (see R309-700-13(3)), must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to the Utah Code, Section 11-14-21. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel experienced in bond matters that the drinking water project obligation is a valid and binding obligation of the applicant.

(10) Hardship Grant - The Board or its designee executes a grant agreement setting forth the terms and conditions of the grant.

(11) As authorized in 19-4-106(3) of the Utah Code, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction, as specified in rule R309-500-4 General. Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary.

(12) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement as described in R309-700-10(2) to cover any part of project costs an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for qualified project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement as described in R309-700-10(1) all project funds will be maintained in a separate account and a quarterly report of project expenditures will be provided to the Board.

(13) If a revenue bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(14) A plan of operation for the completed project, including staffing with an appropriately certified (in accordance with R309-300) operator, staff training, and procedures to assure efficient start-up, operation and maintenance of the project, must be submitted by the applicant and approved by the Board, its Executive Secretary or other designee.

(15) The applicant's contract with its engineer must be submitted to the Board for review to determine that there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(16) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, and adequacy of bidding and contract documents.

(17) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board executes the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and notifies the applicant to sell the bonds (See R309-700-9 and -10).

(18) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant sells the bonds and notifies the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by Section 73-10c-6(3)(d), Utah Code. If an interest buy-down agreement is utilized, the bonds shall bear a legend which makes reference to the interest buy-down agreement and states that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(19) The applicant opens bids for the project.

(20) LOAN ONLY - The Board approves purchase of the bonds and executes the loan contract (see R309-700-4(24)).

(21) LOAN ONLY - The loan closing is conducted.

(22) A preconstruction conference shall be held.

(23) The applicant issues a written notice to proceed to the contractor.

(24) The applicant must have adopted a Water Conservation Plan prior to executing the loan agreement.

R309-700-5. Loan, Credit Enhancement, Interest Buy-Down, and Hardship Grant Consideration Policy.

(1) Board Priority Determination. In determining the priority for financial assistance the Board shall consider:

(a) The ability of the applicant to obtain funds for the drinking water project from other sources or to finance such project from its own resources;

(b) The ability of the applicant to repay the loan or other project obligations;

(c) Whether a good faith effort to secure all or part of the services needed from the private sector through privatization has been made; and

(d) Whether the drinking water project:

(i) meets a critical local or state need;

(ii) is cost effective;

(iii) will protect against present or potential hazards;

(iv) is needed to comply with the minimum standards of the Federal Safe Drinking Water Act, 42 USC, 300f, et. seq. or similar or successor statute;

(v) is needed to comply with the minimum standards of the

Utah Safe Drinking Water Act, Title 19, Chapter 4 or similar or successor statute.

(vi) is needed as a result of an Emergency.

(e) The overall financial impact of the proposed project on the citizens of the community, including direct and overlapping indebtedness, tax levies, user charges, impact or connection fees, special assessments, etc., resulting from the proposed project, and anticipated operation and maintenance costs versus the median income of the community;

(f) Consistency with other funding source commitments which may have been obtained for the project;

(g) The point total from an evaluation of the criteria listed in Table 1;

TABLE 1

NEED FOR PROJECT	POINTS
1. PUBLIC HEALTH AND WELFARE (SELECT ONE)	
A. There is evidence that waterborne illnesses have occurred	15
B. There are reports of illnesses which may be waterborne	10
C. No reports of waterborne illness, but high potential for such exists	5
D. No reports of possible waterborne illness and low potential for such exists	0
2. WATER QUALITY RECORD (SELECT ONE)	
A. Primary Maximum Contaminant Level (MCL) violation more than 6 times in preceding 12 months	15
B. In the past 12 months violated a primary MCL 4 to 6 times	12
C. In the past 12 months violated a primary MCL 2 to 3 times or exceeded the Secondary Drinking Water Standards by double	9
D. In the past 12 months violated MCL 1 time	6
E. Violation of the Secondary Drinking Water Standards	5
F. Does not meet all applicable MCL goals	3
G. Meets all MCLs and MCL goals	0
3. VERIFICATION OF POTENTIAL SHORTCOMINGS (SELECT ONE)	
A. Has had sanitary survey within the last year	5
B. Has had sanitary survey within the last five years	3
C. Has not had sanitary survey within last five years	0
4. GENERAL CONDITIONS OF EXISTING FACILITIES (SELECT ALL THOSE WHICH ARE TRUE AND PROJECT WILL REMEDY)	
A. The necessary water treatment facilities do not exist, not functioning, functioning but do not meet the requirements of the Utah Public Drinking Water Rules (UPDWR)	10
B. Sources are not developed or protected according to UPDWR	10
C. Source capacity is not adequate to meet current demands and system occasionally goes dry or suffers from low pressures	10
D. Significant areas within distribution system have inadequate fire protection	8
E. Existing storage tanks leak excessively or are structurally flawed	5
F. Pipe leak repair rate is greater than 4 leaks per 100 connections per year	2
G. Existing facilities are generally sound and meeting existing needs	0
5. ABILITY TO MEET FUTURE DEMANDS (Select One)	
A. Facilities have inadequate capacity and cannot reliably meet current demands	10
B. Facilities will become inadequate within the next three years	5
C. Facilities will become inadequate within the next five to ten years	3
6. OVERALL URGENCY (Select One)	
A. System is generally out of water. There is no fire protection or water for flushing toilets	10
B. System delivers water which cannot be rendered safe by boiling	10
C. System delivers water which can be rendered safe by boiling	8
D. System is occasionally out of water	5
E. Situation should be corrected, but is not urgent	0
TOTAL POSSIBLE POINTS FOR NEED FOR PROJECT	100

(h) Other criteria that the Board may deem appropriate.

(2) Drinking Water Board Financial Assistance Determination. The amount and type of financial assistance offered will be based on the following considerations:

(a) An evaluation based upon the criteria in Table 2 of the applicant's financial condition, the project's impact on the community, and the applicant's commitment to operating a responsible water system.

The interest rate to be charged by the Board for its financial assistance will be computed using the number of points assigned to the project from Table 2 to reduce, in a manner determined by Board resolution from time to time, the most recent Revenue Bond Buyer Index (RBBI) as published by the Bond Buyer's Guide. The interest rate so calculated will be assigned to the financial assistance. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

For hardship grant consideration, exclusive of planning and design grants or loans described in Sections R309-700-6, 7 and 8, the estimated annual cost of drinking water service for the average residential user should exceed 1.75% of the median adjusted gross household income from the most recent available State Tax Commission records or the local median adjusted gross income (MAGI) is less than or equal to eighty-percent (80.0%) of the State's median adjusted gross income. When considering funding for planning and design grants and loans described in Sections R309-700-6, 7 and 8, the Board will consider whether or not the applicant's local MAGI meets the above criteria for hardship grant funding. If, in the judgment of the Board, the State Tax Commission data is insufficient, the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filings for a given zip code or city). The Board will also consider the applicant's level of contribution to the project.

TABLE 2

FINANCIAL CONSIDERATIONS	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost $0 to $500 per benefitting connection	13
B. $501 to $1,500	11
C. $1,501 to $2,000	9
D. $2,001 to $3,000	6
E. $3,001 to $5,000	3
F. $5,001 to $10,000	1
G. Over $10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	16
B. 71 to 80% of State Median AGI	14
C. 81 to 95% of State Median AGI	12
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
3. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	

A. Greater than 25% of project funds	15
B. 15 to 25% of project funds	12
C. 10 to 15% of project funds	9
D. 5 to 9% of project funds	6
E. 2 to 4% of project funds	3
F. Less than 2% of project funds	0

4 and 5. ABILITY TO REPAY LOAN:

4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)

A. Greater than 2.50% of local median AGI	15
B. 2.01 to 2.50% of local median AGI	11
C. 1.51 to 2.00% of local median AGI	7
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0

5. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)

A. Greater than 12% of fair market value	15
B. 8.1 to 12% of fair market value	12
C. 4.1 to 8.0% of fair market value	9
D. 2.1 to 4.0% of fair market value	6
E. 1.0 to 2.0% of fair market value	3
F. Less than 1% of fair market value	0

6. SPECIAL INCENTIVES
Applicant:

A. has a replacement fund receiving annual deposits of 5% of drinking water budget, and has already accumulated a minimum of 25% of said annual DW budget in this reserve fund.	5
B. is creating or enhancing a regionalization Plan	16
C. has a rate structure encouraging conservation	5
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

(b) Optimizing return on the security account while still allowing the project to proceed.

(c) Local political and economic conditions.

(d) Cost effectiveness evaluation of financing alternatives.

(e) Availability of funds in the security account.

(f) Environmental need.

(g) Other criteria the Board may deem appropriate.

R309-700-6. Planning Grant.

(1) A Planning Grant can only be made to a political subdivision with a population less than 10,000 people demonstrating an urgent need to evaluate its drinking water system's technical, financial and managerial capacity, and lacks the financial means to readily accomplish such an evaluation.

(2) Qualifying for a Planning Grant will be based on the criteria listed in R309-700-5(2)(a).

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Grant will be deposited with these other funds into a supervised escrow account at the time the grant agreement between the applicant and the Board is executed or the Board may choose to provide the funds in incremental disbursements as the applicant incurs expenses on the project.

(4) Failure on the part of the recipient of a Planning Grant to implement the findings of the plan may prejudice any future applications for drinking water project funding.

(5) The recipient of a Planning Grant must first receive written approval for any cost increases or changes to the scope of work.

(6) The Planning Grant recipient must provide a copy of the planning project results to the Division. The planning effort shall conform to rules R309.

R309-700-7. Planning Loan.

(1) A Planning Loan can only be made to a political subdivision which demonstrates a financial hardship preventing the completion of project planning.

(2) A Planning Loan is made to a political subdivision with the intent to provide interim financial assistance for project planning until the long-term project financing can be secured. The Planning Loan must be repaid to the Board unless the payment obligation is waived by the Board.

(3) The applicant must demonstrate that all funds necessary to complete project planning will be available prior to commencing the planning effort. The Planning Loan will be deposited with these other funds into a supervised escrow account at the time the loan agreement between the applicant and the Board is executed.

(4) The recipient of a Planning Loan must first receive written approval for any cost increases or changes to the scope of work.

(5) A copy of the document(s) prepared by means of the planning loan shall be submitted to the Division.

R309-700-8. Design Grant or Loan.

(1) A Design Grant or Loan can only be made to a political subdivision demonstrating financial hardship preventing completion of project design. For purposes of this Section R309-700-8, project design means engineering plans and specifications, construction contracts, and associated work.

(2) A Design Grant or Loan is made to a political subdivision with the intent to provide interim financial assistance for the completion of the project design until the long-term project financing can be secured. The Design Grant or Loan must be repaid to the Board unless the payment obligation is waived by the Board as authorized by 73-10c-4(3)(b).

(3) The applicant must demonstrate that all funds necessary to complete the project design will be available prior to commencing the design effort. The Design Grant or Loan will be deposited with these other funds into a supervised escrow account at the time the grant or loan agreement between the applicant and the Board is executed.

(4) The recipient of a Design Grant or Loan must first receive written approval from the Board before incurring any cost increases or changes to the scope of work.

R309-700-9. Credit Enhancement Agreements.

The Board will determine whether a project may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement subject to the criteria in R309-700-5. To provide security for project obligations the Board may agree to purchase project obligations of applicants or make loans to the applicants to prevent defaults in payments on project obligations. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. In addition, the Board may consider other methods and assistance to applicants to properly enhance the marketability of or security for project obligations.

R309-700-10. Interest Buy-Down Agreements.

Interest buy-down agreements may consist of:

(1) A financing agreement between the Board and applicant whereby a specified sum is loaned or granted to the applicant to be placed in a trust account. The trust account shall be used exclusively to reduce the cost of financing for the project.

(2) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by

the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(3) Any other legal method of financing which reduces the annual payment amount on locally issued bonds. After credit enhancement agreements have been evaluated by the Board and it is determined that this method is not feasible or additional assistance is required, interest buy-down agreements and loans may be considered. Once the level of financial assistance required to make the project financially feasible is determined, a cost effective evaluation of interest buy-down options and loans must be completed. The financing alternative chosen should be the one most economically advantageous for the state and the applicant.

R309-700-11. Loans.

The Board may make loans to finance all or part of a drinking water project only after credit enhancement agreements and interest buy-down agreements have been evaluated and found either unavailable or unreasonably expensive. The financing alternative chosen should be the one most economically advantageous for the state and its political subdivisions.

R309-700-12. Project Authorization (Reference R309-700-4(4)).

A project may be "Authorized" for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant in writing by the Board following submission and favorable review of an application form, engineering report (if required), financial capability assessment, staff feasibility report, and capacity assessment (when determined to be beneficial for evaluating project feasibility). The engineering report shall include a cost effectiveness analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations. If it is anticipated that a project will be a candidate for financial assistance from the Board, the Staff should be contacted, and the plan of study for the engineering report (if required) should be approved before the planning is initiated.

Once the application form and other related documents have been reviewed and assessments made, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include a detailed evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant).

Project Authorization is not a contractual commitment and is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, interest buy-down, or grant agreement and upon adherence to the project schedule approved at that time. If the project is not proceeding according to the project schedule the Board may withdraw the project Authorization so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-700-13. Financial Evaluations.

(1) The Board considers it a proper function to assist and give direction to project applicants in obtaining funding from such State, Federal or private financing sources as may be available to achieve the most effective utilization of resources in meeting the needs of the State. This may also include joint financing arrangements with several funding agencies to complete a total project.

(2) Hardship Grants will be evidenced by a grant agreement.

(3) In providing any form of financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel to the effect that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(a) In providing any form of financial assistance in the form of a loan, the Board may purchase either a taxable or non-taxable bonds; provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt and are accompanied by a legal opinion of recognized municipal bond counsel to the effect that interest on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(i) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(ii) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(b) In any other situations, the Board may purchase taxable bonds if it determines, after evaluating all relevant circumstances including the applicant's ability to pay, that the purchase of the taxable bonds is in the best interests of the State and applicant.

(c) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(d) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or interest) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(4) The Board will consider the financial feasibility and cost effectiveness of the project in detail. The financial capability assessment must be completed as a basis for the review. The Board may require that a full capacity assessment be made for a given project. The Board will generally use these reports and assessments to determine whether a project will be Authorized to receive a loan, credit enhancement agreement, interest buy-down agreement, or hardship grant (Reference R309-700-9, -10 and -11). If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. The Board will require the applicants to repay the loan as rapidly as is reasonably consistent with the financial capability of the applicant. It is the Board's intent to avoid repayment schedules which would exceed the design life of the project facilities.

(5) Normal engineering and investigation costs incurred by

the Department of Environmental Quality or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization. If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board, then administrative costs will not be charged to the project. However, if the project is Authorized to receive a loan or grant of funds from the Board, all costs from the beginning of the project will be charged to the project and paid by the applicant as a part of the total project cost. If the applicant decides not to build the project after the Board has Authorized the project, all costs accruing after the Authorization will be reimbursed by the applicant to the Board.

(6) The Board shall determine the date on which the scheduled payments of principal and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system one year of actual use of the project facilities before the first repayment of principal is required.

(7) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(8) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(9) The Board will not forgive the applicant of any payment after the payment is due.

(10) The Board will require a debt service reserve account be established by the applicant at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Annual reports/statements will be required. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(11) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or interest on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system and to notify the Board prior to making any disbursements from the fund so the Board can confirm that any expenditure is for an acceptable purpose. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed. Annual reports/statements will be required.

(12) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

R309-700-14. Committal of Funds and Approval of Agreements.

After the Board has issued a Plan Approval and received the appropriate legal documents and other items required by Rule R309-700, the Board will determine whether the project loan, interest buy-down, credit enhancement, and/or grant meets the conditions of its authorization. If so, the Board will give its final approval. The Executive Secretary or designee may then execute the financial assistance agreement if no aspects of the project have changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, interest buy-down agreement, or grant agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-700-15. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. The applicant shall notify the Executive Secretary when the project is near completion and request a final inspection. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

KEY: loans, interest buy-downs, credit enhancements, hardship grants
January 28, 2009 19-4-104
Notice of Continuation April 2, 2007 73-10c

R309. Environmental Quality, Drinking Water.
R309-705. Financial Assistance: Federal Drinking Water State Revolving Fund (SRF) Loan Program.
R309-705-1. Purpose.

The purpose of this rule is to establish criteria for financial assistance to public drinking water system in accordance with a federal grant established under 42 U.S.C. 300j et seq., federal Safe Drinking Water Act (SDWA).

R309-705-2. Statutory Authority.

The authority for the Department of Environmental Quality acting through the Drinking Water Board to issue financial assistance for drinking water projects from a federal capitalization grant is provided in 42 U.S.C. 300j et seq., federal Safe Drinking Water Act, and Title 73, Chapter 10c, Utah Code.

R309-705-3. Definitions.

Definitions for general terms used in this rule are given in R309-110. Definitions for terms specific to this rule are given below.

"Board" means the Drinking Water Board.

"Drinking Water Project" means any work or facility that is necessary or desirable to provide water for human consumption and other domestic uses. Its scope includes collection, treatment, storage, and distribution facilities; and also includes studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks.

"Project Costs" include the cost of acquiring and constructing any project including, without limitation: the cost of acquisition and construction of any facility or any modification, improvement, or extension of such facility; any cost incident to the acquisition of any necessary property, easement or right of way, except property condemnation cost, which are not eligible costs; engineering or architectural fees, legal fees, fiscal agents' and financial advisors' fees; any cost incurred for any preliminary planning to determine the economic and engineering feasibility of a proposed project; costs of economic investigations and studies, surveys, preparation of designs, plans, working drawings, specifications and the inspection and supervision of the construction of any facility; Hardship Grant Assessments, fees and interest accruing on loans made under this program during acquisition and construction of the project; costs for studies, planning, education activities, and design work that will promote protecting the public from waterborne health risks; and any other cost incurred by the Board or the Department of Environmental Quality, in connection with the issuance of obligation to evidence any loan made to it under the law.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income less than or equal to 80% of the State's median adjusted gross income, as determined by the Utah State Tax commission from federal individual income tax returns excluding zero exemption returns, or where the estimated annual cost, including loan repayment costs, of drinking water service for the average residential user exceeds 1.75% of the median adjusted gross income. If, in the judgment of the Board, the State Tax Commission data is insufficient the Board may accept other measurements of the water users' income (i.e. local income survey or questionnaire when there is a significant difference between the number of service connections for a system and the number of tax filing for a given zip code or city).

"Drinking Water Project Obligation" means any bond, note or other obligation issued to finance all or part of the cost of acquiring, constructing, expanding, upgrading or improving a drinking water project, including, but not limited to, preliminary planning, studies, surveys, engineering or architectural fees, and preparation of plans and specifications.

"Credit Enhancement Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system for the purpose of providing methods and assistance to eligible water systems to improve the security for and marketability of drinking water project obligations.

"Eligible Water System" means any community drinking water system, either privately or publicly owned; and nonprofit noncommunity water systems.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and an eligible water system, for the purpose of reducing the cost of financing incurred by an eligible water system on bonds issued by the subdivision for project costs.

"Financial Assistance" means a project loan, credit enhancement agreement, interest buy-down agreement, or technical assistance.

"Hardship Grant Assessment" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Negative Interest" means a loan with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Drinking Water Board.

"Principal Forgiveness" means a loan wherein a portion of the loan amount is "forgiven" upon closing the loan. The terms for principal forgiveness will be as directed by section 4 of this rule and by the Drinking Water Board.

"Interest" means an assessment applied to a loan. The assessment shall be calculated as a percentage of outstanding principal balance of a loan, applied on an annual basis.

"Emergency" means an unexpected, serious occurrence of situation requiring urgent or immediate action. With regard to a water system this would be a situation resulting from the failure of equipment or other infrastructure, or contamination of the water supply, which threatens the health and / or safety of the public / water users.

"Technical Assistance" means financial assistance provided for a feasibility study or master plan, to identify and / or correct system deficiencies, to help a water system overcome other technical problems. The system receiving said technical assistance may or may not be required to repay the funds received. If repayment is required, the Board will establish the terms of repayment.

"SRF Technical Assistance Fund" means a fund (or account) that will be established for the express purpose of providing "Technical Assistance" to eligible drinking water systems.

R309-705-4. Financial Assistance Methods.

(1) Eligible Activities of the SRF.

Funds within the SRF may be used for loans and other authorized forms of financial assistance. Funds may be used for the construction of publicly or privately owned works or facilities, or any work that is an eligible project cost as defined by 73-10c-2 of the Utah Code or as allowed by 42 U.S.C.A. 300f et seq. Those costs incurred subsequent to the submission of a funding application to the Board and prior to the execution of a financial assistance agreement and which meet the above criteria are eligible for reimbursement from the proceeds of the financial assistance agreement.

(2) Types of Financial Assistance Available for Eligible Water Systems.

(a) Loans.

To qualify for "negative interest" or "principal forgiveness", the system must qualify as a "disadvantaged community" as defined in section 3 of this rule. Upon application, the Board will make a case by case determination

whether the system is a "disadvantaged community". To be eligible to be considered as a disadvantaged community, the system must meet the definition provided in section 3 of this rule. Additionally, the Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and other such information as the Board determines relevant to making the decision to recognize the system as a "disadvantaged community".

(i) Hardship Grant Assessment.

The assessment will be calculated based on the procedures and formulas shown in section 6 of this rule.

(ii) Repayment.

Annual repayments of principal, interest, fees and/or Hardship Grant Assessment generally commence not later than one year after project completion. Project completion shall be defined as the date the funded project is capable of operation and a notice of "beneficial occupancy" is given to the general contractor. Where a project has been phased or segmented, the repayment requirement applies to the completion of individual phases or segments.

The loan must be fully amortized not later than 20 years after project completion or not later than 30 years after project completion if the community served by the water system is determined to be a disadvantaged community. The yearly amount of the principal repayment is set at the discretion of the Board.

(iii) Principal Forgiveness.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of forgiveness of the principal loan amount. Terms for principal forgiveness will be determined by Board resolution.

Eligible applicants for "principal forgiveness" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(iv) Negative Interest Rate.

Eligible water systems meeting the definition of "disadvantaged community" may qualify for financial assistance in the form of a loan with a negative interest rate, as determined by Board resolution.

Eligible applicants for "negative interest" financial assistance will be considered by the Board on a case-by-case basis. The Board will consider the type of community served by the system, the economic condition of the community, the population characteristics of those served by the system, factors relating to costs, charges and operation of the water system, and such other information as the Board determines relevant to making the decision to recognize the system as a disadvantaged community.

(v) Dedicated Repayment Source and Security.

Loan recipients must establish one or more dedicated sources of revenue for repayment of the loan. As a condition of financial assistance, the applicant must demonstrate a revenue source and security, as required by the Board.

(b) Refinancing Existing Debt Obligations.

The Board may use funds from the SRF to buy or refinance municipal, inter-municipal or interstate agencies, where the initial debt was incurred and construction started after July 1, 1993. Refinanced projects must comply with the requirements imposed by the Safe Drinking Water Act(SDWA) as though they were projects receiving initial financing from the SRF.

(c) Credit Enhancement Agreements and Interest Buy-Down Agreements.

The Board will determine whether a project's funding may receive all or part of a loan, credit enhancement agreement or interest buy-down agreement. To provide security for project obligations, the Board may agree to purchase project obligations of applicants, or make loans to the applicants. The Board may also consider making loans to the applicants to pay the cost of obtaining letters of credit from various financial institutions, municipal bond insurance, or other forms of insurance or security for project obligations. The Board may also consider other methods of assistance to applicants to properly enhance the marketability of or security for project obligations.

Interest buy-down agreements may consist of any of the following:

(i) A financing agreement between the Board and applicant whereby a specified sum is loaned to the applicant. The loaned funds shall be placed in a trust account, which shall be used exclusively to reduce the cost of financing for the project.

(ii) A financing agreement between the Board and the applicant whereby the proceeds of bonds purchased by the Board is combined with proceeds from publicly issued bonds to finance the project. The rate of interest on bonds purchased by the Board may carry an interest rate lower than the interest rate on the publicly issued bonds, which when blended together will provide a reduced annual debt service for the project.

(iii) Any other legal method of financing which reduces the annual payment amount on publicly issued bonds. The financing alternative chosen should be the one most economically advantageous for the State and the applicant.

(d) Technical Assistance.

The Board may establish a fund (or account) into which the proceeds of an annual fee on loans will be placed. These funds will be used to finance technical assistance for eligible water systems.

This fund will provide low interest loans for technical assistance and any other eligible purpose as defined by Section 1452 of the Safe Drinking Water Act (SDWA) Amendments of 1996 to water systems that are eligible for Federal SRF loans. Repayment of these loans may be waived in whole or in part (grant funds) by the Board whether or not the borrower is disadvantaged.

(i) The Board may establish a fee to be assessed against loans authorized under the Federal SRF Loan Program. The revenue generated by this fee will be placed in a new fund called the "SRF Technical Assistance Fund".

(ii) The amount will be assessed as a percentage of the Principal Balance of the loan on an annual basis, the same as the annual interest and hardship grant assessment are assessed. The borrower will pay the fee annually when paying the principal and interest or hardship grant assessments.

(iii) The Board may set / change the amount of the fee from time to time as they determine meets the needs of the program.

(iv) This fee will be part of the "effective rate" calculated for the loan using Table 2, R309-705-6. This fee may be charged in lieu of or in addition to the interest rate or hardship grant assessment, but in no case will the total of the technical assistance fee, the interest rate, and hardship grant assessment exceed the "effective rate".

(v) The proceeds of the fund will be used as defined above or as modified by the Board in compliance with Section 1452 of the federal SDWA Amendments of 1996.

(3) Ineligible Projects.

Projects which are ineligible for financial assistance include:

(a) Any project for a water system in significant non-compliance, as measured by a "not approved" (R309-150)

rating, unless the project will resolve all outstanding issues causing the non-compliance.

(b) Any project where the Board determines that the applicant lacks the technical, managerial, or financial capability to achieve or maintain SDWA compliance, unless the Board determines that the financial assistance will allow or cause the system to maintain long-term capability to stay in compliance.

(c) Any project meant to finance the expansion of a drinking water system to supply or attract future population growth. Eligible projects, however, can be designed and funded at a level which will serve the population that a system expects to serve over the useful life of the facility.

(d) Projects which are specifically prohibited from eligibility by Federal guidelines. These include the following:

(i) Dams, or rehabilitation of dams;

(ii) Water rights, unless the water rights are owned by a system that is being purchased through consolidation as part of a capacity development strategy;

(iii) Reservoirs, except for finished water reservoirs and those reservoirs that are part of the treatment process and are located on the property where the treatment facility is located;

(iv) Laboratory fees for monitoring;

(v) Operation and maintenance costs;

(vi) Projects needed mainly for fire protection.

R309-705-5. Application and Project Initiation Procedures.

The following procedures must normally be followed to obtain financial assistance from the Board:

(1) It is the responsibility of the applicant to obtain the necessary financial, legal and engineering counsel to prepare its application and an effective and appropriate financial assistance agreement.

(2) A completed application form and project engineering report (facility plan) listing the project alternatives considered and including a justification for the chosen alternative, a project financing plan including an evaluation of credit enhancement, interest buy-down and loan methods applicable to the project and financial capability assessment and a history of the applicant's compliance with the SDWA are submitted to the Board. Comments from other interested parties such as an association of governments, the local health and planning departments, and the Department of Environmental Quality (DEQ) District Engineers will also be accepted. Those costs incurred subsequent to the submission of a completed funding application form to the Board and prior to the execution of a financial assistance agreement and which meet the criteria for project costs are eligible for reimbursement from the proceeds of the financial assistance agreement.

(3) An engineering and financial feasibility report and a capacity development analysis are prepared by Division staff for presentation to and consideration by the Board. A Capacity Assessment will be made by Division staff (See rule R309-352) for "equivalency" projects, essentially, those funded by the annual federal Capitalization Grant as defined by federal regulations. A capacity assessment may be prepared for a "non-equivalency project when it is determined to be beneficial for evaluating project feasibility.

(4) The Board may authorize financial assistance for the project on the basis of the staff's feasibility report and designate whether a loan, credit enhancement agreement, interest buy-down agreement, or any combination thereof, is to be entered into, and approve the project schedule (see section 7 of this rule).

(5) The applicant must demonstrate public support for the project prior to bonding, as deemed acceptable by the Drinking Water Board. As a minimum, for a loan to be secured by a revenue bond, the Sponsor must mail notices to each water user in the Sponsor's service area informing them of a public hearing. In addition to the time and location of the public hearing the notice shall inform water users of the Sponsor's intent to issue a non-voted revenue bond to the Board, shall describe the face amount of the bond, the "effective rate", the repayment schedule and shall describe the impact of the project on the user including: user rates, impact and connection fees. The notice shall state that water users may respond to the Sponsor in writing or in the public hearing within ten days after the date of the notice. A copy of all written responses and a certified record of the public hearing shall be forwarded to the Division of Drinking Water.

(6) For financial assistance mechanisms where the applicant's bond is purchased by the Board, the project applicant's bond documentation must include an opinion from recognized bond counsel. Counsel must be experienced in bond matters, and must include an opinion that the drinking water project obligation is a valid and binding obligation of the applicant (see section 8 of this rule). The opinion must be submitted to the Assistant Attorney General for preliminary approval and the applicant shall publish a Notice of Intent to issue bonds in a newspaper of general circulation pursuant to 11-14-21 of the Utah Code. For financial assistance mechanisms when the applicant's bond is not purchased by the Board, the applicant shall submit a true and correct copy of an opinion from legal counsel, experienced in bond matters, that the drinking water project obligation is a valid and binding obligation of the applicant.

(7) As authorized in 19-4-106(3) of the Utah Code, the Executive Secretary may review plans, specifications, and other data pertinent to proposed or expanded water supply systems to insure proper design and construction, as specified in rule R309-500-4 General. Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary.

(8) If a project is designated to be financed by the Board through a loan or an interest buy-down agreement, an account supervised by the applicant and the Board will be established by the applicant to assure that loan funds are used only for eligible project costs. If financial assistance for the project is provided by the Board in the form of a credit enhancement or interest buy-down agreement, all project funds will be maintained in a separate account, and a quarterly report of project expenditures will be provided to the Board.

Incremental disbursement bonds will be required. Cash draws will be based on a schedule that coincides with the rate at which project related costs are expected to be incurred for the project.

(9) If a revenue bond is to be used to secure a loan, a User Charge Ordinance, or water rate structure, must be submitted to the Board for review and approval to insure adequate provisions for debt retirement and/or operation and maintenance. If a general obligation bond is to be used to secure a loan, a User Charge Ordinance must be submitted to the Board for review and approval to insure the system will have adequate resources to provide acceptable service.

(10) A "Private Company" will be required to enter into a Loan Agreement with the Board. The loan agreement will establish the procedures for disbursement of loan proceeds and will set forth the security interests to be granted to the Board by the Applicant to secure the Applicant's repayment obligations.

(a) The Board may require any of the following forms of security interest or additional/other security interests to guarantee repayment of the loan: deed of trust interests in real property, security interests in equipment and water rights, and personal guarantees.

(b) The security requirements will be established after the Board's staff has reviewed and analyzed the Applicants financial condition.

(c) These requirements may vary from project to project at the discretion of the Board

(d) The Applicant will also be required to execute a Promissory Note in the face amount of the loan, payable to the order of the lender, and file a Utah Division of Corporations and Commercial Code Financing Statement, Form UCC-1.

(e) The Board may specify that loan proceeds be disbursed incrementally into an escrow account for expected construction costs, or it may authorize another acceptable disbursement procedure.

(11) The applicant's contract with its engineer must be submitted to the Board for review to determine if there will be adequate engineering involvement, including project supervision and inspection, to successfully complete the project.

(12) The applicant's attorney must provide an opinion to the Board regarding legal incorporation of the applicant, valid legal title to rights-of-way and the project site, validity and quantity of water rights, and adequacy of bidding and contract documents, as required.

(13) A position fidelity bond may be required by the Board insuring the treasurer or other local staff handling the repayment funds and revenues produced by the applicant's system and payable to the State of Utah through the Drinking Water Board.

(14) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The Board shall execute the credit enhancement agreement or interest buy-down agreement setting forth the terms and conditions of the security or other forms of assistance provided by the agreement and shall notify the applicant to sell the bonds.

(15) CREDIT ENHANCEMENT AGREEMENT AND INTEREST BUY-DOWN AGREEMENT ONLY - The applicant shall sell the bonds and shall notify the Board of the terms of sale. If a credit enhancement agreement is utilized, the bonds shall contain the legend required by 73-10c-6(3)(d) of the Utah Code. If an interest buy-down agreement is being utilized, the bonds shall bear a legend referring to the interest buy-down agreement and state that such agreement does not constitute a pledge of or charge against the general revenues, credit or taxing powers of the state and that the holder of any such bond may look only to the applicant and the funds and revenues pledged by the applicant for the payment of interest and principal on the bonds.

(16) The applicant shall open bids for the project.

(17) LOAN ONLY - The Board shall give final approval to purchase the bonds and execute the loan contract.

(18) LOAN ONLY - The closing of the loan is conducted.

(19) A preconstruction conference shall be held.

(20) The applicant shall issue a written notice to proceed to the contractor.

R309-705-6. Applicant Priority System and Selection of Terms of Assistance.

(1) Priority Determination.

The Board may, at its option, modify a project's priority rating based on the following considerations:

(a) The project plans, specifications, contract, financing, etc., of a lesser-rated project are ready for execution.

(b) Available funding.

(c) Acute health risk.

(d) Capacity Development (financial, technical, or managerial issues needing resolution to avoid EPA intervention).

(e) An Emergency.

The Board will utilize Table 1 to prioritize loan applicants as may be modified by (a), (b), (c), or (d) above.

TABLE 1

Priority System

Deficiency Description	Points Received
Source Quality/Quantity	
Health Risk (select one)	
A. There is evidence that waterborne illnesses have occurred.	25
B. There are reports of illnesses which may be waterborne.	20
C. High potential for waterborne illness exists.	15
D. Moderate potential for waterborne illness	8
E. No evidence of potential health risks	0
Compliance with SDWA (select all that apply)	
A. Source has been determined to be under the influence of surface water.	25
B. System is often out of water due to inadequate source capacity.	20
-or- System capacity does not meet the requirements of UPDWR.	10
C. Source has a history of three or more confirmed microbiological violations within the last year.	10
D. Sources are not developed or protected according to UPDWR.	10
E. Source has confirmed MCL chemistry violations within the last year.	10
Total	100

Treatment

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Treatment system cannot consistently meet log removal requirements, turbidity standards, or other enforceable drinking water quality standards.	25
B. The required disinfection facilities are not installed, are inadequate, or fail to provide adequate water quality.	25
C. Treatment system is subject to impending failure, or has failed.	25
-or- Treatment system equipment does not meet demands of UPDWR including the lead and/or copper action levels.	20
-or- System equipment is projected to become inadequate without upgrades.	5
Total	75

Storage

Deficiency Description	Points Available
Health Risk / Compliance with SDWA (select all that apply)	
A. Storage system is subject to impending failure, or has failed.	25
-or- System is old, cannot be easily cleaned, or subject to contamination.	15
B. Storage system is inadequate for existing demands.	20
-or- Storage system demand exceeds 90% of storage capacity.	10
C. Applicable contact time requirements cannot be met without an upgrade.	15
D. System suffers from low static pressures.	15
Total	75

Distribution

Deficiency Description	Points Available
Health Risk/Compliance with SDWA (select all that apply)	
A. Distribution system equipment is deteriorated or inadequate for existing demands.	20
-or- Distribution system is inadequate to meet 5 year projected demands.	10
B. Applicable disinfectant residual maintenance requirements are not met or high backflow contamination potential exists.	20
C. Project will replace pipe containing unsafe materials (lead, asbestos, etc).	15
D. Minimum dynamic pressure requirements are not met.	10
E. System experiences a heavy leak rate in the distribution lines.	10
Total	75

Emergencies

Upon the Board finding of an emergency as required by R309-705-9.	Total 100

Priority Rating = (Average Points Received) x (Rate Factor) x (AGI Factor)

Where:
* Rate Factor = (Average System Water Bill/Average State Water Bill)
** AGI Factor = (State Median AGI/System Median AGI)

(2) Financial Assistance Determination. The amount and type of financial assistance offered will be based upon the criteria shown in Table 2. As determined by Board resolution, disadvantaged communities may also receive zero-percent loans, or other financial assistance as described herein.

Effective rate calculation methods will be determined by Board resolution from time to time, using the Revenue Bond Buyer Index (RBBI)as a basis point, the points assigned in Table 2, and a method to reduce the interest rate from a recent RBBI rate down to a potential minimum of zero percent. To encourage rapid repayment of a loan the Board will increase the interest rate 0.02 per cent (0.02%) for each year the repayment period exceeds five (5.0) years.

TABLE 2
INTEREST, HARDSHIP GRANT FEE AND OTHER FEES REDUCTION FACTORS

	POINTS
1. COST EFFECTIVENESS RATIO (SELECT ONE)	
A. Project cost $0 to $500 per benefitting connection	13
B. $501 to $1,500	11
C. $1,501 to $2,000	9
D. $2,001 to $3,000	6
E. $3,001 to $5,000	3
F. $5,001 to $10,000	1
G. Over $10,000	0
2. CURRENT LOCAL MEDIAN ADJUSTED GROSS INCOME (AGI) (SELECT ONE)	
A. Less than 70% of State Median AGI	16
B. 71 to 80% of State Median AGI	14
C. 81 to 95% of State Median AGI	12
D. 96 to 110% of State Median AGI	9
E. 111 to 130% of State Median AGI	6
F. 131 to 150% of State Median AGI	3
G. Greater than 150% of State Median AGI	0
3. APPLICANT'S COMMITMENT TO PROJECT PROJECT FUNDING CONTRIBUTED BY APPLICANT (SELECT ONE)	
A. Greater than 25% of project funds	15
B. 15 to 25% of project funds	12
C. 10 to 15% of project funds	9
D. 5 to 9% of project funds	6
E. 2 to 4% of project funds	3
F. Less than 2% of project funds	0
4 and 5. ABILITY TO REPAY LOAN:	
4. WATER BILL (INCLUDING TAXES) AFTER PROJECT IS BUILT RELATIVE TO LOCAL MEDIAN ADJUSTED GROSS INCOME (SELECT ONE)	
A. Greater than 2.50% of local median AGI	15
B. 2.01 to 2.50% of local median AGI	11
C. 1.51 to 2.00% of local median AGI	7
D. 1.01 to 1.50% of local median AGI	3
E. 0 to 1.00% of local median AGI	0
5. TOTAL DEBT LOAD (PRINCIPAL ONLY) OF APPLICANT AFTER PROJECT IS CONSTRUCTED (INCLUDING WATER AND SEWER DEBT, LIGHTING DEBT, SCHOOL DEBT, ETC.) (SELECT ONE)	
A. Greater than 12% of fair market value	15
B. 8.1 to 12% of fair market value	12
C. 4.1 to 8.0% of fair market value	9
D. 2.1 to 4.0% of fair market value	6
E. 1.0 to 2.0% of fair market value	3
F. Less than 1% of fair market value	0
6. SPECIAL INCENTIVES Applicant:	
A. has a replacement fund receiving annual deposits of 5% of drinking water budget, and has already accumulated a minimum of 25% of said annual DW budget in this reserve fund.	5
B. is creating or enhancing a regionalization plan	16
C. has a rate structure encouraging conservation	5
TOTAL POSSIBLE POINTS FOR FINANCIAL NEED	100

R309-705-7. Project Authorization.

A project may receive written authorization for financial or technical assistance from the Board following submission and favorable review of an application form, engineering report (if required), capacity development (including financial capability) assessment and staff feasibility report. The engineering report shall include a cost effective analysis of feasible project alternatives capable of meeting State and Federal drinking water requirements. It shall include consideration of monetary costs including the present worth or equivalent annual value of all capital costs, operation, maintenance, and replacement costs. The alternative selected must be the most economical means of meeting applicable State and Federal drinking water requirements over the useful life of the facility while recognizing environmental and other nonmonetary considerations.

Once the application submittals are reviewed, the staff will prepare a project feasibility report for the Board's consideration in Authorizing a project. The project feasibility report will include an evaluation of the project with regard to the Board's funding priority criteria, and will contain recommendations for the type of financial assistance which may be extended (i.e., for a loan, credit enhancement agreement, or interest buy-down agreement).

The Board may authorize financial assistance for any work or facility to provide water for human consumption and other domestic uses. Generally, work means planning, engineering design, or other eligible activities defined elsewhere in these rules.

Project Authorization is conditioned upon the availability of funds at the time of loan closing or signing of the credit enhancement, or interest buy-down and upon adherence to the project schedule approved at that time. The Board, at its own discretion, may require the Applicant to enter into a "Commitment Agreement" with the Board prior to execution of final loan documents or closing of the loan. This Commitment Agreement or Binding Commitment may specify date(s) by which the Applicant must complete the requirements set forth in the Project Authorization Letter. The Commitment Agreement shall state that if the Department of Environmental Quality acting through the Drinking Water Board is unable to make the Loan by the Loan Date, this Agreement shall terminate without any liability accruing to the Department or the Applicant hereunder. Also, if the project does not proceed according to the project schedule, the Board may withdraw project Authorization, so that projects which are ready to proceed can obtain necessary funding. Extensions to the project schedule may be considered by the Board, but any extension requested must be fully justified.

R309-705-8. Financial Evaluations.

(1) The Board considers it a proper function to assist project applicants in obtaining funding from such financing sources as may be available.

(2) In providing financial assistance in the form of a loan, the Board may purchase bonds of the applicant only if the bonds are accompanied by a legal opinion of recognized municipal bond counsel. Bond counsel must provide an opinion that the bonds are legal and binding under applicable Utah law (including, if applicable, the Utah Municipal Bond Act). For bonds of $150,000 or less the Board will not require this opinion.

(3) In providing financial assistance in the form of a loan, the Board may purchase either taxable or non-taxable bonds; or

a secured promissory note provided that it shall be the general preference of the Board to purchase bonds issued by the applicant only if the bonds are tax exempt. Tax-exempt bonds must be accompanied by a legal opinion of recognized municipal bond counsel to the effect that the Interest and the Hardship Grant Assessment, or a fee (also interest) on the bonds is exempt from federal income taxation. Such an opinion must be obtained by the applicant in the following situations:

(a) Bonds which are issued to finance a project which will also be financed in part at any time by the proceeds of other bonds which are exempt from federal income taxation.

(b) Bonds which are not subject to the arbitrage rebate provisions of Section 148 of the Internal Revenue Code of 1986 (or successor provision of similar intent), including, without limitation, bonds covered by the "small governmental units" exemption contained in Section 148(f)(4)(c) of the Internal Revenue Code of 1986 (or any successor provision of similar intent) and bonds which are not subject to arbitrage rebate because the gross proceeds from the loan will be completely expended within six months after the issuance of such bonds.

(4) If more than 25 percent of the project is to serve industry, bond counsel must evaluate the loan to ensure the tax exempt status of the loan fund.

(5) Revenue bonds purchased by the Board shall be secured by a pledge of water system revenues, and it is the general policy of the Board that the pledge of water revenues for the payment of debt service (principal and/or Hardship Grant Assessment) on a particular revenue bond be on a parity with the pledge of those water revenues as security for the debt service payments on all other bonds or other forms of indebtedness which are secured by the water revenues.

(6) If a project is Authorized to receive a loan, the Board will establish the portion of the construction cost to be included in the loan and will set the terms for the loan. It is the Board's intent to avoid repayment schedules exceeding the design life of the project facilities.

(7) Normal engineering and investigation costs incurred by the Department of Environmental Quality (DEQ) or Board during preliminary project investigation and prior to Board Authorization will not become a charge to the applicant if the project is found infeasible, denied by the Board, or if the applicant withdraws the Application prior to the Board's Authorization.

If the credit enhancement agreement or interest buy-down agreement does not involve a loan of funds from the Board administrative costs will not be charged to the project. However, if the Board Authorizes a loan for the project, all costs incurred by the DEQ or Board on the project will be charged against the project and paid by the applicant as a part of the total project cost. Generally, this will include all DEQ and Board costs incurred from the beginning of the preliminary investigations through the end of construction and close-out of the project. If the applicant decides not to build the project after the Board has Authorized the project, all costs accrued after the Authorization date will be reimbursed by the applicant to the Board.

(8) The Board shall determine the date on which the scheduled payments of principal, Hardship Grant Assessment, and interest will be made. In fixing this date, all possible contingencies shall be considered, and the Board may allow the system up to one year of actual use of the project facilities before the first repayment of principal is required.

(9) The applicant shall furnish the Board with acceptable evidence that the applicant is capable of paying its share of the construction costs during the construction period.

(10) LOANS AND INTEREST BUY-DOWN AGREEMENTS ONLY - The Board may require, as part of the loan or interest buy-down agreement, that any local funds which are to be used in financing the project be committed to construction prior to or concurrent with the committal of State funds.

(11) The Board will not forgive the applicant of any payment after the payment is due.

(12) The Board will require that a debt service reserve account be established by the applicant at or before the time that the loan is closed. Deposits to that account shall be made at least annually in the amount of one-tenth of the annual payment on the bond(s) purchased by the Board and shall continue until the total amount in the debt service reserve fund is equal to the annual payment. The debt service reserve account shall be continued until the bond is retired. Failure to maintain the reserve account will constitute a technical default on the bond(s).

(13) The Board will require a capital facilities replacement reserve account be established at or before the loan is closed. Deposits to that account shall be made at least annually in the amount of five percent (5%) of the applicant's annual drinking water system budget, including depreciation, unless otherwise specified by the Board at the time of loan authorization, until the loan is repaid. This fund shall not serve as security for the payment of principal or Hardship Grant Assessment on the loan. The applicant shall adopt such resolutions as necessary to limit the use of the fund to construct capital facilities for its water system. The applicant will not need the consent of the Board prior to making any expenditure from the fund. Failure to maintain the reserve account will constitute a technical default on the bond(s) and may result in penalties being assessed.

(14) If the Board is to purchase a revenue bond, the Board will require that the applicant's water rates be established such that sufficient net revenue will be raised to provide at least 125% or such other amount as the Board may determine of the total annual debt service.

(15) The applicant must have adopted a Water Management and Conservation Plan prior to executing the loan agreement.

R309-705-9. Emergency Assistance.

(1) Authority: Title 73, Chapter 10c of State Statute and the SDWA Amendment of 1996 give the Board authority to provide emergency assistance to drinking water systems.

(2) Eligibility: Generally, any situation occurring as defined in Section R309-705-3 would qualify for consideration for emergency funding. However, prior to authorizing funds for an emergency, the Board may consider one or more of the various factors listed below:

(i) Was the emergency preventable? Did the utility / water system have knowledge that this emergency could be expected? If not. Should it have been aware of the potential for this problem? Did its management take reasonable action to either prevent it or to be as prepared as reasonably possible to correct the problem when it occurred (prepared financially and technically for the event causing the problem)?

(ii) Has the utility / system established a capital improvement replacement reserve fund? Has the utility / system been charging reasonably high rates in order to establish a reserve fund to cover normal infrastructure replacement and emergencies?

(iii) Is the community a disadvantaged (hardship) community?

(iv) Is the potential for illness, injury, or other harm to the public or system operators sufficiently high that the value of providing financial assistance outweighs other factors that would preclude providing this assistance. (Even though the State does not have any legal obligation to provide financial assistance to help correct the problem.).

(3) Requirements for the Applicant: The applicant will be required to do the following as a condition of receiving financial assistance to cope with a drinking water emergency:

(i) To the extent feasible, the utility / system shall first use

its own resources, e.g. capital improvement replacement fund, to correct the problem.

(ii) If the utility / system is not placing funds into a reserve fund on a regular basis and / or is charging relatively low water rates it shall be required to examine its current rate structure and policies for placing funds into a reserve account. The Board may require the utility / system to establish a reserve account and / or to revise its rate structure (increasing its rate) as a condition of the loan.

(iii) The Board may place other requirements on the utility / system.

(4) Financial Agreements, Bonding, etc: The State will work with the Applicant to help secure obligating documents. For example, the Board:

(i) Could waive the 30-day notice period, if legally possible.

(ii) Could accept a generic bond.

(iii) Could accept an unsecured loan or bond.

(5) Funding Alternatives: An Applicant may be authorized to receive a loan by any of the financial assistance methods specified in R309-705-4 for funding an emergency project. The Board may set and revise the methodology and factors to be considered when determining the terms of financial assistance it provides including assigning a priority it deems appropriate. The terms of the loan, including length of repayment period, interest or hardship grant assessment, and principal forgiveness (grant) or repayment waivers will be determined at the time the emergency funding is authorized.

(6) Funding Process - The Board must find that an emergency exists according to the criteria in R309-705-9(2). It is anticipated that under normal emergency conditions time restraints will not allow a request for emergency funding to be placed on the agenda of a regularly scheduled Board meeting or adoption and advertisement of a project priority list. Therefore, the following procedures will be followed in processing a loan application for emergency assistance:

(i) Division staff will evaluate each application for emergency funding according to the criteria listed in R309-705-9(2). Staff will solicit recommendations from the LHD and District Engineer about the proposed project to mitigate the emergency. Staff will submit a report of its findings to the Board Chairperson or designee.

(ii) The Board Chairperson or designee will arrange for a timely meeting of the Board to consider authorizing assistance for the emergency. This meeting may be conducted by telephone.

R309-705-10. Committal of Funds and Approval of Agreements.

After the Board has issued a Plan Approval, the loan, credit enhancement, interest buy-down, or hardship grant will be considered by the Board for final approval. The Board will determine whether the agreement is in proper order. The Executive Secretary, or designee, may then execute the loan or credit enhancement agreement if no aspects of the project have changed significantly since the Board's authorization of the loan or credit enhancement, provided all conditions imposed by the Board have been met. If significant changes have occurred the Board will then review the project and, if satisfied, the Board will then commit funds, approve the signing of the contract, credit enhancement agreement, or interest buy-down agreement, and instruct the Executive Secretary to submit a copy of the signed contract or agreement to the Division of Finance.

R309-705-11. Construction.

The Division of Drinking Water staff may conduct inspections and will report to the applicant and applicant's engineer. Contract change orders must be properly negotiated with the contractor and approved in writing. Change orders in excess of $10,000 must receive prior written approval by the Executive Secretary before execution. When the project is complete to the satisfaction of the applicant, the applicant's engineer, and the Executive Secretary, written approval will be issued by the Executive Secretary in accordance with R309-500-9 to commence using the project facilities.

R309-705-12. Compliance with Federal Requirements.

(1) Applicants must show the legal, institutional, managerial, and financial capability to construct, operate, and maintain the drinking water system(s) that the project will serve.

(2) Applicant(s) shall require its contractors to comply with federal provisions for disadvantaged business enterprises and exclusions for businesses under suspension and/or debarment. Any bidder not complying with these requirements shall be considered a non-responsive bidder.

(3) As required by Federal Code, applicants may be subject to the following federal requirements (all assessments shall consider the impacts of the project twenty (20) years into the future):

Archeological and Historic Preservation Act of 1974, Pub. L. 86-523, as amended

Clean Air Act, Pub. L. 84-159, as amended

Coastal Barrier Resources Act, Pub. L. 97-348

Coastal Zone Management Act, Pub. L. 92-583, as amended

Endangered Species Act, Pub. L. 92-583

Environmental Justice, Executive Order 12898

Floodplain Management, Executive Order 11988 as amended by Executive Order 12148

Protection of Wetlands, Executive Order 11990

Farmland Protection Policy Act, Pub. L. 97-98

Fish and Wildlife Coordination Act, Pub. L. 85-624

National Environmental Policy Act of 1969 (NEPA), Pub. L. 91-190

National Historic Preservation Act of 1966, PL 89-665, as amended

Safe Drinking Water Act, Pub. L. 93-523, as amended

Wild and Scenic Rivers Act, Pub. L. 90-542, as amended

Age Discrimination Act of 1975, Pub. L. 94-135

Title VI of the Civil Rights Act of 1964, Pub. L. 88-352

Section 13 of the Federal Water Pollution Control Act Amendments of 1972, Pub. L. 92-500 (the Clean Water Act)

Section 504 of the Rehabilitation Act of 1973, Pub. L. 93-112 (including Executive Orders 11914 and 11250)

The Drug-Free Workplace Act of 1988, Pub. L. 100-690 (applies only to the capitalization grant recipient)

Equal Employment Opportunity, Executive Order 11246

Women's and Minority Business Enterprise, Executive Orders 11625, 12138 and 12432

Section 129 of the Small Business Administration Reauthorization and Amendment Act of 1988, Pub. L. 100-590

Anti-Lobbying Provisions (40 CFR Part 30)

Demonstration Cities and Metropolitan Development Act of 1966, Pub. L. 89-754, as amended

Procurement Prohibitions under Section 306 of the Clean Water Act and Section 508 of the Clean Water Act, including Executive Order 11738, Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans

Uniform Relocation and Real Property Acquisition Policies Act, Pub. L. 91-646, as amended

Debarment and Suspension, Executive Order 12549

Accounting procedures, whereby applicants agree to maintain a separate project account in accordance with Generally Accepted Accounting Standards and Utah State Uniform Accounting requirements.

KEY: SDWA, financial assistance, loans

January 28, 2009 19-4-104
Notice of Continuation April 2, 2007 73-10c

R315. Environmental Quality, Solid and Hazardous Waste.
R315-1. Utah Hazardous Waste Definitions and References.
R315-1-1. Definitions.

(a) Terms used in R315-1 through R315-101 are defined in Sections 19-1-103 and 19-6-102.

(b) For R315-1 through R315-101, the terms defined in 40 CFR 260.10, 264.18(a)(2), and 279.1, 2007 ed., are adopted and incorporated by reference with the following revisions:

(1) Substitute "Executive Secretary" for "Regional Administrator" or "Administrator," except in the following cases:

(i) In the actual definitions of "Administrator" and "Regional Administrator;" and

(ii) In the definitions of "hazardous waste constituent" and "industrial furnace" where "Board" shall be substituted.

(2) Insert in the definition of "existing tank system" or "existing component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315. A non-HSWA existing tank system or non-HSWA tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(3) Insert in the definition of "new tank system" or "new tank component" the following additional phrase after "July 14, 1986," "or December 16, 1988 for purposes of implementing the non-HSWA requirements of the tank regulations as promulgated by EPA on July 14, 1986, 51 FR 25470, as they have been incorporated into the corresponding rules of R315; except, however, for purposes of 40 CFR 265.193(g)(2) and 40 CFR 264.193(g)(2), a new tank system is one which construction commences after July 14, 1986. A non-HSWA new tank system or non-HSWA new tank component is one which does not implement any of the requirements of the federal Hazardous and Solid Waste Amendments of 1984 (HSWA) as identified in Table 1 of 40 CFR 271.1."

(c) The terms defined in 40 CFR 261.1(c), 1997 ed., are adopted and incorporated by reference.

(d) For purposes of R315-3 regarding application and permit procedures for hazardous waste facilities, the terms defined in 40 CFR 270.2, 1999 ed., are adopted and incorporated by reference with the following revisions:

(1) "Permit" means the plan approval as required by subsection 19-6-108(3)(a), or equivalent control document issued by the Executive Secretary to implement the requirements of the Utah Solid and Hazardous Waste Act;

(2) "Director" or "State Director" means "Executive Secretary;" and

(3) Replace existing definition of "corrective action management unit" with the definition as found in 40 CFR 260.10, 2000 ed.

(e) The definitions of "Polychlorinated biphenyl, PCB," and "Polychlorinated item" as found in 761.3, 40 CFR, 1990 ed., are adopted and incorporated by reference.

(f) In addition, the following terms are defined as follows:

(1) "Approved hazardous waste management facility" or "approved facility" means a hazardous waste treatment, storage, or disposal facility which has received an EPA permit in accordance with federal requirements, has been approved under 19-6-108 and R315-3, or has been permitted or approved under any other EPA authorized hazardous waste state program.

(2) "Division" means the Division of Solid and Hazardous Waste.

(3) "Hazard class" means:

(i) The DOT hazard class identified in 49 CFR 172; and

(ii) If the DOT hazard class is "OTHER REGULATED MATERIAL," ORM, the EPA hazardous waste characteristic exhibited by the waste and identified in R315-2-9.

(4) "Monitoring" means all procedures used to systematically inspect and collect data on operational parameters of the facility or on the quality of the air, ground water, surface water, or soils.

(5) "POHC's" means principle organic hazardous constituents.

(6) "Permittee" means any person who has received an approval of a hazardous waste operation plan under 19-6-108 and R315-3 or a Federal RCRA permit for a treatment, storage, or disposal facility.

(7) "Precipitation run-off" means water generated from naturally occurring storm events. If the precipitation run-off has been in contact with a waste defined in R315-2-9, it qualifies as "precipitation run-off" if the water does not exhibit any of the characteristics identified in R315-2-9. If the precipitation run-off has been in contact with a waste listed in R315-2-10 or R315-2-11, then it qualifies as "precipitation run-off" when the water has been excluded under R315-2-16. Water containing any leachate does not qualify as "precipitation run-off".

(8) "Spill" means the accidental discharging, spilling, leaking, pumping, pouring, emitting, emptying, or dumping of hazardous wastes or materials which, when spilled, become hazardous wastes, into or on any land or water.

(9) "Waste management area" means the limit projected in the horizontal plane of the area on which waste will be placed during the active life of a regulated unit. The waste management area includes horizontal space taken up by any liner, dike, or other barrier designed to contain waste in a regulated unit. If the facility contains more than one regulated unit, the waste management area is described by an imaginary line circumscribing the several regulated units.

(g) Terms used in R315-15 are defined in sections 19-6-703 and 19-6-706(2)(b)(ii).

(h) For purposes of R315-101 regarding cleanup action and risk-based closure standards, the following terms are defined as follows:

(1) "The concentration term, C" is calculated as the 95% upper confidence limit, UCL, on the arithmetic average for normally distributed data, or as the 95% upper confidence limit on the arithmetic average for lognormally distributed data. For normally distributed data, C = Mean + t x Standard Deviation/$n^{1/2}$, where n is the number of observations, and t is Student's t distribution (at the 95% one-sided confidence level and n-1 degrees of freedom), tables of which are printed in most introductory statistics textbooks. For lognormally distributed data, C = exp (Mean of lognormal-transformed data + 0.5 x Variance of lognormal-transformed data + Standard Deviation of lognormal-transformed data x H/$(n - 1)^{1/2}$), where n is the number of observations, and H is Land's H statistic (at the 95% one-sided confidence level), tables of which are printed in advanced statistics books. For data which are not normally nor lognormally distributed, appropriate statistics, such as nonparametric confidence limits, shall be applied.

(2) "Area of contamination" means a hazardous waste management unit or an area where a release has occurred. The boundary is defined as the furthest extent where contamination from a defined source has migrated in any medium at the time the release is first identified.

(3) "Contaminate" means to render a medium polluted through the introduction of hazardous waste or hazardous constituents as identified in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(4) "Hazard index" means the sum of more than one hazard quotient for multiple substances, multiple exposure pathways, or both. The Hazard Index is calculated separately for chronic, subchronic, and shorter duration exposures.

(5) "Hazard quotient" means the ratio of a single substance

exposure level over a specified time period, e.g. subchronic, to a reference dose for that substance derived from a similar exposure period.

(6) "Risk-based closure" means closure of a site where hazardous waste was managed or any medium has been contaminated by a release of hazardous waste or hazardous constituents, and where hazardous waste or hazardous constituents remain at the site in any medium at concentrations determined, under this rule, to cause minimal levels of risk to human health and the environment so as to require no further action or monitoring on the part of the responsible party nor any notice of hazardous waste management on the deed to the property.

(7) "Reasonable maximum exposure (RME)" means the highest exposure that is reasonably expected to occur at a site. The goal of RME is to combine upper-bound and mid-range exposure factors so that the result represents an exposure scenario that is both protective and reasonable; not the worst possible case.

(8) "Release" means spill or discharge of hazardous waste, hazardous constituents, or material that becomes hazardous waste when released to the environment.

(9) "Responsible party" means the owner or operator of a facility, or any other person responsible for the release of hazardous waste or hazardous constituents.

(10) "Site" means the area of contamination and any other area that could be impacted by the released contaminants, or could influence the migration of those contaminants, regardless of whether the site is owned by the responsible party.

R315-1-2. References.

(a) For purposes of R315-1 through R315-101, the publication references of 40 CFR 260.11, 2001 ed., are adopted and incorporated by reference.

(b) R315-1 through R315-101 incorporate by reference a number of provisions from 40 CFR. The incorporated provisions sometimes include cross-references to other sections of 40 CFR. Wherever there are sections in R315-1 through R315-101 that correspond to those cross-references, the cross-references of 40 CFR are not incorporated into R315-1 through R315-101. Instead, the corresponding sections in R315-1 through R315-101 shall apply.

KEY: hazardous waste
January 15, 2009 19-6-105
Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-2. General Requirements - Identification and Listing of Hazardous Waste.
R315-2-1. Purpose and Scope.

(a) This rule identifies those solid wastes which are subject to regulation as hazardous wastes under R315-3 through R315-9 and R315-13 of these rules and which are subject to the notification requirements of these rules.

(b)(1) The definition of solid waste contained in this rule applies only to wastes that also are hazardous for purposes of the rules implementing Chapter 6, Title 19. For example, it does not apply to materials such as non-hazardous scrap, paper, textiles, or rubber that are not otherwise hazardous wastes and that are recycled.

(2) This rule identifies only some of the materials which are solid wastes and hazardous wastes under the Utah Solid and Hazardous Waste Act. A material which is not defined as a solid waste in this rule, or is not a hazardous waste identified or listed in this rule, is still a solid waste and a hazardous waste for purposes of these sections if:

(i) In the case of section 19-6-109, the Board has reason to believe that the material may be a solid waste within the meaning of subsection 19-6-102(13) and a hazardous waste within the meaning of subsection 19-6-102(7) or

(ii) In the case of section 19-6-115, the material is presenting an imminent and substantial danger to human health or the environment.

R315-2-2. Definition of Solid Waste.

(a)(1) A solid waste is any discarded material that is not excluded by subsection R315-2-4(a) or that is not excluded by variance granted under R315-2-18 and R315-2-19.

(2) A discarded material is any material which is:

(i) Abandoned, as explained in paragraph (b) of this section; or

(ii) Recycled, as explained in paragraph (c) of this section; or

(iii) Considered inherently waste-like, as explained in paragraph (d) of this section.

(b) Materials are solid waste if they are abandoned by being;

(1) Disposed of; or

(2) Burned or incinerated; or

(3) Accumulated, stored, or treated, but not recycled, before or in lieu of being abandoned by being disposed of, burned, or incinerated.

(c) Materials are solid wastes if they are recycled - or accumulated, stored, or treated before recycling - as specified in paragraphs (c)(1) through (c)(4) of this section. Table 1 of 40 CFR 261.2, 1998 ed., is adopted and incorporated by reference, except that the heading for column 3 shall read "reclamation (Section 261.2(c)(3)) (except as provided in 261.4(a)(17) for mineral processing secondary materials)."

(1) Used in a manner constituting disposal

(i) Materials noted with "*" in column 1 of Table 1 of 40 CFR 261.2, are solid wastes when they are:

(A) Applied to or placed on the land in a manner that constitutes disposal; or

(B) Used to produce products that are applied to or placed on the land or are otherwise contained in products that are applied to or placed on the land, in which cases the product itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are applied to the land and that is their ordinary manner of use.

(2) Burning for energy recovery.

(i) Materials noted with a "*" in column 2 of Table 1 of 40 CFR 261.2 are solid wastes when they are:

(A) Burned to recover energy;

(B) Used to produce a fuel or are otherwise contained in fuels, in which cases the fuel itself remains a solid waste.

(ii) However, commercial chemical products listed in R315-2-11 are not solid wastes if they are themselves fuels.

(3) Reclaimed. Materials noted with a "*" in column 3 of Table 1 of 40 CFR 261.2 are solid wastes when reclaimed, except as provided under R315-2-4(a)(17), which shall be effective on July 1, 1999. Materials noted with a "---" in column 3 of Table 1 are not solid wastes when reclaimed.

(4) Accumulated speculatively. Materials noted with a "*" in column 4 of Table 1 of 40 CFR 261.2 are solid wastes when accumulated speculatively.

(d) Inherently waste-like materials. The following materials are solid wastes when they are recycled in any manner:

(1) Hazardous Waste Nos. F020, F021, unless used as an ingredient to make a product at the site of generation, F022, F023, F026, and F028.

(2) Secondary materials fed to a halogen acid furnace that exhibit a characteristic of a hazardous waste or are listed as a hazardous waste as defined in R315-2-9 through R315-2-10 and R315-2-24, except for brominated material that meets the following criteria:

(i) The material must contain a bromine concentration of at least 45%; and

(ii) The material must contain less than a total of 1% of toxic organic compounds listed in 40 CFR 261 Appendix VIII; and

(iii) The material is processed continually on-site in the halogen acid furnace via direct conveyance (hard piping).

(3) The Board will use the following criteria to add wastes to that list:

(i)(A) The materials are ordinarily disposed of, burned, or incinerated; or

(B) The materials contain toxic constituents listed in R315-50-10 and these constituents are not ordinarily found in raw materials or products for which the materials substitute, or are found in raw materials or products in smaller concentrations, and are not used or reused during the recycling process; and

(ii) The material may pose a substantial hazard to human health and the environment when recycled.

(e) Materials that are not solid waste when recycled.

(1) Materials are not solid wastes when they can be shown to be recycled by being:

(i) Used or reused as ingredients in an industrial process to make a product, provided the materials are not being reclaimed; or

(ii) Used or reused as effective substitutes for commercial products; or

(iii) Returned to the original process from which they are generated, without first being reclaimed or land disposed. The material shall be returned as a substitute for feedstock materials. In cases where the original process to which the material is returned is a secondary process, the materials must be managed such that there is no placement on the land. After June 30, 1999, in cases where the materials are generated and reclaimed within the primary mineral processing industry, the conditions of the exclusion found at R315-2-4(a)(16) apply rather than this provision.

(2) The following materials are solid wastes, even if the recycling involves use, reuse, or return to the original process, described in paragraphs (e)(1)(i)-(iii) of this section:

(i) Materials used in a manner constituting disposal, or used to produce products that are applied to the land; or

(ii) Materials burned for energy recovery, used to produce a fuel, or contained in fuels; or

(iii) Materials accumulated speculatively; or

(iv) Materials listed in paragraphs (d)(1) and (d)(2) of this section.

(f) Documentation of claims that materials are not solid

wastes or are conditionally exempt from regulation. Respondents in actions to enforce rules implementing the Utah Solid and Hazardous Waste Act who raise a claim that a certain material is not a solid waste, or is conditionally exempt from regulation, must demonstrate that there is a known market or disposition for the material, and that they meet the terms of the exclusion or exemption. In doing so, they must provide appropriate documentation, such as contracts showing that a second person uses the material as an ingredient in a production process, to demonstrate that the material is not a waste, or is exempt from regulation. In addition, owners or operators of facilities claiming that they actually are recycling materials must show that they have the necessary equipment to do so.

R315-2-3. Definition of Hazardous Waste.

(a) A solid waste as defined in section R315-2-2 is a hazardous waste if:

(1) It is not excluded from regulation as a hazardous waste under subsection R315-2-4(b); and

(2) It meets any of the following criteria:

(i) It is listed in sections R315-2-10 or R315-2-11 and has not been excluded from this section under sections R315-2-16 or R315-2-17.

(ii) It exhibits any of the characteristics of hazardous waste identified in R315-2-9. However, any mixture of a waste from the extraction, beneficiation, and processing of ores and minerals excluded under R315-2-4(b)(7) and any other solid waste exhibiting a characteristic of hazardous waste under R315-2-9 is a hazardous waste only if it exhibits a characteristic that would not have been exhibited by the excluded waste alone if such mixture had not occurred, or if it continues to exhibit any of the characteristics exhibited by the non-excluded wastes prior to mixture. Further, for the purposes of applying the Toxicity Characteristic to such mixtures, the mixture is also a hazardous waste if it exceeds the maximum concentration for any contaminant listed in table I, 40 CFR 261.24, which R315-2-9(g)(2) incorporates by reference, that would not have been exceeded by the excluded waste alone if the mixture had not occurred or if it continues to exceed the maximum concentration for any contaminant exceeded by the nonexempt waste prior to mixture.

(iii) RESERVED.

(iv) It is a mixture of solid waste and one or more hazardous wastes listed in R315-2-10 or R315-2-11 and has not been excluded from paragraph (a)(2) of this section under R315-2-16 and R315-2-17, or paragraph (f) of this section; however, the following mixtures of solid wastes and hazardous wastes listed in R315-2-10 or R315-2-11 are not hazardous wastes, except by application of paragraph (a)(2)(i) or (ii) of this section, if the generator can demonstrate that the mixture consists of wastewater the discharge of which is subject to regulation under either Section 402 or Section 307(b) of the Clean Water Act, 33 U.S.C. 1251 et seq., including wastewater at facilities which have eliminated the discharge of wastewater, and;

(A) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - carbon tetrachloride, tetrachloroethylene, trichloroethylene - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 1 part per million; or

(B) One or more of the following spent solvents listed in R315-2-10(e), which incorporates by reference 40 CFR 261.31 - methylene chloride, 1,1,1-trichloroethane, chlorobenzene, o-dichlorobenzene, cresols, cresylic acid, nitrobenzene, toluene, methyl ethyl ketone, carbon disulfide, isobutanol, pyridine, spent chlorofluorocarbon solvents - provided that the maximum total weekly usage of these solvents, other than the amounts that can be demonstrated not to be discharged to wastewater, divided by the average weekly flow of wastewater into the headworks of the facility's wastewater treatment or pre-treatment system does not exceed 25 parts per million; or

(C) One of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, provided that the wastes are discharged to the refinery oil recovery sewer before primary oil/water/solids separation - heat exchanger bundle cleaning sludge from the petroleum refining industry, EPA Hazardous Waste No. K050, crude oil storage tank sediment from petroleum refining operations, EPA Hazardous Waste No. K169, clarified slurry oil tank sediment and/or in-line filter/separation solids from petroleum refining operations, EPA Hazardous Waste No. K170, spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and spent hydrorefining catalyst, EPA Hazardous Waste No. K172; or

(D) A discarded commercial chemical product, or chemical intermediate listed in R315-2-11, arising from "de minimis" losses of these materials from manufacturing operations in which these materials are used as raw materials or are produced in the manufacturing process. For purposes of this subparagraph, "de minimis" losses include those from normal material handling operations, for example, spills from the unloading or transfer of materials from bins or other containers, leaks from pipes, valves or other devices used to transfer materials; minor leaks of process equipment, storage tanks or containers; leaks from well-maintained pump packings and seals; sample purgings; relief device discharges; discharges from safety showers and rinsing and cleaning of personal safety equipment; and rinsate from empty containers or from containers that are rendered empty by that rinsing; or

(E) Wastewater resulting from laboratory operations containing toxic (T) wastes listed in Sections R315-2-10 or R315-2-11, which incorporates by reference 40 CFR 261 subpart D, provided that the annualized average flow of laboratory wastewater does not exceed one percent of total wastewater flow into the headworks of the facility's wastewater treatment or pre-treatment system, or provided the wastes, combined annualized average concentration does not exceed one part per million in the headworks of the facility's wastewater treatment or pre-treatment facility. Toxic (T) wastes used in laboratories that are demonstrated not to be discharged to wastewater are not to be included in this calculation; or

(F) One or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157 - Provided that the maximum weekly usage of formaldehyde, methyl chloride, methylene chloride, and triethylamine, including all amounts that can not be demonstrated to be reacted in the process, destroyed through treatment, or is recovered, i.e., what is discharged or volatilized, divided by the average weekly flow of process wastewater prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 parts per million by weight; or

(G) Wastewaters derived from the treatment of one or more of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste, including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156 - Provided, that the maximum concentration of formaldehyde, methyl chloride, methylene chloride, and triethylamine prior to any dilutions into the headworks of the facility's wastewater treatment system does not exceed a total of 5 milligrams per liter.

(v) Rebuttable presumption for used oil. Used oil

containing more than 1000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in R315-2-10(e) and (f), which incorporates by reference 40 CFR 261 Subpart D. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Third Edition, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(b) A solid waste which is not excluded from regulation under paragraph (a)(1) of this section becomes a hazardous waste when any of the following events occur:

(1) In the case of a waste listed in sections R315-2-10 or R315-2-11, when the waste first meets the listing description set forth in sections R315-2-10 or R315-2-11.

(2) In the case of the mixture of solid waste and one or more listed hazardous wastes, when a hazardous waste listed in sections R315-2-10 or R315-2-11 is first added to the solid waste.

(3) In the case of any other waste, including a waste mixture, when the waste exhibits any of the characteristics identified in section R315-2-9.

(c) Unless and until it meets the criteria of paragraph (d) of this section:

(1) A hazardous waste will remain a hazardous waste.

(2)(i) Except as otherwise provided in paragraph (c)(2)(ii) or (f) of this section, any solid waste generated from the treatment, storage, or disposal of a hazardous waste, including any sludge, spill residue, ash, emission control dust, or leachate, but not including precipitation run-off, is a hazardous waste. However, materials that are reclaimed from solid wastes and that are used beneficially are not solid wastes and hence are not hazardous wastes under this provision unless the reclaimed material is burned for energy recovery or used in a manner constituting disposal.

(ii) The following solid wastes are not hazardous even though they are generated from the treatment, storage, or disposal of a hazardous waste, unless they exhibit one or more of the characteristics of hazardous waste:

(A) Waste pickle liquor sludge generated by lime stabilization of spent pickle liquor from the iron and steel industry, SIC Codes 331 and 332.

(B) Wastes from burning any of the materials exempted from regulations by 40 CFR 261.6(a)(3)(iii) and (v). R315-2-6 incorporates by reference the requirements of 40 CFR 261.6 concerning recyclable materials.

(C)(1) Nonwastewater residues, such as slag, resulting from high temperature metals recovery (HTMR) processing of K061, K062, or F006 waste, in units identified as rotary kilns, flame reactors, electric furnaces, plasma arc furnaces, slag reactors, rotary hearth furnace/electric furnace combinations or industrial furnaces (as defined in 40 CFR 260.10 (6), (7), and (13) of the definition for "Industrial Furnace" which R315-1-1(b) incorporates by reference), that are disposed in solid waste landfills regulated under R315-301 through R315-320, provided that these residues meet the generic exclusion levels identified below for all constituents, and exhibit no characteristics of hazardous waste. Testing requirements shall be incorporated in a facility's waste analysis plan or a generator's self-implementing waste analysis plan; at a minimum, composite samples of residues shall be collected and analyzed quarterly and/or when the process or operation generating the waste changes. Persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements.

TABLE

Constituent Maximum for any single composite sample - TCLP (mg/l)

Generic exclusion levels for K061 and K062 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

Generic exclusion levels for F006 nonwastewater HTMR residues

Antimony	0.10
Arsenic	0.50
Barium	7.6
Beryllium	0.010
Cadmium	0.050
Chromium (total)	0.33
Cyanide (total)(mg/kg)	1.8
Lead	0.15
Mercury	0.009
Nickel	1.0
Selenium	0.16
Silver	0.30
Thallium	0.020
Zinc	70

(2) A one-time notification and certification shall be placed in the facility's files and sent to the Executive Secretary for K061, K062 or F006 HTMR residues that meet the generic exclusion levels for all constituents and do not exhibit any characteristics that are sent to solid waste landfills regulated under R315-301 through R315-320. The notification and certification that is placed in the generators or treaters files shall be updated if the process or operation generating the waste changes and/or if the solid waste landfill regulated under R315-301 through R315-320 receiving the waste changes. However, the generator or treater need only notify the Executive Secretary on an annual basis if such changes occur. Such notification and certification should be sent to the Executive Secretary by the end of the calendar year, but no later than December 31. The notification shall include the following information: The name and address of the solid waste landfill regulated under R315-301 through R315-320 receiving the waste shipments; the EPA Hazardous Waste Number(s) and treatability group(s) at the initial point of generation; and, the treatment standards applicable to the waste at the initial point of generation. The certification shall be signed by an authorized representative and shall state as follows: "I certify under penalty of law that the generic exclusion levels for all constituents have been met without impermissible dilution and that no characteristic of hazardous waste is exhibited. I am aware that there are significant penalties for submitting a false certification, including the possibility of fine and imprisonment."

(D) Biological treatment sludge from the treatment of one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32 - organic waste,

including heavy ends, still bottoms, light ends, spent solvents, filtrates, and decantates, from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K156, and wastewaters from the production of carbamates and carbamoyl oximes, EPA Hazardous Waste No. K157.

(E) Catalyst inert support media separated from one of the following wastes listed in R315-2-10(f), which incorporates by reference 40 CFR 261.32, - Spent hydrotreating catalyst, EPA Hazardous Waste No. K171, and Spent hydrorefining catalyst, EPA Hazardous Waste N0. K172.

(d) Any solid waste described in paragraph (c) of this section is not a hazardous waste if it meets the following criteria:

(1) In the case of any solid waste, it does not exhibit any of the characteristics of hazardous waste identified in section R315-2-9. However, wastes that exhibit a characteristic at the point of generation may still be subject to the requirements of R315-13 which incorporates by reference 40 CFR 268, even if they no longer exhibit a characteristic at the point of land disposal.

(2) In the case of a waste which is a listed waste under sections R315-2-10 or R315-2-11, contains a waste listed under sections R315-2-10 or R315-2-11, or is derived from a waste listed in sections R315-2-10 or R315-2-11, it also has been excluded from paragraph (c) of this section under R315-2-16 and R315-2-17.

(e) Notwithstanding R315-2-3(a) through (d) and provided the debris as defined in R315-13, which incorporates by reference 40 CFR 268, does not exhibit a characteristic identified in R315-2-9, the following materials are not subject to regulation under R315-1, R315-2 to R315-8, R315-13, and R315-14:

(1) Hazardous debris as defined in R315-13, which incorporates by reference 40 CFR 268, that has been treated using one of the required extraction or destruction technologies specified in R315-13, which incorporates by reference 40 CFR 268.45 Table 1; persons claiming this exclusion in an enforcement action will have the burden of proving by clear and convincing evidence that the material meets all of the exclusion requirements; or

(2) Debris as defined in R315-13, which incorporates by reference 40 CFR 268, that the Board, considering the extent of contamination, has determined is no longer contaminated with hazardous waste.

(f)(1) A hazardous waste that is listed in R315-2-10 or R315-2-11 solely because it exhibits one or more characteristics of ignitability as defined under R315-2-9(d), corrosivity as defined under R315-2-9(e), or reactivity as defined under R315-2-9(f) is not hazardous waste, if the waste no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d), (e), (f), or (g).

(2) The exclusion described in paragraph (f)(1) of this section also pertains to

(i) Any mixture of a solid waste and a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(a)(2)(iv); and,

(ii) Any solid waste generated from treating, storing, or disposing of a hazardous waste listed in R315-2-10 and R315-2-11 solely because it exhibits the characteristics of ignitability, corrosivity, or reactivity as regulated under R315-2-3(c)(2)(i).

(3) Wastes excluded from R315-2-3 are subject to R315-13-1, which incorporates by reference 40 CFR 268, (as applicable), even if they no longer exhibit a characteristic at the point of land disposal.

(4) Any mixture of a solid waste excluded from regulation under R315-2-4(b)(7) and a hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, solely because it exhibits one or more of the characteristics of ignitability, corrosivity, or reactivity as regulated under paragraph (a)(2)(iv) of this section is not a hazardous waste, if the mixture no longer exhibits any characteristic of hazardous waste identified in R315-2-9(a), (d) - (g) for which the hazardous waste listed in R315-2-10 and R315-2-11, which incorporates by reference 40 CFR 261 subpart D, was listed.

R315-2-4. Exclusions.

(a) MATERIALS WHICH ARE NOT SOLID WASTES.

The following materials are not solid wastes for the purpose of this rule:

(1) Domestic sewage or any mixture of domestic sewage and other wastes that passes through a sewer system to a publicly-owned treatment works for treatment. "Domestic sewage" means untreated sanitary wastes that pass through a sewer system.

(2) Industrial wastewater discharges that are point source discharges subject to regulation under Section 402 of the Clean Water Act, as amended. This exclusion applies only to the actual point source discharge. It does not exclude industrial wastewaters while they are being collected, stored, or treated before discharge, nor does it exclude sludges that are generated by industrial wastewater treatment.

(3) Irrigation return flows.

(4) Source, special nuclear or by-product material as defined by the Atomic Energy Act of 1954, as amended, 42 U.S.C. Section 2011 et seq.

(5) Materials subjected to in-situ mining techniques which are not removed from the ground as part of the extraction process.

(6) Pulping liquors, black liquor that are reclaimed in a pulping liquor recovery furnace and then reused in the pulping process, unless it is accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(7) Spent sulfuric acid used to produce virgin sulfuric acid, unless it is accumulated speculatively as defined in subsection R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(8) Secondary materials that are reclaimed and returned to the original process or processes in which they were generated where they are reused in the production process provided:

(i) Only tank storage is involved, and the entire process through completion of reclamation is closed by being entirely connected with pipes or other comparable enclosed means of conveyance;

(ii) Reclamation does not involve controlled flame combustion (such as occurs in boilers, industrial furnaces, or incinerators);

(iii) The secondary materials are never accumulated in such tanks for over twelve months without being reclaimed; and

(iv) The reclaimed material is not used to produce a fuel, or used to produce products that are used in a manner constituting disposal.

(9)(i) Spent wood preserving solutions that have been reclaimed and are reused for their original intended purpose; and

(ii) wastewaters from the wood preserving process that have been reclaimed and are reused to treat wood.

(iii) Prior to reuse, the wood preserving wastewaters and spent wood preserving solutions described in R315-2-4(a)(9)(i) and (ii), so long as they meet all of the following conditions:

(A) The wood preserving wastewaters and spent wood preserving solutions are reused onsite at water borne plants in the production process for their original intended purpose;

(B) Prior to reuse, the wastewaters and spent wood preserving solutions are managed to prevent release to either land or groundwater or both;

(C) Any unit used to manage wastewaters and/or spent

wood preserving solutions prior to reuse can be visually or otherwise determined to prevent such releases;

(D) Any drip pad used to manage the wastewaters and/or spent wood preserving solutions prior to reuse complies with the standards in R315-7-28, which incorporates by reference 40 CFR 265.440 - 445, regardless of whether the plant generates a total of less than 100 kg/month of hazardous waste; and

(E) Prior to operating pursuant to this exclusion, the plant owner or operator submits to the Executive Secretary a one-time notification stating that the plant intends to claim the exclusion, giving the date on which the plant intends to begin operating under the exclusion, and containing the following language: "I have read the applicable regulation establishing an exclusion for wood preserving wastewaters and spent wood preserving solutions and understand it requires me to comply at all times with the conditions set out in the regulation." The plant must maintain a copy of that document in its on-site records for a period of no less than 3 years from the date specified in the notice. The exclusion applies only so long as the plant meets all of the conditions. If the plant goes out of compliance with any condition, it may apply to the Executive Secretary for reinstatement. The Executive Secretary may reinstate the exclusion upon finding that the plant has returned to compliance with all conditions and that violations are not likely to recur.

(10) EPA Hazardous Waste Nos. K060, K087, K141, K142, K143, K144, K145, K147, and K148, and any wastes from the coke by-products processes that are hazardous only because they exhibit the Toxicity Characteristic (TC) specified in R315-2-9(g) when, subsequent to generation, these materials are recycled to coke ovens, to the tar recovery process as a feedstock to produce coal tar or are mixed with coal tar prior to the tar's sale or refining. This exclusion is conditioned on there being no land disposal of the wastes from the point they are generated to the point they are recycled to coke ovens or the tar recovery or refining processes, or mixed with coal tar.

(11) Nonwastewater splash condenser dross residue from the treatment of K061 in high temperature metals recovery units, provided it is shipped in drums (if shipped) and not land disposed before recovery.

(12)(i) Oil-bearing hazardous secondary materials, i.e., sludges, byproducts, or spent materials, that are generated at a petroleum refinery, SIC code 2911, and are inserted into the petroleum refining process, SIC code 2911 - including distillation, catalytic cracking, fractionation, or thermal cracking units, i.e., cokers, unless the material is placed on the land, or speculatively accumulated before being so recycled. Materials inserted into thermal cracking units are excluded under this paragraph, provided that the coke product also does not exhibit a characteristic of hazardous waste. Oil-bearing hazardous secondary materials may be inserted into the same petroleum refinery where they are generated, or sent directly to another petroleum refinery, and still be excluded under this provision. Except as provided in R315-2-4(a)(12)(ii), oil-bearing hazardous secondary materials generated elsewhere in the petroleum industry, i.e., from sources other than petroleum refineries, are not excluded under R315-2-4. Residuals generated from processing or recycling materials excluded under this paragraph, where such materials as generated would have otherwise met a listing under R315-2-10, R315-2-11, R315-2-24, and R315-2-26, are designated as F037 listed wastes when disposed of or intended for disposal.

(ii) Recovered oil that is recycled in the same manner and with the same conditions as described in R315-2-4(a)(12)(i). Recovered oil is oil that has been reclaimed from secondary materials, including wastewater, generated from normal petroleum industry practices, including refining, exploration and production, bulk storage, and transportation incident thereto (SIC codes 1311, 1321, 1381, 1382, 1389, 2911, 4612, 4613, 4922, 4923, 4789, 5171, and 5152.) Recovered oil does not include oil-bearing hazardous wastes listed in R315-2-10, R315-2-11, R315-2-24, and R315-2-26; however, oil recovered from such wastes may be considered recovered oil. Recovered oil does not include used oil as defined in 19-6-703(19).

(13) Excluded scrap metal, processed scrap metal, unprocessed home scrap metal, and unprocessed prompt scrap metal, being recycled.

(14) Shredded circuit boards being recycled provided that they are:

(i) Stored in containers sufficient to prevent a release to the environment prior to recovery; and

(ii) Free of mercury switches, mercury relays, and nickel-cadmium batteries and lithium batteries.

(15) Condensates derived from the overhead gases from kraft mill steam strippers that are used to comply with 40 CFR 63.446(e). The exemption applies only to combustion at the mill generating the condensates.

(16) Comparable fuels or comparable syngas fuels, i.e., comparable/syngas fuels, that meet the requirements of R315-2-26, which incorporates by reference 40 CFR 261.38.

(17) Spent materials as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1, other than hazardous wastes listed in R315-2-10, 2-11, and 2-26 (which incorporate by reference 40 CFR 261 Subpart D), and R315-2-24, generated within the primary mineral processing industry from which minerals, acids, cyanide, water or other values are recovered by mineral processing or by benefication, provided that:

(i) The spent material is legitimately recycled to recover minerals, acids, cyanide, water or other values;

(ii) The spent material is not accumulated speculatively;

(iii) Except as provided in R315-2-4(a)(17)(iv), the spent material is stored in tanks, containers, or buildings meeting the following minimum integrity standards: a building must be an engineered structure with a floor, walls, and a roof all of which are made of non-earthen materials providing structural support, except smelter buildings may have partially earthen floors provided the secondary material is stored on the non-earthen portion, and have a roof suitable for diverting rainwater away from the foundation; a tank must be free standing, not be a surface impoundment as defined R315-1-1(b), which incorporates by reference 40 CFR 260.10, and be manufactured of a material suitable for containment of its contents; a container must be free standing and be manufactured of a material suitable for containment of its contents. If tanks or containers contain any particulate which may be subject to wind dispersal, the owner/operator must operate these units in a manner which controls fugitive dust. Tanks, containers, and buildings must be designed, constructed and operated to prevent significant releases to the environment of these materials.

(iv) The Executive Secretary may make a site-specific determination, after public review and comment, that only solid mineral processing spent materials may be placed on pads, rather than in tanks, containers, or buildings. Solid mineral processing spent materials do not contain any free liquid. The Executive Secretary must affirm that pads are designed, constructed and operated to prevent significant releases of the secondary material into the environment. Pads must provide the same degree of containment afforded by the non-RCRA tanks, containers and buildings eligible for exclusion.

(A) The Executive Secretary must also consider if storage on pads poses the potential for significant releases via groundwater, surface water, and air exposure pathways. Factors to be considered for assessing the groundwater, surface water, air exposure pathways are: the volume and physical and chemical properties of the secondary material, including its potential for migration off the pad; the potential for human or environmental exposure to hazardous constituents migrating from the pad via each exposure pathway, and the possibility and extent of harm to human and environmental receptors via each

exposure pathway.

(B) Pads must meet the following minimum standards: be designed of non-earthen material that is compatible with the chemical nature of the mineral processing spent material, capable of withstanding physical stresses associated with placement and removal, have run on/runoff controls, be operated in a manner which controls fugitive dust, and have integrity assurance through inspections and maintenance programs.

(C) Before making a determination under this paragraph, the Executive Secretary must provide notice and the opportunity for comment to all persons potentially interested in the determination. This can be accomplished by placing notice of this action in major local newspapers, or broadcasting notice over local radio stations.

(v) The owner or operator provides notice to the Executive Secretary, providing the following information: the types of materials to be recycled; the type and location of the storage units and recycling processes; and the annual quantities expected to be placed in land-based units. This notification must be updated when there is a change in the type of materials recycled or the location of the recycling process.

(vi) For purposes of R315-2-4(a)(7), mineral processing spent materials must be the result of mineral processing and may not include any listed hazardous wastes. Listed hazardous wastes and characteristic hazardous wastes generated by non-mineral processing industries are not eligible for the conditional exclusion from the definition of solid waste.

(vii) R315-2-4(a)(16) becomes effective July 1, 1999.

(18) Petrochemical recovered oil from an associated organic chemical manufacturing facility, where the oil is to be inserted into the petroleum refining process, SIC code 2911, along with normal petroleum refinery process streams, provided:

(i) The oil is hazardous only because it exhibits the characteristic of ignitability, as defined in R315-2-9(d), and/or toxicity for benzene, R315-2-9(g), waste code D018; and

(ii) The oil generated by the organic chemical manufacturing facility is not placed on the land, or speculatively accumulated before being recycled into the petroleum refining process. An "associated organic chemical manufacturing facility" is a facility where the primary SIC code is 2869, but where operations may also include SIC codes 2821, 2822, and 2865; and is physically co-located with a petroleum refinery; and where the petroleum refinery to which the oil being recycled is returned also provides hydrocarbon feedstocks to the organic chemical manufacturing facility. "Petrochemical recovered oil" is oil that has been reclaimed from secondary materials, i.e., sludges, byproducts, or spent materials, including wastewater, from normal organic chemical manufacturing operations, as well as oil recovered from organic chemical manufacturing processes.

(19) Spent caustic solutions from petroleum refining liquid treating processes used as a feedstock to produce cresylic or napthenic acid unless the material is placed on the land, or accumulated speculatively as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c).

(20) Hazardous secondary materials used to make zinc fertilizers, provided that the conditions specified below are satisfied:

(i) Hazardous secondary materials used to make zinc micronutrient fertilizers must not be accumulated speculatively, as defined in R315-1-1(c) which incorporates by reference 40 CFR 261.1(c)(8).

(ii) Generators and intermediate handlers of zinc-bearing hazardous secondary materials that are to be incorporated into zinc fertilizers must:

(A) Submit a one-time notice to the Executive Secretary which contains the name, address and EPA ID number of the generator or intermediate handler facility, provides a brief description of the secondary material that will be subject to the exclusion, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(B) Store the excluded secondary material in tanks, containers, or buildings that are constructed and maintained in a way that prevents releases of the secondary materials into the environment. At a minimum, any building used for this purpose must be an engineered structure made of non-earthen materials that provide structural support, and must have a floor, walls and a roof that prevent wind dispersal and contact with rainwater. Tanks used for this purpose must be structurally sound and, if outdoors, must have roofs or covers that prevent contact with wind and rain. Containers used for this purpose must be kept closed except when it is necessary to add or remove material, and must be in sound condition. Containers that are stored outdoors must be managed within storage areas that:

(1) have containment structures or systems sufficiently impervious to contain leaks, spills and accumulated precipitation;

(2) provide for effective drainage and removal of leaks, spills and accumulated precipitation; and

(3) prevent run-on into the containment system.

(C) With each off-site shipment of excluded hazardous secondary materials, provide written notice to the receiving facility that the material is subject to the conditions of R315-2-4(a)(20).

(D) Maintain at the generator's or intermediate handler's facility for no less than three years records of all shipments of excluded hazardous secondary materials. For each shipment these records must at a minimum contain the following information:

(1) Name of the transporter and date of the shipment;

(2) Name and address of the facility that received the excluded material, and documentation confirming receipt of the shipment; and

(3) Type and quantity of excluded secondary material in each shipment.

(iii) Manufacturers of zinc fertilizers or zinc fertilizer ingredients made from excluded hazardous secondary materials must:

(A) Store excluded hazardous secondary materials in accordance with the storage requirements for generators and intermediate handlers, as specified in R315-2-4(a)(20)(ii)(B).

(B) Submit a one-time notification to the Executive Secretary that, at a minimum, specifies the name, address and EPA ID number of the manufacturing facility, and identifies when the manufacturer intends to begin managing excluded, zinc-bearing hazardous secondary materials under the conditions specified in R315-2-4(a)(20).

(C) Maintain for a minimum of three years records of all shipments of excluded hazardous secondary materials received by the manufacturer, which must at a minimum identify for each shipment the name and address of the generating facility, name of transporter and date the materials were received, the quantity received, and a brief description of the industrial process that generated the material.

(D) Submit to the Executive Secretary an annual report that identifies the total quantities of all excluded hazardous secondary materials that were used to manufacture zinc fertilizers or zinc fertilizer ingredients in the previous year, the name and address of each generating facility, and the industrial process(s) from which they were generated.

(iv) Nothing in this section preempts, overrides or otherwise negates the provision in R315-5-1.11, which incorporates by reference 40 CFR 262.11, which requires any person who generates a solid waste to determine if that waste is a hazardous waste.

(v) Interim status and permitted storage units that have been used to store only zinc-bearing hazardous wastes prior to the submission of the one-time notice described in R315-2-

4(a)(20)(ii)(A), and that afterward will be used only to store hazardous secondary materials excluded under this paragraph, are not subject to the closure requirements of R315-7 and R315-8.

(21) Zinc fertilizers made from hazardous wastes, or hazardous secondary materials that are excluded under R315-2-4(a)(20), provided that:

(i) The fertilizers meet the following contaminant limits:

(A) For metal contaminants:

TABLE

Constituent	Maximum Allowable Total Concentration in Fertilizer, per Unit (1%) of Zinc ppm)
Arsenic	0.3
Cadmium	1.4
Chromium	0.6
Lead	2.8
Mercury	0.3

(B) For dioxin contaminants the fertilizer must contain no more than eight (8) parts per trillion of dioxin, measured as toxic equivalent (TEQ).

(ii) The manufacturer performs sampling and analysis of the fertilizer product to determine compliance with the contaminant limits for metals no less than every six months, and for dioxins no less than every twelve months. Testing must also be performed whenever changes occur to manufacturing processes or ingredients that could significantly affect the amounts of contaminants in the fertilizer product. The manufacturer may use any reliable analytical method to demonstrate that no constituent of concern is present in the product at concentrations above the applicable limits. It is the responsibility of the manufacturer to ensure that the sampling and analysis are unbiased, precise, and representative of the product(s) introduced into commerce.

(iii) The manufacturer maintains for no less than three years records of all sampling and analyses performed for purposes of determining compliance with the requirements of R315-2-4(a)(21)(ii). Such records must at a minimum include:

(A) The dates and times product samples were taken, and the dates the samples were analyzed;

(B) The names and qualifications of the person(s) taking the samples;

(C) A description of the methods and equipment used to take the samples;

(D) The name and address of the laboratory facility at which analyses of the samples were performed;

(E) A description of the analytical methods used, including any cleanup and sample preparation methods; and

(F) All laboratory analytical results used to determine compliance with the contaminant limits specified in R315-2-4(a)(21).

(22) Used cathode ray tubes (CRTs)

(i) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes within the United States unless they are disposed, or unless they are speculatively accumulated as defined in R315-1-1(c), which incorporates by reference 40 CFR 261.1(c)(8), by CRT collectors or glass processors.

(ii) Used, intact CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes when exported for recycling provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.40.

(iii) Used, broken CRTs as defined in R315-1-1(b), which incorporates by reference 40 CFR 260.10, are not solid wastes provided that they meet the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39.

(iv) Glass removed from CRTs is not a solid waste provided that it meets the requirements of R315-2-27, which incorporates by reference 40 CFR 261.39(c).

(b) SOLID WASTES WHICH ARE NOT HAZARDOUS WASTES.

The following solid wastes are not hazardous wastes:

(1) Household waste, including household waste that has been collected, transported, stored, treated, disposed, recovered, such as refuse-derived fuel or reused. "Household waste" means any material, including garbage, trash and sanitary wastes in septic tanks, derived from households, including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds and day-use recreation areas. A resource recovery facility managing municipal solid waste shall not be deemed to be treating, storing, disposing of or otherwise managing hazardous wastes for the purposes of regulation under this subtitle, if the facility:

(i) Receives and burns only

(A) Household waste, from single and multiple dwellings, hotels, motels, and other residential sources and

(B) Solid waste from commercial of industrial sources that does not contain hazardous waste; and

(ii) The facility does not accept hazardous wastes and the owner or operator of the facility has established contractual requirements or other appropriate notification or inspection procedures to assure that hazardous wastes are not received at or burned in the facility.

(2) Solid wastes generated by any of the following and which are returned to the soil as fertilizers:

(i) The growing and harvesting of agricultural crops.

(ii) The raising of animals, including animal manures.

(3) Mining overburden returned to the mine site.

(4) Fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste generated primarily from the combustion of coal or other fossil fuels, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(5) Drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas or geothermal energy.

(6) The following additional solid wastes:

(i) Wastes which fail the test for the Toxicity Characteristic because chromium is present or are listed in sections R315-2-10 or R315-2-11 due to the presence of chromium, which do not fail the test for the Toxicity Characteristic for any other constituent or are not listed due to the presence of any other constituent, and which do not fail the test for any other characteristic, if it is shown by a waste generator or by waste generators that:

(A) The chromium in the waste is exclusively, or nearly exclusively, trivalent chromium; and

(B) The waste is generated from an industrial process which uses trivalent chromium exclusively, or nearly exclusively, and the process does not generate hexavalent chromium; and

(C) The waste is typically and frequently managed in non-oxidizing environments.

(ii) Specific wastes which meet the standard in paragraphs (b)(6)(i)(A),(B), and (C) of this section, so long as they do not fail the test for the toxicity characteristic for any other constituent, and do not exhibit any other characteristic, are:

(A) Chrome blue trimmings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(B) Chrome blue shavings generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(C) Buffing dust generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue.

(D) Sewer screenings generated by the following subcategories of the leather tanning and finishing industry: hair/pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(E) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; retan/wet finish; no beamhouse; through-the-blue; and shearling.

(F) Wastewater treatment sludges generated by the following subcategories of the leather tanning and finishing industry: hair pulp/chrome tan/retan/wet finish; hair save/chrome tan/retan/wet finish; and through-the-blue.

(G) Waste scrap leather from the leather tanning industry, the shoe manufacturing industry, and other leather product manufacturing industries.

(H) Wastewater treatment sludges from the production of TiO_2 pigment using chromium-bearing ores by the chloride process.

(7) Solid waste from the extraction, beneficiation, and processing of ores and minerals, including coal, phosphate rock, and overburden from the mining of uranium ore, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112 for facilities that burn or process hazardous waste.

(i) For purposes of R315-2-4(b)(7) beneficiation of ores and minerals is restricted to the following activities; crushing; grinding; washing; dissolution; crystallization; filtration; sorting; sizing; drying; sintering; pelletizing; briquetting; calcining to remove water and/or carbon dioxide; roasting, autoclaving, and/or chlorination in preparation for leaching (except where the roasting (and/or autoclaving and/or chlorination)/leaching sequence produces a final or intermediate product that does not undergo further beneficiation or processing); gravity concentration; magnetic separation; electrostatic separation; flotation; ion exchange; solvent extraction; electrowinning; precipitation; amalgamation; and heap, dump, vat, tank, and in situ leaching.

(ii) For the purposes of R315-2-4(b)(7), solid waste from the processing of ores and minerals includes only the following wastes as generated:

(A) Slag from primary copper processing;

(B) Slag from primary lead processing;

(C) Red and brown muds from bauxite refining;

(D) Phosphogypsum from phosphoric acid production;

(E) Slag from elemental phosphorus production ;

(F) Gasifier ash from coal gasification;

(G) Process wastewater from coal gasification;

(H) Calcium sulfate wastewater treatment plant sludge from primary copper processing;

(I) Slag tailings from primary copper processing;

(J) Fluorogypsum from hydrofluoric acid production;

(K) Process wastewater from hydrofluoric acid production;

(L) Air pollution control dust/sludge from iron blast furnaces;

(M) Iron blast furnace slag;

(N) Treated residue from roasting/leaching of chrome ore;

(O) Process wastewater from primary magnesium processing by the anhydrous process;

(P) Process wastewater from phosphoric acid production;

(Q) Basic oxygen furnace and open hearth furnace air pollution control dust/sludge from carbon steel production;

(R) Basic oxygen furnace and open hearth furnace slag from carbon steel production;

(S) Chloride process waste solids from titanium tetrachloride production;

(T) Slag from primary zinc processing.

(iii) A residue derived from co-processing mineral processing secondary materials with normal beneficiation raw materials or with normal mineral processing raw materials remains excluded under R315-2-4(b) if the owner or operator:

(A) Processes at least 50 percent by weight normal beneficiation raw materials or normal mineral processing raw materials; and,

(B) Legitimately reclaims the secondary mineral processing materials.

(8) Cement kiln dust waste, except as provided by R315-14-7, which incorporates by reference 40 CFR 266.112, for facilities that burn or process hazardous waste.

(9) Solid waste which consists of discarded arsenical-treated wood or wood products which fails the test for the Toxicity Characteristic for Hazardous Waste Codes D004 through D017 and which is not a hazardous waste for any other reason if the waste is generated by persons who utilize the arsenical-treated wood and wood products for these materials' intended end use.

(10) Petroleum-contaminated media and debris that fail the test for the Toxicity Characteristic (TC) of R315-2-9(g), Hazardous Waste Codes D018 through D043 only, and are subject to the corrective action requirements under R311-202, which incorporates by reference 40 CFR 280.

(11) Injected groundwater that is hazardous only because it exhibits the Toxicity Characteristic, Hazardous Waste Codes D018 through D043 only, in R315-2-9(e) that is reinjected through an underground injection well pursuant to free phase hydrocarbon recovery operations undertaken at petroleum refineries, petroleum marketing terminals, petroleum bulk plants, petroleum pipelines, and petroleum transportation spill sites until January 25, 1993. This extension applies to recovery operations in existence, or for which contracts have been issued, on or before March 25, 1991. For groundwater returned through infiltration galleries from such operations at petroleum refineries, marketing terminals, and bulk plants, until October 2, 1991. New operations involving injection wells, beginning after March 25, 1991, will qualify for this compliance date extension until January 25, 1993, only if:

(i) Operations are performed pursuant to a written state agreement that includes a provision to assess the groundwater and the need for further remediation once the free phase recovery is completed; and

(ii) A copy of the written agreement has been submitted to: Characteristics Section (OS-333), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460 and the Division of Solid and Hazardous Waste, Dept. of Environmental Quality, State of Utah, Salt Lake City, UT 84114-4880.

(12) Used chlorofluorocarbon refrigerants from totally enclosed heat transfer equipment, including mobile air conditioning systems, mobile refrigeration, and commercial and industrial air conditioning and refrigeration systems that use chlorofluorocarbons as the heat transfer fluid in a refrigeration cycle, provided the refrigerant is reclaimed for further use.

(13) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products.

(14) Non-terne plated used oil filters that are not mixed with wastes listed in R315-2-10(e) and (f) and R315-2-11, which incorporate by reference 40 CFR 261 Subpart D, if these oil filters have been gravity hot-drained using one of the following methods:

(i) Puncturing the filter anti-drain back valve or the filter dome end and hot draining;

(ii) Hot-draining and crushing;

(iii) Dismantling and hot-draining; or

(iv) Any other equivalent hot-draining method that will

remove used oil.

(15) Leachate or gas condensate collected from landfills where certain solid wastes have been disposed, provided that:

(i) The solid wastes disposed would meet one or more of the listing descriptions for Hazardous Waste Codes K169, K170, K171, K172, K174, K175, K176, K177, K178, and K181 if these wastes had been generated after the effective date of the listing;

(ii) The solid wastes described in paragraph R315-2-4(b)(15)(i) were disposed prior to the effective date of the listing;

(iii) The leachate or gas condensate does not exhibit any characteristic of hazardous waste nor are derived from any other listed hazardous waste;

(iv) Discharge of the leachate or gas condensate, including leachate or gas condensate transferred from the landfill to a POTW by truck, rail, or dedicated pipe, is subject to regulation under R317-8 of the Utah Water Quality Rules.

(v) As of February 13, 2001, leachate or gas condensate derived from K169-K172 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. As of November 21, 2003, leachate or gas condensate derived from K176, K177, and K 178 is no longer exempt if it is stored or managed in a surface impoundment prior to discharge. After February 26, 2007, leachate or gas condensate derived from K181 will no longer be exempt if it is stored or managed in a surface impoundment prior to discharge. There is one exception: if the surface impoundment is used to temporarily store leachate or gas condensate in response to an emergency situation, e.g., shutdown of wastewater treatment system, provided the impoundment has a double liner, and provided the leachate or gas condensate is removed from the impoundment and continues to be managed in compliance with the conditions of this paragraph after the emergency ends.

(c) HAZARDOUS WASTES WHICH ARE EXEMPTED FROM CERTAIN RULES.

A hazardous waste which is generated in a product or raw material storage tank, a product or raw material transport vehicle or vessel, a product or raw material pipeline, or in a manufacturing process unit or an associated non-waste-treatment-manufacturing unit is not subject to these regulations or to the notification requirements of Section 3010 of RCRA until it exits the unit in which it was generated, unless the unit is a surface impoundment, or unless the hazardous waste remains in the unit more than 90 days after the unit ceases to be operated for manufacturing, or for storage or transportation of products or raw materials.

(d) SAMPLES

(1) Except as provided in paragraph (d)(2) of this section, a sample of solid waste or a sample of water, soil, or air, which is collected for the sole purpose of testing to determine its characteristics or compositions, is not subject to any requirements of these rules when:

(i) The sample is being transported to a laboratory for the purpose of testing;

(ii) The sample is being transported back to the sample collector after testing;

(iii) The sample is being stored by the sample collector before transport to a laboratory for testing;

(iv) The sample is being stored in a laboratory before testing;

(v) The sample is being stored in a laboratory after testing but before it is returned to the sample collector; or

(vi) The sample is being stored temporarily in the laboratory after testing for a specific purpose, for example, until conclusion of a court case or enforcement action where further testing of the sample may be necessary.

(2) In order to qualify for the exemption in paragraphs (d)(1)(i) and (ii) of this section, a sample collector shipping samples to a laboratory and a laboratory returning samples to a sample collector shall:

(i) Comply with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(ii) Comply with the following requirements if the sample collector determines that DOT, USPS, or other shipping requirements do not apply to the shipment of the sample:

(A) Assure that the following information accompanies the sample:

(1) The sample collector's name, mailing address, and telephone number;

(2) The laboratory's name, mailing address, and telephone number;

(3) The quantity of the sample;

(4) The date of shipment; and

(5) A description of the sample.

(B) Package the sample so that it does not leak, spill, or vaporize from its packaging.

(3) This exemption does not apply if the laboratory determines that the waste is hazardous but the laboratory is no longer meeting any of the conditions stated in paragraph (d)(1) of this section.

(e) TREATABILITY STUDY SAMPLES.

(1) Except as provided in paragraph (e)(2) of this Section, a person who generates or collects samples for the purpose of conducting treatability studies as defined in section R315-1-1, which incorporates by reference the definitions of 40 CFR 260.10, are not subject to any requirement of R315-2, R315-5, and R315-6, or to the notification requirements of Section 3010 of RCRA, nor are these samples included in the quantity determinations of R315-2-5, which incorporates by reference the requirements concerning conditionally exempt small quantity generators of 40 CFR 261.5 and R315-5-3.34, which incorporates by reference the requirements concerning waste accumulation time for generators of 40 CFR 262.34(d) when:

(i) the sample is being collected and prepared for transportation by the generator or sample collector;

(ii) the sample is being accumulated or stored by the generator or sample collector prior to transportation to a laboratory or testing facility; or

(iii) the sample is being transported to the laboratory or testing facility for the purpose of conducting a treatability study.

(2) The exemption in paragraph (e)(1) of this section is applicable to samples of hazardous waste being collected and shipped for the purpose of conducting treatability studies provided that:

(i) The generator or sample collector uses, in "treatability studies," no more than 10,000 kg of media contaminated with non-acute hazardous waste, 1000 kg of non-acute hazardous waste other than contaminated media, 1 kg of acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste for each process being evaluated for each generated waste stream;

(ii) The mass of each sample shipment does not exceed 10,000 kg; the 10,000 kg quantity may be all media contaminated with non-acute hazardous waste, or may include 2500 kg of media contaminated with acute hazardous waste, 1000 kg of hazardous waste, and 1 kg of acute hazardous waste; and

(iii) the sample shall be packaged so that it will not leak, spill, or vaporize from its packaging during shipment and the requirements of paragraph A or B of this subparagraph are met;

(A) the transportation of each sample shipment complies with U.S. Department of Transportation (DOT), U.S. Postal Service (USPS), or any other applicable shipping requirements; or

(B) if the DOT, USPS, or other shipping requirements do not apply to the shipment of the sample, the following

information shall accompany the sample:

(1) the name, mailing address, and telephone number of the originator of the sample;

(2) the name, address, and telephone number of the facility that will perform the treatability study;

(3) the quantity of the sample;

(4) the date of shipment; and

(5) a description of the sample, including its EPA Hazardous Waste Number.

(iv) the sample is shipped to a laboratory or testing facility which is exempt under R315-2-4(f) (40 CFR 261.4(f)) or has an appropriate RCRA permit or interim status;

(v) the generator or sample collector maintains the following records for a period ending 3 years after completion of the treatability study:

(A) copies of the shipping documents;

(B) a copy of the contract with the facility conducting the treatability study;

(C) documentation showing:

(1) the amount of waste shipped under this exemption;

(2) the name, address, and EPA identification number of the laboratory or testing facility that received the waste;

(3) the date the shipment was made; and

(4) whether or not unused samples and residues were returned to the generator.

(vi) the generator reports the information required under paragraph (e)(v)(C) of this section in its biennial report.

(3) The Executive Secretary may grant requests on a case-by-case basis for up to an additional two years for treatability studies involving bioremediation. The Executive Secretary may grant requests on a case-by-case basis for quantity limits in excess of those specified in paragraphs (e)(2) (i) and (ii) and (f)(4) of this section, for up to an additional 5000 kg of media contaminated with non-acute hazardous waste, 500 kg of non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste and 1 kg of acute hazardous waste:

(i) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities in advance of commencing treatability studies. Factors to be considered in reviewing such requests include the nature of the technology, the type of process, e.g., batch versus continuous, size of the unit undergoing testing, particularly in relation to scale-up considerations, the time/quantity of material required to reach steady state operating conditions, or test design considerations such as mass balance calculations.

(ii) In response to requests for authorization to ship, store and conduct treatability studies on additional quantities after initiation or completion of initial treatability studies, when: There has been an equipment or mechanical failure during the conduct of a treatability study; there is a need to verify the results of a previously conducted treatability study; there is a need to study and analyze alternative techniques within a previously evaluated treatment process; or there is a need to do further evaluation of an ongoing treatability study to determine final specifications for treatment.

(iii) The additional quantities and time frames allowed in paragraph (e)(3) (i) and (ii) of this section are subject to all the provisions in paragraphs (e) (1) and (e)(2) (iii) through (vi) of this section. The generator or sample collector must apply to the Executive Secretary and provide in writing the following information:

(A) The reason why the generator or sample collector requires additional time or quantity of sample for treatability study evaluation and the additional time or quantity needed;

(B) Documentation accounting for all samples of hazardous waste from the waste stream which have been sent for or undergone treatability studies including the date each previous sample from the waste stream was shipped, the quantity of each previous shipment, the laboratory or testing facility to which it was shipped, what treatability study processes were conducted on each sample shipped, and the available results on each treatability study;

(C) A description of the technical modifications or change in specifications which will be evaluated and the expected results;

(D) If such further study is being required due to equipment or mechanical failure, the applicant must include information regarding the reason for the failure or breakdown and also include what procedures or equipment improvements have been made to protect against further breakdowns; and

(E) Such other information that the Executive Secretary considers necessary.

(f) SAMPLES UNDERGOING TREATABILITY STUDIES AT LABORATORIES AND TESTING FACILITIES.

Samples undergoing treatability studies and the laboratory or testing facility that conducts these treatability studies, to the extent these facilities are not otherwise subject to RCRA requirements, are not subject to any requirement of this rule, R315-3 through R315-8, and R315-13, or to the notification requirements of Section 3010 of RCRA provided that the conditions of paragraphs (f)(1) through (11) of this Section are met. A mobile treatment unit (MTU) may qualify as a testing facility subject to paragraphs (f)(1) through (11) of this section. Where a group of MTUs are located at the same site, the limitations specified in (f)(1) through (11) of this section apply to the entire group of MTUs collectively as if the group were one MTU.

(1) No less than 45 days before conducting treatability studies, the facility notifies the Executive Secretary in writing that it intends to conduct treatability studies under this paragraph.

(2) The laboratory or testing facility conducting the treatability study has an EPA identification number.

(3) No more than a total of 10,000 kg of "as received" media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste or 250 kg of other "as received" hazardous waste is subject to initiation of treatment in all treatability studies in any single day. "As received" waste refers to the waste as received in the shipment from the generator or sample collector.

(4) The quantity of "as received" hazardous waste stored at the facility for the purpose of evaluation in treatability studies does not exceed 10,000 kg, the total of which can include 10,000 kg of media contaminated with non-acute hazardous waste, 2500 kg of media contaminated with acute hazardous waste, 1000 kg of non-acute hazardous wastes other than contaminated media, and 1 kg of acute hazardous waste. This quantity limitation does not include treatment materials, including nonhazardous solid waste, added to "as received" hazardous waste.

(5) No more than 90 days have elapsed since the treatability study for the sample was completed, or no more than one year, two years for treatability studies involving bioremediation, have elapsed since the generator or sample collector shipped the sample to the laboratory or testing facility, whichever date first occurs. Up to 500 kg of treated material from a particular waste stream from treatability studies may be archived for future evaluation up to five years from the date of initial receipt. Quantities of materials archived are counted against the total storage limit for the facility.

(6) The treatability study does not involve the placement of hazardous waste on the land or open burning of hazardous waste.

(7) The facility maintains records for three years following completion of each study that show compliance with the treatment rate limits and the storage time and quantity limits. The following specific information shall be included for each

treatability study conducted:

(i) the name, address, and EPA identification number of the generator or sample collector of each waste sample;

(ii) the date the shipment was received;

(iii) the quantity of waste accepted;

(iv) the quantity of "as received" waste in storage each day;

(v) the date the treatment study was initiated and the amount of "as received" waste introduced to treatment each day;

(vi) the date the treatability study was concluded; and

(vii) the date any unused sample or residues generated from the treatability study were returned to the generator or sample collector or, if sent to a designated facility, the name of the facility and the EPA identification number.

(8) The facility keeps, on-site, a copy of the treatability study contract and all shipping papers associated with the transport of treatability study samples to and from the facility for a period ending three years from the completion date of each treatability study.

(9) The facility prepares and submits a report to the Executive Secretary by March 15 of each year that estimates the number of studies and the amount of waste expected to be used in treatability studies during the current year, and includes the following information for the previous calendar year:

(i) the name, address, and EPA identification number of the facility conducting the treatability studies;

(ii) the types, by process, of treatability studies conducted;

(iii) the names and addresses of persons for whom studies have been conducted, including their EPA identification numbers;

(iv) the total quantity of waste in storage each day;

(v) the quantity and types of waste subjected to treatability studies;

(vi) when each treatability study was conducted; and

(vii) the final disposition of residues and unused sample from each treatability study.

(10) The facility determines whether any unused sample or residues generated by the treatability study are hazardous waste under R315-2-3 and, if so, are subject to R315-2 through R315-8, and R315-13, unless the residues and unused samples are returned to the sample originator under the exemption of paragraph (e) of this section.

(11) The facility notifies the Executive Secretary by letter when the facility is no longer planning to conduct any treatability studies at the site.

(g) DREDGED MATERIAL THAT IS NOT A HAZARDOUS WASTE.

Dredged material that is subject to the requirements of a permit that has been issued under 404 of the Federal Water Pollution Control Act (33 U.S.C. 1344) or section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413) is not a hazardous waste. For this paragraph (g), the following definitions apply:

(1) The term dredged material has the same meaning as defined in 40 CFR 232.2;

(2) The term permit means:

(i) A permit issued by the U.S. Army Corps of Engineers (Corps) or the Utah State Division of Water Quality;

(ii) A permit issued by the Corps under section 103 of the Marine Protection, Research, and Sanctuaries Act of 1972 (33 U.S.C. 1413); or

(iii) In the case of Corps civil works projects, the administrative equivalent of the permits referred to in paragraphs R315-2-4(g)(2)(i) and (ii), as provided for in Corps regulations.

R315-2-5. Special Requirements for Hazardous Waste Generated by Conditionally Exempt Small Quantity Generators.

The requirements of 40 CFR 261.5, 1996 ed., are adopted and incorporated by reference.

R315-2-6. Requirements for Recyclable Materials.

The requirements of 40 CFR 261.6, 1998 ed., as amended by 63 FR 42110, August 6, 1998, are adopted and incorporated by reference within this rule, except for the following changes:

(a) Paragraph 40 CFR 261.6(a)(5) shall be amended to read as follows:

Hazardous waste as identified in 40 CFR 262.80(a) that is exported to or imported from designated member countries of the Organization for Economic Cooperation and Development (OECD) (as defined in Section 262.58(a)(1)) for purpose of recovery is subject to the requirements of 40 CFR part 262, subpart H, if it is subject to either the Federal manifesting requirements of 40 CFR Part 262, to the universal waste management standards of 40 CFR Part 273, or to State requirements analogous to 40 CFR Part 273.

R315-2-7. Residues of Hazardous Waste in Empty Containers.

(a)(1) Any hazardous waste remaining in either

(i) an empty container, or

(ii) an empty inner liner removed from a container, as defined in paragraph (b) of this section, is not subject to regulation under R315-2 through R315-13.

(2) Any hazardous waste in either:

(i) a container that is not empty, or

(ii) an inner liner removed from a container that is not empty, as defined in paragraph (b) of this section, is subject to regulation under R315-2 through R315-13.

(b)(1) A container or an inner liner removed from a container that has held any hazardous waste, except a waste that is a compressed gas or that is identified as acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) All wastes have been removed that can be removed using the practices commonly employed to remove materials from that type of container, e.g., pouring, pumping, and aspirating; and

(ii) No more than 2.5 centimeters, one inch, of residue remains on the bottom of the container or inner liner; or

(iii)(A) No more than three percent by weight of the total capacity of the container remains in the container or inner liner if the container is less than or equal to 119 gallons in size, or

(B) No more than 0.3 percent by weight of the total capacity of the container remains in the container or inner liner if the container is greater than 119 gallons in size.

(2) A container that has held a hazardous waste that is a compressed gas is empty when the pressure in the container approaches atmospheric.

(3) A container or an inner liner removed from a container that has held an acute hazardous waste listed in sections R315-2-10 or R315-2-11 is empty if:

(i) The container or inner liner has been triple rinsed using a solvent capable of removing the commercial chemical product or manufacturing chemical intermediate;

(ii) The container or inner liner has been cleaned by another method that has been shown in the scientific literature, or by tests conducted by the generator, to achieve equivalent removal; or

(iii) In the case of a container, the inner liner that prevented contact of the commercial chemical product or manufacturing chemical intermediate with the container, has been removed.

R315-2-8. PCB Wastes Regulated under the Toxic Substance Control Act, 42 U.S.C. et seq.

The disposal of PCB-containing dielectric fluid and electric equipment containing such fluid authorized for use and

regulated under part 761 40 CFR and that are hazardous only because they fail the test for the Toxicity Characteristic, hazardous codes D018 through D043 only, are exempt from regulation under R315-2 through R315-50 and the notification requirements of section 3010 of RCRA.

R315-2-9. Characteristics of Hazardous Waste.

(a) GENERAL.

(1) A solid waste, as defined in section R315-2-2, which is not excluded from regulation as a hazardous waste under R315-2-4(b), is a hazardous waste if it exhibits any of the characteristics identified in this section.

(2) A hazardous waste which is identified by a characteristic in this section, is assigned every EPA Hazardous Waste Number that is applicable as set forth in this section. This number shall be used in complying with the notification requirements of section 3010 of RCRA and all applicable recordkeeping and reporting requirements under R315-3 through R315-8, and R315-13.

(3) For purposes of this section, the Executive Secretary will consider a sample obtained using any of the applicable sampling methods specified in R315-50-6, or an equivalent method, to be a representative sample.

(b) CRITERIA FOR IDENTIFYING THE CHARACTERISTICS OF HAZARDOUS WASTE.

(1) The Board shall identify and define a characteristic of hazardous waste in this section only upon determining that:

(i) A solid waste that exhibits the characteristic may:

(A) Cause, or significantly contribute to, an increase in mortality or an increase in serious irreversible, or incapacitating reversible, illness; or

(B) Pose a substantial present or potential hazard to human health or the environment when it is improperly treated, stored, transported, disposed of or otherwise managed; and

(ii) The characteristic can be:

(A) Measured by an available standardized test method which is reasonably within the capability of generators of solid waste or private sector laboratories that are available to serve generators of solid waste; or

(B) Reasonably detected by generators of solid waste through their knowledge of their waste.

(c) CRITERIA FOR LISTING HAZARDOUS WASTE.

(1) The Board shall list a solid waste as a hazardous waste only upon determining that the solid waste meets one of the following criteria:

(i) It exhibits any of the characteristics of hazardous waste identified in this section.

(ii) It has been found to be fatal to humans in low doses, or, in the absence of data on human toxicity, it has been shown in studies to have an oral LD 50 toxicity, rat, of less than 50 milligrams per kilogram, an inhalation LC 50 toxicity, rat, of less than 50 milligrams per liter, or a dermal LD 50 toxicity, rabbit, of less than 200 milligrams per kilogram or is otherwise capable of causing or significantly contributing to an increase in serious irreversible, or incapacitating reversible illness. Waste listed in accordance with these criteria will be designated Acute Hazardous Waste.

(iii) It contains any of the toxic constituents listed in R315-50-10 and, after considering the following factors, the Board concludes that the waste is capable of posing a substantial present or potential hazard to human health or the environment when improperly treated, stored, transported or disposed of, or otherwise managed:

(A) The nature of the toxicity presented by the constituent.

(B) The concentration of the constituent in the waste.

(C) The potential of the constituent or any toxic degradation product of the constituent to migrate from the waste into the environment under the types of improper management considered in paragraph (c)(1)(iii)(G) of this section.

(D) The persistence of the constituent or any toxic degradation product of the constituent.

(E) The potential for the constituent or any toxic degradation product of the constituent to degrade into non-harmful constituents and the rate of degradation.

(F) The degree to which the constituent or any degradation product of the constituent bioaccumulates in ecosystems.

(G) The plausible types of improper management to which the waste could be subjected.

(H) The quantities of the waste generated at individual generation sites or on a regional or national basis.

(I) The nature and severity of the human health and environmental damage that has occurred as a result of the improper management of wastes containing the constituent.

(J) Action taken by other governmental agencies or regulatory programs based on the health or environmental hazard posed by the waste or waste constituent.

(K) Other factors as may be appropriate.

Substances will be listed on R315-50-10 only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. Wastes listed in accordance with these criteria will be designated Toxic wastes.

(2) The Board may list classes or types of solid waste as hazardous waste if they have reason to believe that individual wastes, within the class or type of waste, typically or frequently are hazardous under the definition of hazardous waste found in Section 19-6-102 of the Utah Solid and Hazardous Waste Act.

(3) The Board will use the criteria for listing specified in this section to establish the exclusion limits referred to in 40 CFR 261.5(c). R315-2-5 incorporates by reference the requirements of 40 CFR 261.5 concerning conditionally exempt small quantity generators.

(d) CHARACTERISTIC OF IGNITABILITY

(1) A solid waste exhibits the characteristic of ignitability if a representative sample of the waste has any of the following properties:

(i) It is a liquid, other than an aqueous solution containing less than 24 percent alcohol by volume, and has a flash point less than 60 degrees C, 140 degrees F, as determined by a Pensky-Martens Closed Cup Tester, using the test method specified in ASTM Standard D-93-79, or D-93-80, incorporated by reference, see section R315-1-2, or a Setaflash Closed Cup Tester, using the test method specified in ASTM Standard D-3278-78, incorporated by reference, see section R315-1-2, or as determined by an equivalent test method approved under the procedures set forth in section R315-2-15.

(ii) It is not a liquid and is capable, under standard temperature and pressure, of causing fire through friction, absorption of moisture or spontaneous chemical changes and, when ignited, burns so vigorously and persistently that it creates a hazard.

(iii) It is an ignitable "compressed gas" as defined in 49 CFR 173.300(a), 1990 ed., which is adopted and incorporated by reference, and as determined by the test methods described in that regulation or equivalent test methods approved under section R315-2-15.

(iv) It is an "oxidizer" as defined in 49 CFR 173.151, 1990 ed., which is adopted and incorporated by reference.

(2) A solid waste that exhibits the characteristic of ignitability has the EPA Hazardous Waste Number of D001.

(e) CHARACTERISTIC OF CORROSIVITY

(1) A solid waste exhibits the characteristic of corrosivity if a representative sample of the waste has either of the following properties:

(i) It is aqueous and has a pH less than or equal to 2 or greater than or equal to 12.5, as determined by a pH meter using Method 9040 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as

incorporated by reference in 40 CFR 260.11, see R315-1-2.

(ii) It is a liquid and corrodes steel, SAE 1020, at a rate greater than 6.35 mm, 0.250 inch, per year at a test temperature of 55 degrees C, 130 degrees F, as determined by the test method specified in NACE, National Association of Corrosion Engineers Standard TM-01-69 as standardized in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2.

(2) A solid waste that exhibits the characteristic of corrosivity has the EPA Hazardous Waste Number of D002.

(f) CHARACTERISTIC OF REACTIVITY

(1) A solid waste exhibits the characteristic of reactivity if a representative sample of the waste has any of the following properties:

(i) It is normally unstable and readily undergoes violent change without detonating.

(ii) It reacts violently with water.

(iii) It forms potentially explosive mixtures with water.

(iv) When mixed with water, it generates toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(v) It is a cyanide or sulfide bearing waste which, when exposed to pH conditions between 2 and 12.5, can generate toxic gases, vapors or fumes in a quantity sufficient to present a danger to human health or the environment.

(vi) It is capable of detonation or explosive reaction if it is subjected to a strong initiating source or if heated under confinement.

(vii) It is readily capable of detonation or explosive decomposition or reaction at standard temperature and pressure.

(viii) It is a "forbidden explosive" as defined in 49 CFR 173.5 ed., or a "Class 1 explosive" as defined in 49 CFR 173.50(b)(1), (2), or (3), which are incorporated by reference.

(2) A solid waste that exhibits the characteristic of reactivity has the EPA Hazardous Waste Number of D003.

(g) TOXICITY CHARACTERISTIC

(1) A solid waste (except manufactured gas plant waste) exhibits the characteristic of toxicity if, using the Toxicity Characteristic Leaching Procedure, test Method 1311 in "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods," EPA Publication SW-846, as incorporated by reference in 40 CFR 260.11, see R315-1-2, the extract from a representative sample of the waste contains any of the contaminants listed in Table 1 of 40 CFR 261.24 at a concentration equal to or greater than the respective value given in that Table. Where the waste contains less than 0.5 percent filterable solids, the waste itself, after filtering using the methodology outlined in Method 1311, is considered to be the extract for the purposes of this paragraph.

(2) A solid waste that exhibits the characteristic of toxicity has the EPA Hazardous Waste Number specified in Table 1 of 40 CFR 261.24, which corresponds to the toxic contaminant causing it to be hazardous. Table 1 of 40 CFR 261.24, 1990 ed., is adopted and incorporated by reference.

R315-2-10. Lists of Hazardous Wastes.

(a) A solid waste is a hazardous waste if it is listed in this section or R315-2-11, unless it has been excluded from this list under section R315-2-16.

(b) The Board will indicate the basis for listing the classes or types of wastes listed in this section and R315-2-11 by employing one or more of the following Hazard Codes:

Ignitable Waste: (I)
Corrosive Waste: (C)
Reactive Waste: (R)
Toxicity Characteristic Waste: (E)
Acute Hazardous Waste: (H)
Toxic Waste: (T)

R315-50-9, which incorporates by reference 40 CFR 261, Appendix VII, identifies the constituent which caused the Board to list the waste as a Toxicity Characteristic Waste (E) or Toxic Waste (T) in this section and R315-2-11.

(c) Each hazardous waste listed in this section and R315-2-11, is assigned an EPA Hazardous Waste Number which precedes the name of the waste. This number shall be used to comply with these rules where description and identification of a hazardous waste is required.

(d) The following hazardous wastes listed in this section are subject to the exclusion limits for acutely hazardous wastes established in R315-2-4:

EPA Hazardous Waste Nos. F020, F021, F022, F023, F026, and F027.

(e) The listing of hazardous wastes from non-specific sources found in 40 CFR 261.31, 2000 ed., is adopted and incorporated by reference with the following additional waste:

(1) F999 - Residues from demilitarization, treatment, and testing of nerve, military, and chemical agents CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX. (R,T,C,H)

(f) The listing of hazardous wastes from specific sources found in 40 CFR 261.32, 2002 ed., as amended by 70 FR 9138, February 24, 2005, is adopted and incorporated by reference.

R315-2-11. Discarded Commercial Chemical Products, Off-Specification Species, Container Residues, and Spill Residues Thereof.

The phrase "commercial chemical product or manufacturing chemical intermediate having the generic name listed in R315-2-11" refers to a chemical substance which is manufactured or formulated for commercial or manufacturing use which consists of the commercially pure grade of the chemical, any technical grades of the chemical that are produced or marketed, and all formulations in which the chemical is the sole active ingredient. It does not refer to a material, such as a manufacturing process waste, that contains any of the substances listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Where a manufacturing process waste is deemed to be hazardous waste because it contains a substance listed in paragraphs (e) or (f) of this section, that waste will be listed in Section R315-2-10, which incorporates the lists of hazardous wastes in 40 CFR 261.31 and 261.32, or will be identified as a hazardous waste by the characteristics set forth in Section R315-2-9.

The following materials or items are hazardous wastes if and when they are discarded or intended to be discarded as described in Subsection R315-2-2(a)(2)(i), when they are mixed with waste oil or used oil or other material and applied to the land for dust suppression or road treatment, when they are otherwise applied to the land in lieu of their original intended use or when they are contained in products that are applied to the land in lieu of their original intended use, or when, in lieu of their original intended use, they are produced for use as, or a component of a fuel, distributed for use as a fuel, or burned as a fuel.

(a) Any commercial chemical product, or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(b) Any off-specification commercial chemical product or manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33.

(c) Any residue remaining in a container or in an inner liner removed from a container that has held any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, unless the container is empty as defined in R315-2-7(b). Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard and thus, a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to a drum reconditioner who reconditions the drum but discards the residue.

(d) Any residue or contaminated soil, water or other debris resulting from the cleanup of a discharge, into or on any land or water, of any commercial chemical product or manufacturing chemical intermediate having the generic name listed in paragraphs (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33, or any residue or contaminated soil, water or other debris resulting from the cleanup of a spill, into or on any land or water, of any off-specification chemical product and manufacturing chemical intermediate which, if it met specifications, would have the generic name listed in paragraph (e) or (f) of this section, which incorporate by reference, respectively, the lists of acute hazardous wastes and hazardous wastes in 40 CFR 261.33. Unless the residue is being beneficially used or reused, or legitimately recycled or reclaimed; or being accumulated, stored, transported or treated prior to such use, re-use, recycling or reclamation, the Board considers the residue to be intended for discard, and thus a hazardous waste. An example of a legitimate re-use of the residue would be where the residue remains in the container and the container is used to hold the same commercial chemical product or manufacturing chemical product or manufacturing chemical intermediate it previously held. An example of the discard of the residue would be where the drum is sent to the drum reconditioner who reconditions the drum but discards the residue.

(e) The listing of chemicals, found in 40 CFR 261.33(e), 1997 ed., is adopted and incorporated by reference, with the addition of the following waste:

(1) P999 Nerve, Military, and Chemical Agents (i.e., CX, GA, GB, GD, H, HD, HL, HN-1, HN-2, HN-3, HT, L, T, and VX.)

(f) The listing of chemicals, found in 40 CFR 261.33(f), 2000 ed., is adopted and incorporated by reference.

R315-2-12. Inspections.

Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which hazardous wastes are generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to these wastes for the purpose of ascertaining the compliance with R315-1 through R315-101. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

R315-2-13. Variances Authorized.

(a) Variances will be granted by the Board only to the extent allowed under State and Federal law.

(b) The Board may consider a variance request in accordance with the standard established in section 19-6-111.(c) The Board may, at its own instance, review any variance granted during the term for which a variance was granted.

(d) A person applying for a variance shall submit the application, in writing, to the Executive Secretary. The application shall provide the following:

(1) Citation of the statutory, regulatory, or permit requirement from which the variance is sought;

(2) For variances for which the Board promulgates or has promulgated specific rules, information meeting the requirements of those rules;

(3) Information demonstrating that application of or compliance with the requirement would cause undue or unreasonable hardship on the person applying for the variance;

(4) Proposed alternative requirements, if any;

(5) Information demonstrating that the variance will achieve the purpose and intent of the statutory, regulatory, or permit provision from which the variance is sought;

(6) Information demonstrating that any alternative requirement or requirements will adequately protect human health and the environment; and

(7) If no alternative requirement is proposed, information demonstrating that if the variance is granted, human health and the environment will be adequately protected.

(e) A person applying for a variance shall provide such additional information as the Board or the Executive Secretary requires.

(f) Nothing in R315-2-13(d) or (e) limits the authority of the Board to grant variances in accordance with the standard established in section 19-6-111. A person applying for a variance under R315-9-2 shall provide such information described under R315-2-13(d) as the Executive Secretary directs.

R315-2-14. Violations, Orders, and Hearings.

(a) Whenever the Board or its duly appointed representative, as expressly delegated by the Board, determines that any person is in violation of any applicable approved hazardous waste operation plan or the requirements of R315-1 through R315-101, the Board or its duly appointed representative may cause written notice of that violation to be served upon the alleged violators. That notice shall specify the provisions of the plan, the rules alleged to have been violated, and the facts alleged to constitute the violation. The Board or its duly appointed representative may issue an order that necessary corrective action be taken within a reasonable time or may request the attorney general or the county attorney in the county in which the violation takes place to bring a civil action for injunctive relief and enforcement of R315-1 through R315-101.

(b) Any order issued pursuant to 19-6-112 and R315-2-14(a) shall become final unless, within 30 days after the order is served, the persons specified therein request a hearing. The request shall:

(1) be in writing;
(2) be addressed to the Executive Secretary;
(3) include the order number;
(4) state the facts;
(5) state the relief sought; and
(6) state the reasons the relief requested should be granted.

(c) Utah Administrative Procedures Act, 63G-4, and R315-12, shall govern the conduct of hearings before the Board.

R315-2-15. Petitions for Equivalent Testing or Analytical Methods.

(a) Any person seeking to add a testing or analytical method to R315-2, R315-7, R315-8, or R315-50, which incorporates the testing and analytical methods of 40 CFR 261, may petition for a regulatory amendment under this section and R315-2-17. To be successful, the person shall demonstrate to the satisfaction of the Board that the proposed method is equal to or superior to the corresponding method prescribed in R315-2, R315-7, R315-8, or R315-50, in terms of its sensitivity, accuracy, and precision, i.e., reproducibility.

(b) Each petition shall include:

(1) The petitioner's name and address;

(2) A statement of the petitioner's interest in the proposed action;

(3) A description of the proposed action, including, where appropriate, suggested regulatory language;

(4) A statement of the need and justification for the proposed action, including any supporting tests, studies, or other information;

(5) A full description of the proposed method, including all procedural steps and equipment used in the method;

(6) A description of the types of wastes or waste matrices for which the proposed method may be used;

(7) Comparative results obtained from using the proposed method with those obtained from using the relevant or corresponding methods prescribed in R315-2, R315-7, R315-8, and R315-50;

(8) An assessment of any factors which may interfere with, or limit the use of, the proposed method; and

(9) A description of the quality control procedures necessary to ensure the sensitivity, accuracy, and precision of the proposed method.

(c) After receiving a petition for an equivalent method, the Board may request any additional information on the proposed method which it may reasonably require to evaluate the method.

(d) The Board will consider any petitions in accordance with rulemaking procedures outlined in Section 63G-3-601.

(e) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.21 to have an alternative analytical method approved by EPA. In the event approval is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board.

R315-2-16. Petitions to Amend This Rule to Exclude a Waste Produced at a Particular Facility.

(a) The requirements of 40 CFR 260.22, 1993 ed., as amended by 58 FR 46040, August 31, 1993, regarding petitions to exclude a waste are adopted and incorporated by reference with the following amendments:

(1) Substitute "Board" for "Administrator;"

(2) Include the following paragraphs:

(i) The Board will consider any petitions in accordance with rulemaking procedures outlined in 63G-3, and in accordance with the procedures outlined in the Utah Administrative Procedures Act, 63G-4, and R315-12.

(ii) Petitioner may, alternatively, proceed under the provisions of 40 CFR 260.22 to have a particular waste delisted by EPA. In the event delisting is granted, the petitioner shall so notify the Board and the decision of EPA will be binding upon the Board unless, within 30 days after such notification, the Board specifically overrules the decision of EPA. In such event, the petitioner may petition the Board directly under this section for the relief sought.

R315-2-17. Petition to Amend Rules.

(a) It is the intent of the Board to insure the compatibility and equivalency of R315-1 through R315-101 with the regulations promulgated by EPA under the Resource Conservation and Recovery Act of 1976.

(b) Any person may petition the Board to modify or revoke any provision in R315-1 through R315-16, R315-50, R315-101, and R315-102. A petition shall be considered under the procedures outlined in 63G-3-601 and R15-2.

R315-2-18. Variances from Classification as a Solid Waste.

The variances from classification as a solid waste of 40 CFR 260.30, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-19. Standards and Criteria for Variances from Classification as a Solid Waste.

(a) The standards and criteria for variances from classification as a solid waste found in 40 CFR 260.31, 1994 ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

(1) Substitute "Board" for "Regional Administrator."

R315-2-20. Variance to be Classified as a Boiler.

The provision for a variance to be classified as a boiler as found in 40 CFR 260.32, 1994 ed., as amended by 59 FR 47982, September 19, 1994, is adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-21. Procedures for Variances from Classification as a Solid Waste or to be Classified as a Boiler.

The procedures for variances from classification as a solid waste or boiler of 40 CFR 260.33, ed., as amended by 59 FR 47982, September 19, 1994, are adopted and incorporated by reference with the following amendment:

Substitute "Board" for "Regional Administrator."

R315-2-22. Additional Regulation of Certain Hazardous Waste Recycling Activities on a Case-by-Case Basis.

The provision regarding the regulation of certain hazardous waste recycling activities of 40 CFR 260.40, 1990 ed., is adopted and incorporated by reference with the following amendment:

Substitute "Executive Secretary" for "Regional Administrator."

R315-2-23. Procedures for Case-by-Case Regulation of Hazardous Waste Recycling Activities.

The Executive Secretary shall use the following procedures when determining whether to regulate hazardous waste recycling activities described in R315-2-6, which incorporates by reference the requirements of 40 CFR 261.6 regarding recyclable materials, under the provisions of 40 CFR 261.6 (b) and (c), rather than under the provisions of 40 CFR 266.70 concerning precious metals recovery.

(a) If a generator is accumulating the waste, the Executive Secretary will issue a notice setting forth the factual basis for the decision and stating that the person must comply with the applicable requirements of R315-5. The notice will become final within 30 days, unless the person served requests a public hearing before the Board to challenge the decision. Upon receiving such a request, the Board will hold a hearing. The Board will provide notice of the hearing to the public and allow public participation at the hearing. The Board will issue a final order after the hearing stating whether or not compliance with R315-5 is required. The order becomes effective 30 days after

service of the decision unless the Board specifies a later date.

(b) If the person is accumulating the recyclable material as a storage facility, the notice will state that the person must obtain a hazardous waste permit in accordance with all applicable provisions of R315-3. The owner or operator of the facility must apply for a permit within no less than 60 days and no more than six months of notice, as specified in the notice. If the owner or operator of the facility wishes to challenge the Board's decision, he may do so in his hazardous waste permit, in a public hearing held on the draft permit, or in comments filed on the draft permit, or on the notice of intent to deny the permit. The fact sheet accompanying the permit will specify the reasons for the Board's determination. The question of whether the Board's decision was proper will remain open for consideration during the public comment period discussed under R315-4-1.11 and in any subsequent hearing.

R315-2-24. Deletion of Certain Hazardous Waste Codes Following Equipment Cleaning and Replacement.

(a) Wastes from wood preserving processes at plants that do not resume or initiate use of chlorophenolic preservatives will not meet the listing definition of F032 once the generator has met all of the requirements of paragraphs (b) and (c) of this section. These wastes may, however, continue to meet another hazardous waste listing description or may exhibit one or more of the hazardous waste characteristics.

(b) Generators must either clean or replace all process equipment that may have come into contact with chlorophenolic formulations or constituents thereof, including, but not limited to, treatment cylinders, sumps, tanks, piping systems, drip pads, fork lifts, and trams, in a manner that minimizes or eliminates the escape of hazardous waste or constituents, leachate, contaminated drippage, or hazardous waste decomposition products to the ground water, surface water, or atmosphere.

(1) Generators shall do one of the following:

(i) Prepare and follow an equipment cleaning plan and clean equipment in accordance with this section;

(ii) Prepare and follow an equipment replacement plan and replace equipment in accordance with this section; or

(iii) Document cleaning and replacement in accordance with this section, carried out after termination of use of chlorophenolic preservations.

(2) Cleaning Requirements.

(i) Prepare and sign a written equipment cleaning plan that describes:

(A) The equipment to be cleaned;

(B) How the equipment will be cleaned;

(C) The solvent to be used in cleaning;

(D) How solvent rinses will be tested; and

(E) How cleaning residues will be disposed.

(ii) Equipment must be cleaned as follows:

(A) Remove all visible residues from process equipment;

(B) Rinse process equipment with an appropriate solvent until dioxins and dibenzofurans are not detected in the final solvent rinse.

(iii) Analytical requirements.

(A) Rinses must be tested in accordance with SW-846, Method 8290.

(B) "Not detected" means at or below the lower method calibration limit (MCL) in Method 8290, Table 1.

(iv) The generator must manage all residues from the cleaning process as F032 waste.

(3) Replacement requirements.

(i) Prepare and sign a written equipment replacement plan that describes:

(A) The equipment to be replaced;

(B) How the equipment will be replaced; and

(C) How the equipment will be disposed.

(ii) The generator must manage the discarded equipment as F032 waste.

(4) Documentation requirements.

(i) Document that previous equipment cleaning and/or replacement was performed in accordance with this section and occurred after cessation of use of chlorophenolic preservatives.

(c) The generator must maintain the following records documenting the cleaning and replacement as part of the facility's operating record:

(1) The name and address of the facility;

(2) Formulations previously used and the date on which their use ceased in each process at the plant;

(3) Formulations currently used in each process at the plant;

(4) The equipment cleaning or replacement plan;

(5) The name and address of any persons who conducted the cleaning and replacement;

(6) The dates on which cleaning and replacement were accomplished;

(7) The dates of sampling and testing;

(8) A description of the sample handling and preparation techniques, including techniques used for extraction, containerization, preservation, and chain-of-custody of the samples;

(9) A description of the tests performed, the date the tests were performed, and the results of the tests;

(10) The name and model numbers of the instrument(s) used in performing the tests;

(11) QA/QC documentation; and

(12) The following statement signed by the generator or his authorized representative:

I certify under penalty of law that all process equipment required to be cleaned or replaced under 40 CFR 261.35 was cleaned or replaced as represented in the equipment cleaning and replacement plan and accompanying documentation. I am aware that there are significant penalties for providing false information, including the possibility of fine or imprisonment.

R315-2-25. Requirements for Universal Waste.

The wastes listed in this section are exempt from regulation under R315-3 through R315-14 of these rules except as specified in section R315-16 of these rules and, therefore are not fully regulated as hazardous waste. The wastes listed in this section are subject to regulation under R315-16:

(a) Batteries as described in R315-16-1.2;

(b) Pesticides as described in R315-16-1.3;

(c) Mercury thermostats as described in R315-16-1.4; and

(d) Mercury lamps as described in R315-16-1.5.

R315-2-26. Comparable/Syngas Fuel Exclusion.

The requirements of 40 CFR 261.38, 2001 ed., are adopted and incorporated by reference with the following exception:

Substitute "Executive Secretary" for all references made to "Director".

R315-2-27. Exclusions/Exemptions.

The requirements as found in 40 CFR subpart E, sections 261.39 through 261.41, 2007 ed., are adopted and incorporated by reference.

KEY: hazardous wastes
January 15, 2008 19-6-105
Notice of Continuation August 24, 2006 19-6-106

R315. Environmental Quality, Solid and Hazardous Waste.
R315-15. Standards for the Management of Used Oil.
R315-15-1. Applicability, Prohibitions, and Definitions.

1.1 APPLICABILITY

This section identifies those materials which are subject to regulation as used oil under Section R315-15. This section also identifies some materials that are not subject to regulation as used oil under Rule R315-15, and indicates whether these materials may be subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50.

(a) Used oil. It is presumed that used oil is to be recycled unless a used oil handler disposes of used oil, or sends used oil for disposal. Except as provided in Section R315-15-1.2, the requirements of Rule R315-15 apply to used oil, and to materials identified in this section as being subject to regulation as used oil, whether or not the used oil or material exhibits any characteristics of hazardous waste identified in Section R315-2-9.

(b) Mixtures of used oil and hazardous waste.

(1) Listed hazardous waste.

(i) Mixtures of used oil and hazardous waste that is listed in Section R315-2-10 are subject to regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50, rather than as used oil under Rule R315-15.

(ii) Rebuttable presumption for used oil. Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. Persons may rebut this presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261, Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(A) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(B) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(2) Characteristic hazardous waste. Mixtures of used oil and hazardous waste that solely exhibits one or more of the hazardous waste characteristics identified in Section R315-2-9 and mixtures of used oil and hazardous waste that is listed in Section R315-2-10 solely because it exhibits one or more of the characteristics of hazardous waste identified in Section R315-2-9 are subject to:

(i) Except as provided in Subsection R315-15-1(b)(2)(iii), regulation as hazardous waste under Rules R315-1 through R315-14, and R315-50 rather than as used oil under Rule R315-15, if the resultant mixture exhibits any characteristics of hazardous waste identified in Section R315-2-9; or

(ii) Except as specified in Subsection R315-15-1.1(b)(2)(iii), regulation as used oil under Rule R315-15, if the resultant mixture does not exhibit any characteristics of hazardous waste identified under Section R315-2-9.

(iii) Regulation as used oil under Rule R315-15, if the mixture is of used oil and a waste which is hazardous solely because it exhibits the characteristic of ignitability, e.g., mineral spirits, provided that the mixture does not exhibit the characteristic of ignitability under Subsection R315-2-9(d).

(3) Conditionally exempt small quantity generator hazardous waste. Mixtures of used oil and conditionally exempt small quantity generator hazardous waste regulated under Section R315-2-5, which incorporates by reference 40 CFR 261.5, are subject to regulation as used oil under Rule R315-15.

(c) Materials containing or otherwise contaminated with used oil.

(1) Except as provided in paragraph (c)(2) of this section, materials containing or otherwise contaminated with used oil from which the used oil has been properly drained or removed to the extent possible such that no visible signs of free-flowing oil remain in or on the material:

(i) Are not used oil and thus not subject to Rule R315-15, and

(ii) If applicable are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50.

(2) Materials containing or otherwise contaminated with used oil that are burned for energy recovery are subject to regulation as used oil under Rule R315-15.

(3) Used oil drained or removed from materials containing or otherwise contaminated with used oil is subject to regulation as used oil under Rule R315-15.

(d) Mixtures of used oil with products.

(1) Except as provided in paragraph (d)(2) of this section, mixtures of used oil and fuels or other fuel products are subject to regulation as used oil under Rule R315-15.

(2) Mixtures of used oil and diesel fuel mixed on-site by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil is subject to the requirements of Section R315-15-2.

(e) Materials derived from used oil.

(1) Materials that are reclaimed from used oil that are used beneficially and are not burned for energy recovery or used in a manner constituting disposal, e.g., re-refined lubricants, are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Not solid wastes and are thus not subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 as provided in Subsection R315-2-3(c)(2)(i).

(2) Materials produced from used oil that are burned for energy recovery, e.g., used oil fuels, are subject to regulation as used oil under Rule R315-15.

(3) Except as provided in paragraph (e)(4) of this section, materials derived from used oil that are disposed of or used in a manner constituting disposal are:

(i) Not used oil and thus are not subject to Rule R315-15, and

(ii) Are solid wastes and thus are subject to the hazardous waste regulations of Rules R315-1 through R315-14, and R315-50 if the materials are listed or identified as hazardous wastes.

(4) Used oil re-refining distillation bottoms that are used as feedstock to manufacture asphalt products are not subject to Rule R315-15.

(f) Wastewater. Wastewater, the discharge of which is subject to regulation under either section 402 or section 307(b) of the Clean Water Act, including wastewaters at facilities which have eliminated the discharge of wastewater, contaminated with de minimis quantities of used oil are not subject to the requirements of Rule R315-15. For purposes of this paragraph, "de minimis" quantities of used oils are defined as small spills, leaks, or drippings from pumps, machinery, pipes, and other similar equipment during normal operations or small amounts of oil lost to the wastewater treatment system during washing or draining operations. This exception does not apply if the used oil is discarded as a result of abnormal manufacturing operations resulting in substantial leaks, spills,

or other releases, or to used oil recovered from wastewaters.

(g) Used oil introduced into crude oil pipelines or a petroleum refining facility.

(1) Used oil mixed with crude oil or natural gas liquids, e.g., in a production separator or crude oil stock tank, for insertion into a crude oil pipeline is exempt from the requirements of Rule R315-15. The used oil is subject to the requirements of Rule R315-15 prior to the mixing of used oil with crude oil or natural gas liquids.

(2) Mixtures of used oil and crude oil or natural gas liquids containing less than 1% used oil that are being stored or transported to a crude oil pipeline or petroleum refining facility for insertion into the refining process at a point prior to crude distillation or catalytic cracking are exempt from the requirements of Rule R315-15.

(3) Used oil that is inserted into the petroleum refining facility process before crude distillation or catalytic cracking without prior mixing with crude oil is exempt from the requirements of Rule R315-15 provided that the used oil constitutes less than 1% of the crude oil feed to any petroleum refining facility process unit at any given time. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(4) Except as provided in paragraph (g)(5) of this section, used oil that is introduced into a petroleum refining facility process after crude distillation or catalytic cracking is exempt from the requirements of Rule R315-15 only if the used oil meets the specification of Section R315-15-1.2. Prior to insertion into the petroleum refining facility process, the used oil is subject to the requirements of Rule R315-15.

(5) Used oil that is incidentally captured by a hydrocarbon recovery system or wastewater treatment system as part of routine process operations at a petroleum refining facility and inserted into the petroleum refining facility process is exempt from the requirements of Rule R315-15. This exemption does not extend to used oil which is intentionally introduced into a hydrocarbon recovery system, e.g., by pouring collected used oil into the waste water treatment system.

(6) Tank bottoms from stock tanks containing exempt mixtures of used oil and crude oil or natural gas liquids are exempt from the requirements of Rule R315-15.

(h) Used oil on vessels. Used oil produced on vessels from normal shipboard operations is not subject to Rule R315-15 until it is transported ashore.

(i) Used oil containing PCBs. In addition to the requirements of Rule R315-15, marketers and burners of used oil who market used oil containing any quantifiable level of PCBs are subject to the requirements found in 40 CFR 761.20(e).

(j) Inspections. Any duly authorized officer, employee or representative of the Department or the Board may, at any reasonable time and upon presentation of appropriate credentials and upon providing the opportunity to have a representative of the owner, operator, or agent in charge to be present, enter upon and inspect any property, premise, or place on or at which used oil is generated, transported, stored, treated or disposed of, and may have access to and the right to copy any records relating to used oil for purpose of ascertaining the compliance with Rule R315-15. Those persons referred to in this section may also inspect any waste and obtain samples thereof, including samples from any vehicle in which wastes are being transported or samples of any containers or labels. Any person obtaining samples shall give to the owner, operator or agent a receipt describing the sample obtained and, if requested, a portion of each sample of waste equal in volume or weight to the portion retained. If any analysis is made of those samples, a copy of the results of that analysis shall be furnished promptly to the owner, operator, or agent in charge.

(k) Violations, Orders, and Hearings. If the Executive Secretary has reason to believe a person is in violation of any provision of Rule R315-15, procedural requirements for compliance or cessation shall follow Section 19-6-721.

1.2 USED OIL SPECIFICATIONS

Used oil burned for energy recovery, and any fuel produced from used oil by processing, blending, or other treatment, is subject to regulation under Rule R315-15 unless it is shown not to exceed any of the allowable levels of the constituents and properties in the specification shown in Table 1. Once used oil that is to be burned for energy recovery has been shown not to exceed any specification and the person making that claim complies with Sections R315-15-7.3, R315-15-7.4, and Subsection R315-15-7.5(b), the used oil is no longer subject to Section R315-15-6.

TABLE 1
USED OIL NOT EXCEEDING ANY SPECIFICATION LEVEL IS NOT SUBJECT TO R315-15-6 WHEN BURNED FOR ENERGY RECOVERY(1)

Constituent/property	Allowable level
Arsenic	5 ppm maximum
Cadmium	2 ppm maximum
Chromium	10 ppm maximum
Lead	100 ppm maximum
Flash point	100 degrees F minimum
Total halogens	4,000 ppm maximum(2)

(1) The specification does not apply to mixtures of used oil and hazardous waste that continue to be regulated as hazardous waste, see Subsection R315-15-1.1(b).

(2) Used oil containing more than 1,000 ppm total halogens is presumed to be a hazardous waste under the rebuttable presumption provided under Subsection R315-15-1.1(b)(1). Such used oil is subject to Section R315-14-7, which incorporates by reference 40 CFR 266 Subpart H, rather than Rule R315-15 when burned for energy recovery unless the presumption of mixing can be successfully rebutted.

Note: Applicable standards for the burning of used oil containing PCBs are imposed by 40 CFR 761.20(e).

1.3 PROHIBITIONS

Except as authorized by the Board, a person may not place, discard, or otherwise dispose of used oil in the following manner:

(a) Surface impoundment prohibition. Used oil shall not be managed in surface impoundments or waste piles unless the units are subject to regulation under Rule R315-7 or R315-8.

(b) Use as a dust suppressant, weed suppressant, or for road oiling. The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited. Any disposal of used oil on the ground is prohibited under Subsection 19-6-706(1)(a)(iii).

(c) A person may not mix or commingle used oil with the following substances, except as incidental to the normal course of processing, mechanical, or industrial operations:

(1) Solid waste that is to be disposed of in any solid waste treatment, storage, or disposal facility, except as authorized by the Board; or

(2) Any hazardous waste so the resulting mixture may not be recycled or used for other beneficial purpose as authorized under Rule R315-15.

(d) Used oil shall not be disposed in a solid waste treatment, storage, or disposal facility, except for the disposal of hazardous used oil as authorized under R315-2.

(e) Used oil shall not be disposed in sewers, drainage systems, septic tanks, surface or ground waters, watercourses, or any body of water;

1.4 BURNING IN PARTICULAR UNITS

Burning in particular units. Off-specification used oil fuel may be burned for energy recovery only in the devices described in Subsection R315-15-6.2(a).

1.5 DISPOSAL OF DE MINIMIS USED OIL

(a) Section R315-15-1.3 does not apply to release of de minimis quantities of used oil identified under Subsection 19-6-706(4)(a).

(b) A person may dispose of an item or substance that contains de minimis amounts of oil in disposal facilities if:

(1) To the extent reasonably possible all oil has been removed from the item or substance; and

(2) No free flowing oil remains in the item or substance.

1.6 DISPOSAL OF USED OIL FILTERS

A person may dispose of a nonterne plated used oil filter that meets the exclusion of Subsection R315-2-4(b)(14) and is not mixed with hazardous waste defined by Rule R315-2.

1.7 DEFINITIONS

(a) Definitions of terms used in Rule R315-15 are incorporated by reference in Section R315-1-1.

(b) The definition of the term "de minimis" as used in Rule R315-15 has the same meaning as in Subsection 19-6-706(4)(b).

(c) The definition of the term "financial responsibility" as used in Rule R315-15 means the mechanism by which a person who has a financial obligation satisfies that obligation.

R315-15-2. Standards for Used Oil Generators.

2.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, Section R315-15-2 applies to all used oil generators. A used oil generator is any person, by site, whose act or process produces used oil or whose act first causes used oil to become subject to regulation.

(1) Household "do-it-yourselfer" used oil generators. Household "do-it-yourselfer" used oil generators are not subject to regulation under Rule R315-15, except for the prohibitions of Section R315-15-1.3.

(2) Vessels. Vessels at sea or at port are not subject to Section R315-15-2. For purposes of Section R315-15-2, used oil produced on vessels from normal shipboard operations is considered to be generated at the time it is transported ashore. The owner or operator of the vessel and the person(s) removing or accepting used oil from the vessel are co-generators of the used oil and are both responsible for managing the waste in compliance with Section R315-15-2 once the used oil is transported ashore. The co-generators may decide among them which party will fulfill the requirements of Section R315-15-2.

(3) Diesel fuel. Mixtures of used oil and diesel fuel mixed by the generator of the used oil for use in the generator's own vehicles are not subject to Rule R315-15 once the used oil and diesel fuel have been mixed. Prior to mixing, the used oil fuel is subject to the requirements of Section R315-15-2.

(4) Farmers. Farmers who generate an average of 25 gallons per month or less of used oil from vehicles or machinery used on the farm in a calendar year are not subject to the requirements of Rule R315-15, except for the prohibitions of Section R315-15-1.3.

(b) Other applicable provisions. Used oil generators who conduct the following activities are subject to the requirements of other applicable provisions of Rule R315-15 as indicated in paragraphs (b)(1) through (5) of this section:

(1) Generators who transport used oil, except under the self-transport provisions of Subsections R315-15-2.5(a) and (b), shall also comply with Section R315-15-4.

(2)(i) Except as provided in paragraph (b)(2)(ii) of this section, generators who process or re-refine used oil must also comply with Section R315-15-5.

(ii) Generators who perform the following activities are not processors provided that the used oil is generated on-site and is not being sent off-site to a burner of on- or off-specification used oil fuel.

(A) Filtering, cleaning, or otherwise reconditioning used oil before returning it for reuse by the generator;

(B) Separating used oil from wastewater generated on-site to make the wastewater acceptable for discharge or reuse pursuant to section 402 or section 307(b) of the Clean Water Act or other applicable Federal or state regulations governing the management or discharge of wastewater;

(C) Using oil mist collectors to remove small droplets of used oil from in-plant air to make plant air suitable for continued recirculation;

(D) Draining or otherwise removing used oil from materials containing or otherwise contaminated with used oil in order to remove excessive oil to the extent possible pursuant to Subsection R315-15-1.1(c); or

(E) Filtering, separating or otherwise reconditioning used oil before burning it in a space heater pursuant to Section R315-15-2.4.

(3) Generators who burn off-specification used oil for energy recovery, except under the on-site space heater provisions of Section R315-15-2.4, shall also comply with Section R315-15-6.

(4) Generators who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7.

(5) Generators who dispose of used oil shall also comply with Section R315-15-8.

2.2 HAZARDOUS WASTE MIXING

(a) Mixtures of used oil and hazardous waste shall be managed in accordance with Subsection R315-15-1.1(b).

(b) The rebuttable presumption for used oil of Subsection R315-15-1.1(b)(1)(ii) applies to used oil managed by generators. Under the rebuttable presumption for used oil of Subsection R315-15-1.1(b)(1)(ii), used oil containing greater than 1,000 ppm total halogens is presumed to be a hazardous waste and thus shall be managed as hazardous waste and not as used oil unless the presumption is rebutted. However, the rebuttable presumption does not apply to certain metalworking oil/fluids and certain used oils removed from refrigeration units.

2.3 USED OIL STORAGE

Used oil generators are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of Section R315-15-2. Used oil generators are also subject to the standards and requirements of Rules R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-2.

(a) Storage units. Used oil generators shall not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store used oil at generator facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects or deterioration; and

(2) Not leaking (no visible leaks).

(c) Labels.

(1) Containers and aboveground tanks used to store used oil at generator facilities shall be labeled or marked clearly with the words "Used Oil".

(2) Fill pipes used to transfer used oil into underground storage tanks at generator facilities shall be labeled or marked clearly with the words "Used Oil."

(d) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a generator shall comply with Section R315-15-9.

2.4 ON-SITE BURNING

Generators may burn used oil in used oil-fired space heaters without a permit provided that:

(a) The heater burns only used oil that the owner or operator generates;

(b) The heater is designed to have a maximum capacity of not more than 0.5 million Btu per hour;

(c) The combustion gases from the heater are vented to the ambient air;

(d) If registered as a Used Oil Collection Center as authorized in Section R315-15-3, the generator may burn used oil received from household do-it-yourselfer generators or farmers described in Subsection R315-15-2.1(a)(4); and

(e) The used oil is being legitimately recycled to utilize its energy content.

2.5 OFF-SITE SHIPMENTS

Except as provided in paragraphs (a) through (c) of this section, generators shall ensure that their used oil is transported only by transporters who have obtained EPA identification numbers.

(a) Self-transportation of small amounts to approved collection centers. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site and used oil collected from household do-it-yourselfers to a used oil collection center provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to a used oil collection center that is registered or permitted to manage used oil.

(b) Self-transportation of small amounts to aggregation points owned by the generator. Generators may transport, without an EPA identification number, used oil that is generated at the generator's site to an aggregation point provided that:

(1) The generator transports the used oil in a vehicle owned by the generator or owned by an employee of the generator;

(2) The generator transports no more than 55 gallons of used oil at any time; and

(3) The generator transports the used oil to an aggregation point that is owned and/or operated by the same generator.

(c) Tolling arrangements. Used oil generators may arrange for used oil to be transported by a transporter without an EPA identification number if the used oil is reclaimed under a contractual agreement pursuant to which reclaimed oil is returned by the processor/re-refiner to the generator for use as a lubricant, cutting oil, or coolant. The contract, known as a "tolling arrangement," shall indicate:

(1) The type of used oil and the frequency of shipments;

(2) That the vehicle used to transport the used oil to the processing/re-refining facility and to deliver recycled used oil back to the generator is owned and operated by the used oil processor/re-refiner; and

(3) That reclaimed oil will be returned to the generator.

R315-15-3. Standards for Used Oil Collection Centers and Aggregation Points.

3.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS

(a) Applicability. This section applies to owners or operators of all do-it-yourselfer (DIYer) used oil collection centers. A DIYer used oil collection center is any site or facility that accepts/aggregates and stores used oil collected only from household do-it-yourselfers.

(b) DIYer used oil collection center requirements. Owners or operators of all DIYer used oil collection centers shall comply with the generator standards in Section R315-15-2 and the record keeping requirements of Subsections R315-15-3.2(b)(3)(i) through (iv).

3.2 GENERATOR USED OIL COLLECTION CENTERS

(a) Applicability. This section applies to owners or operators of generator used oil collection centers. A generator used oil collection center is any site or facility that accepts/aggregates and stores used oil collected from used oil generators regulated under Section R315-15-2 who bring used oil to the collection center in shipments of no more than 55 gallons under the provisions of Subsection R315-15-2.5(a). Used generator oil collection centers may also accept used oil from household do-it-yourselfers and farmers described in Subsection R315-15-2.1(a)(4), if registered to do so.

(b) Generator used oil collection center requirements. Owners or operators of all generator used oil collection centers shall:

(1) Comply with the generator standards in Section R315-15-2;

(2) Be registered with the Division of Solid and Hazardous Waste to manage used oil; and

(3) Keep records of used oil received from off-site sources and picked up/transported from the collection center. This does not include used oil generated on-site from maintenance and servicing operations. These records shall be kept for a minimum of three years and shall contain the following information:

(i) Name and address of generator; or if unavailable, a written description of how the used oil was received.

(ii) Quantity of used oil received;

(iii) Date the used oil is received; and

(iv) Volumes of used oil picked up by a permitted transporter and the transporter's name and federal EPA identification number.

3.3 USED OIL AGGREGATION POINTS OWNED BY THE GENERATOR

(a) Applicability. This section applies to owners or operators of all used oil aggregation points. A used oil aggregation point is any site or facility that accepts, aggregates, and/or stores used oil collected only from other used oil generation sites owned or operated by the owner or operator of the aggregation point, from which used oil is transported to the aggregation point in shipments of no more than 55 gallons under the provisions of Subsection R315-15-2.5(b). Used oil aggregation points may also accept used oil from household do-it-yourselfers as long as they register as do-it-yourselfer collection centers, as described in Section R315-15-13.1, and comply with do-it-yourselfer collection center standards in Section R315-15-3.1. Used oil aggregation points that accept used oil from other generators must register as collection centers, as described in Section R315-15-13.2, and comply with collection center standards in Section R315-15-3.2.

(b) Used oil aggregation point requirements. Owners or operators of all used oil aggregation points shall comply with the generator standards in Section R315-15-2.

R315-15-4. Standards for Used Oil Transporter and Transfer Facilities.

4.1 APPLICABILITY

(a) General. Except as provided in paragraphs (a)(1) through (a)(4) of this section, Section R315-15-4 applies to all used oil transporters. Used oil transporters are persons who transport used oil, persons who collect used oil from more than one generator and transport the collected oil, and owners and operators of used oil transfer facilities. Except as provided by Subsection R315-15-13.4(f), used oil transporters or operators of used oil transfer facilities shall obtain a permit from the Executive Secretary prior to accepting any used oil for transportation or transfer. The application for a permit shall include the information required by Section R315-15-13.4.

(1) Section R315-15-4 does not apply to on-site transportation.

(2) Section R315-15-4 does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil collection center as specified in Subsection R315-15-2.5(a).

(3) Section R315-15-4 does not apply to generators who transport shipments of used oil totalling 55 gallons or less from the generator to a used oil aggregation point owned or operated by the same generator as specified in Subsection R315-15-2.5(b).

(4) Section R315-15-4 does not apply to transportation of used oil from household do-it-yourselfers to a regulated used oil generator, collection center, aggregation point, processor/re-refiner, or burner subject to the requirements of Rule R315-15. Except as provided in paragraphs (a)(1) through (a)(3) of this section, Section R315-15-4 does, however, apply to transportation of collected household do-it-yourselfer used oil from regulated used oil generators, collection centers, aggregation points, or other facilities where household do-it-yourselfer used oil is collected.

(b) Imports and exports. Transporters who import used oil from abroad or export used oil outside of the United States are subject to the requirements of Section R315-15-4 from the time the used oil enters and until the time it exits Utah.

(c) Trucks used to transport hazardous waste. Unless trucks previously used to transport hazardous waste are emptied as described in Section R315-2-7 prior to transporting used oil, the used oil is considered to have been mixed with the hazardous waste and shall be managed as hazardous waste unless, under the provisions of Subsection R315-15-1.1(b), the hazardous waste/used oil mixture is determined not to be hazardous waste.

(d) Other applicable provisions. Used oil transporters who conduct the following activities are also subject to other applicable provisions of Rule R315-15 as indicated in paragraphs (d)(1) through (5) of this section:

(1) Transporters who generate used oil shall also comply with Section R315-15-2;

(2) Transporters who process or re-refine used oil, except as provided in Section R315-15-4.2, shall also comply with Section R315-15-5;

(3) Transporters who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6;

(4) Transporters who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7; and

(5) Transporters who dispose of used oil shall also comply with Section R315-15-8.

4.2 RESTRICTIONS ON TRANSPORTERS WHO ARE NOT ALSO PROCESSORS OR RE-REFINERS

(a) Used oil transporters may consolidate or aggregate loads of used oil for purposes of transportation. However, except as provided in paragraph (b) of this section, used oil transporters may not process used oil unless they also comply with the requirements for processors/re-refiners in Section R315-15-5.

(b) Transporters may conduct incidental processing operations that occur in the normal course of used oil transportation, e.g., settling and water separation, but that are not designed to produce, or make more amenable for production of, used oil derived products unless they also comply with the processor/re-refiner requirements in Section R315-15-5.

(c) Transporters of used oil that is removed from oil bearing electrical transformers and turbines and filtered by the transporter or at a transfer facility prior to being returned to its original use are not subject to the processor/re-refiner requirements in Section R315-15-5.

4.3 NOTIFICATION

(a) Identification numbers. Used oil transporters who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil transporter who has not received an EPA identification number may obtain one by notifying the Executive Secretary of his used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Transporter company name;

(ii) Owner of the transporter company;

(iii) Mailing address for the transporter;

(iv) Name and telephone number for the transporter point of contact;

(v) Type of transport activity, i.e., transport only, transport and transfer facility, transfer facility only;

(vi) Location of all transfer facilities at which used oil is stored; and

(vii) Name and telephone number for a contact at each transfer facility.

4.4 USED OIL TRANSPORTATION

(a) Deliveries. A used oil transporter shall deliver all used oil received to:

(1) Another used oil transporter, provided that the transporter has obtained an EPA identification number;

(2) A used oil processing/re-refining facility which has obtained an EPA identification number;

(3) An off-specification used oil burner facility which has obtained an EPA identification number; or

(4) An on-specification used oil burner facility.

(b) DOT Requirements. Used oil transporters shall comply with all applicable requirements under the U.S. Department of Transportation regulations in 49 CFR 171 through 180. Persons transporting used oil that meets the definition of a hazardous material in 49 CFR 171.8 shall comply with all applicable regulations in 49 CFR 171 through 180.

(c) Used oil discharges. In the event of a used oil discharge, a transporter shall comply with Section R315-15-9.

4.5 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil is not a hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), the used oil transporter shall determine whether the total halogen content of used oil being transported or stored at a transfer facility is above or below 1,000 ppm.

(b) The transporter shall make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they

are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units if the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section shall be maintained by the transporter for at least three years.

4.6 USED OIL STORAGE AT TRANSFER FACILITIES

Used oil transporters are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of Section R315-15-4. Used oil transporters are also subject to the standards of Title R311, which incorporates by reference 40 CFR 280, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-4.

(a) Applicability. This section applies to used oil transfer facilities. Used oil transfer facilities are transportation related facilities including loading docks, parking areas, storage areas, and other areas where shipments of used oil are held for more than 24 hours during the normal course of transportation and not longer than 35 days. Transfer facilities that store used oil for more than 35 days are subject to the processor/re-refiner requirements as found in Section R315-15-5.

(b) Storage units. Owners or operators of used oil transfer facilities may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(c) Condition of units. Containers and aboveground tanks used to store used oil at transfer facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(d) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store used oil at transfer facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dikes, berms, or retaining walls except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(e) Labels.

(1) Containers and aboveground tanks used to store used oil at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at transfer facilities shall be labeled or marked clearly with the words "Used Oil."

(f) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, the owner/operator of a transfer facility shall comply with Section R315-15-9.

4.7 TRACKING

(a) Acceptance. Used oil transporters shall keep a record of each used oil shipment accepted for transport. Records for each shipment shall include:

(1) The name and address of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(2) The EPA identification number, if applicable, of the generator, transporter, or processor/re-refiner who provided the used oil for transport;

(3) The quantity of used oil accepted;

(4) The date of acceptance; and

(5)(i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the generator, transporter, or processor/re-refiner who provided the used oil for transport.

(ii) Intermediate rail transporters are not required to sign the record of acceptance.

(b) Deliveries. Used oil transporters shall keep a record of each shipment of used oil that is delivered to another used oil transporter, or to a used oil burner, processor/re-refiner, or disposal facility. Records of each delivery shall include:

(1) The name and address of the receiving facility or transporter;

(2) The EPA identification number of the receiving facility or transporter;

(3) The quantity of used oil delivered;

(4) The date of delivery; and

(5) (i) Except as provided in paragraph (a)(5)(ii) of this section, the signature, dated upon receipt of the used oil, of a representative of the receiving facility or transporter.

(ii) Intermediate rail transporters are not required to sign the record of delivery.

(c) Exports of used oil. Used oil transporters shall maintain the records described in paragraphs (b)(1) through (b)(4) of this section for each shipment of used oil exported to any foreign country.

(d) Record retention. The records described in paragraphs (a), (b), and (c) of this section shall be maintained for at least three years.

(e) Reporting. A used oil transporter/transfer facility shall report annually to the Executive Secretary by March 1 of each year. The report shall be consistent with the requirements of Subsection R315-15-13.4(d).

4.8 MANAGEMENT OF RESIDUES

Transporters who generate residues from the storage or transport of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

R315-15-5. Standards for Used Oil Processors and Re-Refiners.

5.1 APPLICABILITY

(a) The requirements of Section R315-15-5 apply to owners and operators of facilities that process used oil. Processing means chemical or physical operations designed to produce from used oil, or to make used oil more amenable for production of, fuel oils, lubricants, or other used oil-derived products. Processing includes: blending used oil with virgin petroleum products, blending used oils to meet the fuel specification, filtration, simple distillation, chemical or physical separation and re-refining. The requirements of Section R315-15-5 do not apply to:

(1) Transporters that conduct incidental processing operations that occur during the normal course of transportation as provided in Section R315-15-4.2; or

(2) Burners that conduct incidental processing operations that occur during the normal course of used oil management prior to burning as provided in Subsection R315-15-6.2(b).

(b) Other applicable provisions. Used oil processors/re-refiners who conduct the following activities are also subject to the requirements of other applicable provisions of Rule R315-15 as indicated in paragraphs (b)(1) through (b)(5) of this section.

(1) Processors/re-refiners who generate used oil shall also

comply with Section R315-15-2.

(2) Processors/re-refiners who transport used oil shall also comply with Section R315-15-4.

(3) Except as provided in paragraphs (b)(3)(i) and (b)(3)(ii) of this section, processors/re-refiners who burn off-specification used oil for energy recovery shall also comply with Section R315-15-6. Processor/re-refiners burning used oil for energy recovery under the following conditions are not subject to Section R315-15-6:

(i) The used oil is burned in an on-site space heater that meets the requirements of Section R315-15-2.4; or

(ii) The used oil is burned for purposes of processing used oil, which is considered burning incidentally to used oil processing.

(4) Processors/re-refiners who direct shipments of off-specification used oil from their facility to a used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Section R315-15-7.

(5) Processors/re-refiners who dispose of used oil shall also comply with Section R315-15-8.

(c) Processors/re-refiners shall obtain a permit from the Executive Secretary prior to processing or re-refining used oil. An application for a permit shall contain the information required by Section R315-15-13.5.

5.2 NOTIFICATION

(a) Identification numbers. Used oil processors/re-refiners who have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. A used oil processor or re-refiner who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Processor or re-refiner company name;

(ii) Owner of the processor or re-refiner company;

(iii) Mailing address for the processor or re-refiner;

(iv) Name and telephone number for the processor or re-refiner point of contact;

(v) Type of used oil activity, i.e., process only, process and re-refine;

(vi) Location of the processor or re-refiner facility.

5.3 GENERAL FACILITY STANDARDS

(a) Preparedness and prevention. Owners and operators of used oil processor/re-refiner facilities shall comply with the following requirements:

(1) Maintenance and operation of facility. Facilities shall be maintained and operated to minimize the possibility of a fire, explosion, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water which could threaten human health or the environment.

(2) Required equipment. Unless none of the hazards posed by used oil handled at the facility could require a particular kind of equipment specified in paragraphs (a)(2)(i) through (iv) of this section, all facilities shall be equipped with the following:

(i) An internal communications or alarm system capable of providing immediate emergency instruction, voice or signal, to facility personnel;

(ii) A device, such as a telephone, immediately available at the scene of operations, or a hand-held two-way radio, capable of summoning emergency assistance from local police departments, fire departments, or State or local emergency response teams;

(iii) Portable fire extinguishers, fire control equipment, including special extinguishing equipment, such as that using foam, inert gas, or dry chemicals, spill control equipment, and decontamination equipment; and

(iv) Water at adequate volume and pressure to supply water hose streams, or foam producing equipment, or automatic sprinklers, or water spray systems.

(3) Testing and maintenance of equipment. All facility communications or alarm systems, fire protection equipment, spill control equipment, and decontamination equipment, where required, shall be tested and maintained as necessary to assure its proper operation in time of emergency.

(4) Access to communications or alarm system.

(i) Whenever used oil is being poured, mixed, spread, or otherwise handled, all personnel involved in the operation shall have immediate access to an internal alarm or emergency communication device, either directly or through visual or voice contact with another employee, unless such a device is not required in paragraph (a)(2) of this section.

(ii) If there is ever just one employee on the premises while the facility is operating, the employee shall have immediate access to a device, such as a telephone, immediately available at the scene of operation, or a hand-held two-way radio, capable of summoning external emergency assistance, unless such a device is not required in paragraph (a)(2) of this section.

(5) Required aisle space. The owner or operator shall maintain aisle space to allow the unobstructed movement of personnel, fire protection equipment, spill control equipment, and decontamination equipment to any area of facility operation in an emergency, unless aisle space is not needed for any of these purposes.

(6) Arrangements with local authorities.

(i) The owner or operator shall attempt to make the following arrangements, as appropriate for the type of used oil handled at the facility and the potential need for the services of these organizations:

(A) Arrangements to familiarize police, fire departments, and emergency response teams with the layout of the facility, properties of used oil handled at the facility and associated hazards, places where facility personnel would normally be working, entrances to roads inside the facility, and possible evacuation routes;

(B) Where more than one police and fire department might respond to an emergency, agreements designating primary emergency authority to a specific police and a specific fire department, and agreements with any others to provide support to the primary emergency authority;

(C) Agreements with State emergency response teams, emergency response contractors, and equipment suppliers; and

(D) Arrangements to familiarize local hospitals with the properties of used oil handled at the facility and the types of injuries or illnesses which could result from fires, explosions, or releases at the facility.

(ii) Where State or local authorities decline to enter into such arrangements, the owner or operator shall document the refusal in the operating record.

(b) Contingency plan and emergency procedures. Owners and operators of used oil processors and re-refiners facilities shall comply with the following requirements:

(1) Purpose and implementation of contingency plan.

(i) Each owner or operator shall have a contingency plan for the facility. The contingency plan shall be designed to minimize hazards to human health or the environment from fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water.

(ii) The provisions of the plan shall be carried out immediately whenever there is a fire, explosion, or release of used oil which could threaten human health or the environment.

(2) Content of contingency plan.

(i) The contingency plan shall describe the actions facility personnel shall take to comply with paragraphs (b)(1) and (6) of this section in response to fires, explosions, or any unplanned sudden or non-sudden release of used oil to air, soil, or surface water at the facility.

(ii) If the owner or operator has already prepared a Spill Prevention, Control, and Countermeasures (SPCC) Plan in accordance with 40 CFR 112 or some other emergency or contingency plan, the owner or operator need only amend that plan to incorporate used oil management provisions necessary to comply with the requirements of R315-15.

(iii) The plan shall describe arrangements agreed to by local police departments, fire departments, hospitals, contractors, and State and local emergency response teams to coordinate emergency services, pursuant to paragraph (a)(6) of this section.

(iv) The plan shall list names, addresses, and phone numbers, office and home, of all persons qualified to act as emergency coordinator. This list shall be kept up to date. Where more than one person is listed, one shall be named as primary emergency coordinator and others shall be listed in the order in which they will assume responsibility as alternates. See also paragraph (b)(5) of this section.

(v) The plan shall include a list of all emergency equipment at the facility, such as fire extinguishing systems, spill control equipment, communications and alarm systems, internal and external, and decontamination equipment, where this equipment is required. This list shall be kept up to date. In addition, the plan shall include the location and a physical description of each item on the list, and a brief outline of its capabilities.

(vi) The plan shall include an evacuation plan for facility personnel where there is a possibility that evacuation could be necessary. This plan shall describe signal(s) to be used to begin evacuation, evacuation routes, and alternate evacuation routes, in cases where the primary routes could be blocked by releases of used oil or fires.

(3) Copies of contingency plan. A copy of the contingency plan and all revisions to the plan shall be:

(i) Maintained at the facility; and

(ii) Submitted to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services.

(4) Amendment of contingency plan. The contingency plan shall be reviewed, and immediately amended, if necessary, whenever:

(i) Applicable regulations are revised;

(ii) The plan fails in an emergency;

(iii) The facility changes its design, construction, operation, maintenance, or other circumstances in a way that materially increases the potential for fires, explosions, or releases of used oil, or changes the response necessary in an emergency;

(iv) The list of emergency coordinators changes; or

(v) The list of emergency equipment changes.

(5) Emergency coordinator. At all times, there shall be at least one employee either on the facility premises or on call, i.e., available to respond to an emergency by reaching the facility within a short period of time, with the responsibility for coordinating all emergency response measures. This emergency coordinator shall be thoroughly familiar with all aspects of the facility's contingency plan, all operations and activities at the facility, the location and characteristic of used oil handled, the location of all records within the facility, and facility layout. In addition, this person shall have the authority to commit the resources needed to carry out the contingency plan.

(6) Emergency procedures.

(i) Whenever there is an imminent or actual emergency situation, the emergency coordinator, or the designee when the emergency coordinator is on call, shall immediately:

(A) Activate internal facility alarms or communication systems, where applicable, to notify all facility personnel; and

(B) Notify appropriate State or local agencies with designated response roles if their help is needed.

(ii) Whenever there is a release, fire, or explosion, the emergency coordinator shall immediately identify the character, exact source, amount, and areal extent of any released materials. He may do this by observation or review of facility records of manifests and, if necessary, by chemical analysis.

(iii) Concurrently, the emergency coordinator shall assess possible hazards to human health or the environment that may result from the release, fire, or explosion. This assessment shall consider both direct and indirect effects of the release, fire, or explosion, e.g., the effects of any toxic, irritating, or asphyxiating gases that are generated, or the effects of any hazardous surface water run-offs from water or chemical agents used to control fire and heat-induced explosions.

(iv) If the emergency coordinator determines that the facility has had a release, fire, or explosion which could threaten human health, or the environment, outside the facility, he shall report his findings as follows:

(A) If his assessment indicated that evacuation of local areas may be advisable, he shall immediately notify appropriate local authorities. He shall be available to help appropriate officials decide whether local areas should be evacuated; and

(B) He shall implement the actions as required in Section R315-15-9.

(v) During an emergency, the emergency coordinator shall take all reasonable measures necessary to ensure that fires, explosions, and releases do not occur, recur, or spread to other used oil or hazardous waste at the facility. These measures shall include, where applicable, stopping processes and operation, collecting and containing released used oil, and removing or isolating containers.

(vi) If the facility stops operation in response to a fire, explosion, or release, the emergency coordinator shall monitor for leaks, pressure buildup, gas generation, or ruptures in valves, pipes, or other equipment, wherever this is appropriate.

(vii) Immediately after an emergency, the emergency coordinator shall provide for recycling, storing, or disposing of recovered used oil, contaminated soil or surface water, or any other material that results from a release, fire, or explosion at the facility.

(viii) The emergency coordinator shall ensure that, in the affected area(s) of the facility:

(A) No waste or used oil that may be incompatible with the released material is recycled, treated, stored, or disposed of until cleanup procedures are completed; and

(B) All emergency equipment listed in the contingency plan is cleaned and fit for its intended use before operations are resumed.

(C) The owner or operator shall notify the Executive Secretary, and appropriate local authorities that the facility is in compliance with paragraphs (b)(6)(viii)(A) and (B) of this section before operations are resumed in the affected area(s) of the facility.

(ix) The owner or operator shall note in the operating record the time, date, and details of any incident that requires implementing the contingency plan. Within 15 days after the incident, he shall submit a written report on the incident to the Executive Secretary. The report shall include:

(A) Name, address, and telephone number of the owner or operator;

(B) Name, address, and telephone number of the facility;

(C) Date, time, and type of incident, e.g., fire, explosion;

(D) Name and quantity of material(s) involved;

(E) The extent of injuries, if any;

(F) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and

(G) Estimated quantity and disposition of recovered material that resulted from the incident.

5.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a processing/re-refining facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), the owner or operator of a used oil processing/re-refining facility shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The owner or operator shall make this determination by:

(1) Testing the used oil; or

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in Section R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling agreement, to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

5.5 USED OIL MANAGEMENT

Used oil processor/re-refiners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR 112, in addition to the requirements of Section R315-15-5. Used oil processors/re-refiners are also subject to the standards and requirements of Rules R311-200 through R311-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-5.

(a) Management units. Used oil processors/re-refiners may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(c) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store or process used oil at processing and re-refining facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floors, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Labels.

(1) Containers and aboveground tanks used to store or process used oil at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer used oil into underground storage tanks at processing and re-refining facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, an owner/operator shall comply with Section R315-15-9.

(f) Closure.

(1) Aboveground tanks. Owners and operators who store or process used oil in aboveground tanks shall comply with the following requirements:

(i) At closure of a tank system, the owner or operator shall remove or decontaminate used oil residues in tanks, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under this chapter. Nonhazardous solid waste, must be managed in accordance with Section R315-301-4.

(ii) If the owner or operator demonstrates that not all contaminated soils can be practicably removed or decontaminated as required in paragraph (f)(1)(i) of this section, then the owner or operator shall close the tank system and perform post-closure care in accordance with the closure and post-closure care requirements that apply to hazardous waste landfills, Section R315-7-21.4.

(2) Containers. Owners and operators who store used oil in containers shall comply with the following requirements:

(i) At closure, containers holding used oils or residues of used oil shall be removed from the site;

(ii) The owner or operator shall remove or decontaminate used oil residues, contaminated containment system components, contaminated soils, and structures and equipment contaminated with used oil, and manage them as hazardous waste, unless the materials are not hazardous waste under Rule R315-2.

5.6 ANALYSIS PLAN

Owners or operators of used oil processing and re-refining facilities shall develop and follow a written analysis plan describing the procedures that will be used to comply with the analysis requirements of Section R315-15-5.4 and, if applicable, the marketer requirements in Section R315-15-7.3. The owner or operator shall keep the plan at the facility.

(a) Rebuttable presumption for used oil in Section R315-15-5.4. At a minimum, the plan shall specify the following:

(1) Whether sample analyses or knowledge of the halogen content of the used oil will be used to make this determination.

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Section R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under Section R315-2-15;

(ii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iii) The methods used to analyze used oil for the

parameters specified in Section R315-15-5.4; and

(3) The type of information that will be used to determine the halogen content of the used oil.

(b) On-specification used oil fuel in Section R315-15-7.3. At a minimum, the plan shall specify the following if Section R315-15-7.3 is applicable:

(1) Whether sample analyses or other information will be used to make this determination;

(2) If sample analyses are used to make this determination:

(i) The sampling method used to obtain representative samples to be analyzed. A representative sample may be obtained using either:

(A) One of the sampling methods in Section R315-50-6, which incorporates by reference 40 CFR 261, Appendix I; or

(B) A method shown to be equivalent under Section R315-2-15;

(ii) Whether used oil will be sampled and analyzed prior to or after any processing/re-refining;

(iii) The frequency of sampling to be performed, and whether the analysis will be performed on-site or off-site; and

(iv) The methods used to analyze used oil for the parameters specified in Section R315-15-7.3.

(3) The type of information that will be used to make the on-specification used oil fuel determination.

5.7 TRACKING

(a) Acceptance. Used oil processors/re-refiners shall keep a record of each used oil shipment accepted for processing/re-refining. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the processor/re-refiner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(3) The EPA identification number of the transporter who delivered the used oil to the processor/re-refiner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent for processing/re-refining;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Delivery. Used oil processor/re-refiners shall keep a record of each shipment of used oil that is shipped to a used oil burner, processor/re-refiner, or disposal facility. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(2) The name and address of the burner, processor/re-refiner, or disposal facility which will receive the used oil;

(3) The EPA identification number of the transporter who delivers the used oil to the burner, processor/re-refiner, or disposal facility;

(4) The EPA identification number of the burner, processor/re-refiner, or disposal facility which will receive the used oil;

(5) The quantity of used oil shipped; and

(6) The date of shipment.

(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years.

5.8 OPERATING RECORD AND REPORTING

(a) Operating record.

(1) The owner or operator shall keep a written operating record at the facility.

(2) The following information shall be recorded, as it becomes available, and maintained in the operating record until closure of the facility:

(i) Records and results of used oil analyses performed as described in the analysis plan required under R315-15-5.6;

(ii) Summary reports and details of all incidents that require implementation of the contingency plan as specified in Subsection R315-15-5.3(b); and

(iii) Records detailing the mass balance of wastewater entering and leaving the facility. This includes wastewater discharge records. This does not include water used in non-contact cooling processes.

(b) Reporting. A used oil processor/re-refiner shall report annually to the Executive Secretary by March 1 of each year. The report shall be consistent with the requirements of Subsection R315-15-13.5(d).

5.9 OFF-SITE SHIPMENTS OF USED OIL

Used oil processors/re-refiners who initiate shipments of used oil off-site shall ship the used oil using a used oil transporter who has obtained an EPA identification number.

5.10 MANAGEMENT OF RESIDUES

Owners and operators who generate residues from the storage, processing, or re-refining of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

R315-15-6. Standards for Used Oil Burners Who Burn Used Oil for Energy Recovery.

6.1 APPLICABILITY

(a) General. The requirements of Section R315-15-6 apply to used oil burners except as specified in paragraphs (a)(1) through (a)(3) of this section. An off-specification used oil burner is a facility where used oil not meeting the specification requirements in Section R315-15-1.2 is burned for energy recovery in devices identified in Subsection R315-15-6.2(a). Facilities burning used oil for energy recovery under the following conditions are not subject to Section R315-15-6:

(1) The used oil is burned by the generator in an on-site space heater under the provisions of Section R315-15-2.4;

(2) The used oil is burned by a processor/re-refiner for purposes of processing used oil, which is considered burning incidentally to used oil processing; or

(3) The used oil burned by the facility is obtained from a registered marketer who claims the oil meets the used oil fuel specifications set forth in Section R315-15-1.2 and who delivers the oil in the manner set forth in Subsection R315-15-7.5(b).

(b) Other applicable provisions. Used oil burners who conduct the following activities are also subject to the requirements of other applicable provisions of Rule R315-15 as indicated below.

(1) Burners who generate used oil shall also comply with Section R315-15-2;

(2) Burners who transport used oil shall also comply with Section R315-15-4;

(3) Except as provided in Subsection R315-15-6.2(b)(2), burners who process or re-refine used oil shall also comply with Section R315-15-5;

(4) Burners who direct shipments of off-specification used oil from their facility to an off-specification used oil burner or first claim that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2 shall also comply with Sections R315-15-7 and R315-15-13.7;

(5) Burners who dispose of used oil shall comply with Section R315-15-8; and

(6) Burners who collect used oil must also comply with the collection center requirements in Section R315-15-3. Burners who burn used oil collected from other generators must become marketers and comply with the provisions of Section R315-15-7. Burners who collect and burn used oil that does not fall into the categories of "do-it-yourselfer" or farmer-generated

used oil as described in Subsections R315-15-2.1(a)(1) and (4), must also become marketers and comply with the provisions of Section R315-15-7.

(c) Specification fuel. Persons burning used oil that meets the used oil fuel specifications of Section R315-15-1.2 under the conditions described in Subsections R315-15-6.1(a)(1) through (3) are not subject to Section R315-15-6, provided that the burner complies with the requirements of Section R315-15-7 and Subsection R315-15-13.6(a).

6.2 RESTRICTIONS ON BURNING

(a) Off-specification used oil fuel may be burned for energy recovery in only the following devices:

(1) Industrial furnaces identified in Section R315-1-1, which incorporates by reference 40 CFR 260.10;

(2) Boilers, as defined in Section R315-1-1, which incorporates by reference 40 CFR 260.10, that are identified as follows:

(i) Industrial boilers located on the site of a facility engaged in a manufacturing process where substances are transformed into new products, including the component parts of products, by mechanical or chemical processes;

(ii) Utility boilers used to produce electric power, steam, heated or cooled air, or other gases or fluids for sale;

(iii) Used oil-fired space heaters provided that the burner meets the provisions of Section R315-15-2.4; or

(3) Hazardous waste incinerators subject to regulation under Section R315-7-22 or R315-8-15.

(b)(1) With the following exception, off-specification used oil burners may not process used oil unless they also comply with the requirements of Section R315-15-5.

(2) Off-specification used oil burners may aggregate off-specification used oil with virgin oil or on-specification used oil for purposes of burning, but may not aggregate for purposes of producing on-specification used oil without also complying with the processor/re-refiner requirements in Section R315-15-5.

6.3 NOTIFICATION

(a) Identification numbers. Off-specification used oil burners which have not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) Mechanics of notification. An off-specification used oil burner who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12. To obtain EPA Form 8700-12 call Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Burner company name;

(ii) Owner of the burner company;

(iii) Mailing address for the burner;

(iv) Name and telephone number for the burner point of contact;

(v) Type of used oil activity; and

(vi) Location of the burner facility.

6.4 REBUTTABLE PRESUMPTION FOR USED OIL

(a) To ensure that used oil managed at a used oil burner facility is not hazardous waste under the rebuttable presumption of Subsection R315-15-1.1(b)(1)(ii), a used oil burner shall determine whether the total halogen content of used oil managed at the facility is above or below 1,000 ppm.

(b) The used oil burner shall determine if the used oil contains above or below 1,000 ppm total halogens by:

(1) Testing the used oil;

(2) Applying knowledge of the halogen content of the used oil in light of the materials or processes used; or

(3) Using information provided by the processor/re-refiner, if the used oil has been received from a processor/re-refiner subject to regulation under Section R315-15-5.

(c) If the used oil contains greater than or equal to 1,000 ppm total halogens, it is presumed to be a hazardous waste because it has been mixed with halogenated hazardous waste listed in Section R315-2-10. The owner or operator may rebut the presumption by demonstrating that the used oil does not contain hazardous waste, for example, by using an analytical method from SW-846, Edition III, to show that the used oil does not contain significant concentrations of halogenated hazardous constituents listed in R315-50-10, which incorporates by reference 40 CFR 261 Appendix VIII. SW-846, Edition III, is available for review during normal business hours at the Utah Division of Solid and Hazardous Waste office, located at 288 North 1460 West, Salt Lake City, Utah. To schedule an appointment, call 801-538-6170.

(1) The rebuttable presumption does not apply to metalworking oils/fluids containing chlorinated paraffins, if they are processed, through a tolling arrangement as described in Subsection R315-15-2.5(c), to reclaim metalworking oils/fluids. The presumption does apply to metalworking oils/fluids if such oils/fluids are recycled in any other manner, or disposed.

(2) The rebuttable presumption does not apply to used oils contaminated with chlorofluorocarbons (CFCs) removed from refrigeration units where the CFCs are destined for reclamation. The rebuttable presumption does apply to used oils contaminated with CFCs that have been mixed with used oil from sources other than refrigeration units.

(d) Record retention. Records of analyses conducted or information used to comply with paragraphs (a), (b), and (c) of this section shall be maintained by the burner for at least 3 years.

6.5 USED OIL STORAGE

Used oil burners are subject to all applicable Spill Prevention, Control and Countermeasures, 40 CFR part 112, in addition to the requirements of Section R315-15-6. Used oil burners are also subject to the standards and requirements of Rules R311-200 through R315-209, Underground Storage Tanks, for used oil stored in underground tanks whether or not the used oil exhibits any characteristics of hazardous waste, in addition to the requirements of Section R315-15-6.

(a) Storage units. Used oil burners may not store used oil in units other than tanks, containers, or units subject to regulation under Rule R315-7 or R315-8.

(b) Condition of units. Containers and aboveground tanks used to store oil at used oil burner facilities shall be:

(1) In good condition, with no severe rusting, apparent structural defects, or deterioration; and

(2) Not leaking (no visible leaks).

(c) Secondary containment. Containers, existing aboveground tanks, and new aboveground tanks used to store off-specification used oil at burner facilities shall be equipped with a secondary containment system.

(1) The secondary containment system shall consist of, at a minimum:

(i) Dikes, berms, or retaining walls; and

(ii) A floor. The floor shall cover the entire area within the dike, berm, or retaining wall, except areas where existing portions of existing aboveground tanks meet the ground.

(2) The entire containment system, including walls and floor, shall be sufficiently impervious to used oil to prevent any used oil released into the containment system from migrating out of the system to the soil, groundwater, or surface water.

(d) Labels.

(1) Containers and aboveground tanks used to store off-specification used oil at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(2) Fill pipes used to transfer off-specification used oil

into underground storage tanks at burner facilities shall be labeled or marked clearly with the words "Used Oil."

(e) Response to releases. Upon detection of a release of used oil to the environment not subject to the requirements of Section R311-202-1, which incorporates by reference 40 CFR 280, Subpart F, a burner shall comply with Section R315-15-9.

6.6 TRACKING

(a) Acceptance. Off-specification used oil burners shall keep a record of each off-specification used oil shipment accepted for burning. These records may take the form of a log, invoice, manifest, bill of lading, or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivered the used oil to the burner;

(2) The name and address of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(3) The EPA identification number of the transporter who delivered the used oil to the burner;

(4) The EPA identification number, if applicable, of the generator or processor/re-refiner from whom the used oil was sent to the burner;

(5) The quantity of used oil accepted; and

(6) The date of acceptance.

(b) Record retention. The records described in paragraph (a) of this section shall be maintained for at least three years.

6.7 NOTICES

(a) Certification. Before a burner accepts the first shipment of off-specification used oil fuel from a generator, transporter, or processor/re-refiner, the burner shall provide to the generator, transporter, or processor/re-refiner a one-time written and signed notice certifying that:

(1) The burner has notified the Executive Secretary stating the location and general description of his used oil management activities; and

(2) The burner will burn the used oil only in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

(b) Certification retention. The certification described in paragraph (a) of this section shall be maintained for three years from the date the burner last receives shipment of off-specification used oil from that generator, transporter, or processor/re-refiner.

6.8 MANAGEMENT OF RESIDUES

Burners who generate residues from the storage or burning of used oil shall manage the residues as specified in Subsection R315-15-1.1(e).

R315-15-7. Standards for Used Oil Fuel Marketers.

7.1 APPLICABILITY

(a) Any person who conducts either of the following activities is subject to the requirements of Sections R315-15-7 and R315-15-13.7:

(1) Directs a shipment of off-specification used oil from their facility to a used oil burner; or

(2) First claims that used oil that is to be burned for energy recovery meets the used oil fuel specifications set forth in Section R315-15-1.2.

(b) The following persons are not marketers subject to Section R315-15-7:

(1) Used oil generators, and transporters who transport used oil received only from generators, unless the generator or transporter directs a shipment of off-specification used oil from their facility to a used oil burner. However, processors/re-refiners who burn some used oil fuel for purposes of processing are considered to be burning incidentally to processing. Thus, generators and transporters who direct shipments of off-specification used oil to processors/re-refiners who incidentally burn used oil are not marketers subject to Section R315-15-7;

(2) Persons who direct shipments of on-specification used oil and who are not the first person to claim the oil meets the used oil fuel specifications of Section R315-15-1.2.

(c) Any person subject to the requirements of Section R315-15-7 shall also comply with one of the following:

(1) Section R315-15-2 - Standards for Used Oil Generators;

(2) Section R315-15-4 - Standards for Used Oil Transporters and Transfer Facilities;

(3) Section R315-15-5 - Standards for Used Oil Processors and Re-refiners; or

(4) Section R315-15-6 - Standards for Used Oil Burners who Burn Off-Specification Used Oil for Energy Recovery.

(d) A person may not act as a used oil fuel marketer without receiving a registration number issued by the Executive Secretary pursuant to Section R315-15-13.7.

7.2 PROHIBITIONS

A used oil fuel marketer may initiate a shipment of off-specification used oil only to a used oil burner who:

(a) Has an EPA identification number; and

(b) Burns the used oil in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).

7.3 ON-SPECIFICATION USED OIL FUEL

(a) Analysis of used oil fuel. A generator, transporter, processor/re-refiner, or burner may determine that used oil that is to be burned for energy recovery meets the fuel specifications of Section R315-15-1.2 by performing analyses or obtaining copies of analyses or other information documenting that the used oil fuel meets the specifications.

(b) Record retention. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the specifications for used oil fuel under Section R315-15-1.2, shall keep copies of analyses of the used oil, or other information used to make the determination, for three years.

7.4 NOTIFICATION

(a) Identification numbers. A used oil fuel marketer subject to the requirements of Section R315-15-7 who has not previously complied with the notification requirements of RCRA section 3010 shall comply with these requirements and obtain an EPA identification number.

(b) A marketer who has not received an EPA identification number may obtain one by notifying the Executive Secretary of their used oil activity by submitting either:

(1) A completed EPA Form 8700-12, which can be obtained by calling the Utah Division of Solid and Hazardous Waste at 801-538-6170; or

(2) A letter to the Division requesting an EPA identification number. The letter shall include the following information:

(i) Marketer company name;

(ii) Owner of the marketer;

(iii) Mailing address for the marketer;

(iv) Name and telephone number for the marketer point of contact; and

(v) Type of used oil activity, e.g., generator directing shipments of off-specification used oil to a burner.

7.5 TRACKING

(a) Off-specification used oil delivery. Any used oil marketer who directs a shipment of off-specification used oil to a burner shall keep a record of each shipment of used oil to a used oil burner. These records may take the form of a log, invoice, manifest, bill of lading or other shipping documents. Records for each shipment shall include the following information:

(1) The name and address of the transporter who delivers the used oil to the burner;

(2) The name and address of the burner who will receive the used oil;

(3) The EPA identification number of the transporter who

delivers the used oil to the burner;
(4) The EPA identification number of the burner;
(5) The quantity of used oil shipped; and
(6) The date of shipment.
(b) On-specification used oil delivery. A generator, transporter, processor/re-refiner, or burner who first claims that used oil that is to be burned for energy recovery meets the fuel specifications under Section R315-15-1.2 shall keep a record of each shipment of used oil to an on-specification used oil burner. Records for each shipment shall include the following information:
(1) The name and address of the facility receiving the shipment;
(2) The quantity of used oil fuel delivered;
(3) The date of shipment or delivery; and
(4) A cross-reference to the record of used oil analysis or other information used to make the determination that the oil meets the specification as required under Subsection R315-15-7.3(a).
(c) Record retention. The records described in paragraphs (a) and (b) of this section shall be maintained for at least three years.
7.6 NOTICES
(a) Certification. Before a used oil generator, transporter, or processor/re-refiner directs the first shipment of off-specification used oil fuel to a burner, he shall obtain a one-time written and signed notice from the burner certifying that:
(1) The burner has notified the Executive Secretary stating the location and general description of used oil management activities; and
(2) The burner will burn the off-specification used oil only in an industrial furnace or boiler identified in Subsection R315-15-6.2(a).
(b) Certification retention. The certification described in paragraph (a) of this section shall be maintained for three years from the date the last shipment of off-specification used oil is shipped to the burner.

R315-15-8. Standards for the Disposal of Used Oil.
8.1 APPLICABILITY
The requirements of Section R315-15-8 apply to all used oils that cannot be recycled and are therefore being disposed.
8.2 DISPOSAL
(a) Disposal of hazardous used oils. Used oils that are identified as a hazardous waste and cannot be recycled in accordance with Rule R315-15 shall be managed in accordance with the hazardous waste management requirements of Rules R315-1 through R315-14, and R315-50.
(b) Disposal of nonhazardous used oils. Used oils that are not hazardous wastes and cannot be recycled under Rule R315-15 shall be disposed in a solid waste disposal facility meeting the applicable requirements of Rules R315-301 through R315-318 and authorized by the Board.
8.3 USE AS A DUST SUPPRESSANT, WEED SUPPRESSANT, OR FOR ROAD OILING
The use of used oil as a dust suppressant, weed suppressant, or for road oiling or other similar use is prohibited.

R315-15-9. Emergency Controls.
9.1 IMMEDIATE ACTION
In the event of a release of used oil, the person responsible for the material at the time of the release shall immediately:
(a) Take appropriate action to minimize the threat to human health and the environment.
(b) Notify the Utah State Department of Environmental Quality, 24-hour Answering Service, 801-536-4123 for used oil releases exceeding 25 gallons, or smaller releases that pose a potential threat to human health or the environment. Small leaks and drips from vehicles are considered de minimis and are not subject to the release clean-up provisions of R315-15-9.
(c) Provide the following information when reporting the release:
(1) Name, phone number, and address of person responsible for the release.
(2) Name, title, and phone number of individual reporting.
(3) Time and date of release.
(4) Location of release--as specific as possible including nearest town, city, highway, or waterway.
(5) Description contained on the manifest and the amount of material released.
(6) Cause of release.
(7) Possible hazards to human health or the environment and emergency action taken to minimize that threat.
(8) The extent of injuries, if any.
(d) An air, rail, highway, or water transporter who has discharged used oil shall:
(1) Give notice, if required by 49 CFR 171.15 to the National Response Center, 800-424-8802 or 202-426-2675; and
(2) Report in writing as required by 49 CFR 171.16 to the Director, Office of Hazardous Materials Regulations, Materials Transportation Bureau, Department of Transportation, Washington, D.C. 20590.
(e) A water, bulk shipment, transporter who has discharged used oil shall give the same notice as required by 33 CFR 153.203 for oil and hazardous substances.
9.2 EMERGENCY CONTROL VARIANCE
If a release of used oil requires immediate removal to protect human health or the environment, as determined by the Executive Secretary, a variance may be granted by the Executive Secretary to the EPA Identification Number requirement for used oil transporters until the released material and any residue or contaminated soil, water, or other material resulting from the release no longer presents an immediate hazard to human health or the environment, as determined by the Executive Secretary.
9.3 RELEASE CLEAN-UP
The person responsible for the material at the time of the release shall clean up all the released material and any residue or contaminated soil, water or other material resulting from the release or take action as may be required by the Executive Secretary so that the released material, residue, or contaminated soil, water, or other material no longer presents a hazard to human health or the environment. The cleanup or other required actions shall be at the expense of the person responsible for the release.
9.4 REPORTING
Within 15 days after any release of used oil that is reported under R315-15-9.1(b), the person responsible for the material at the time of the release shall submit to the Board or the Executive Secretary a written report which contains the following information:
(a) The person's name, address, and telephone number;
(b) Date, time, location, and nature of the incident;
(c) Name and quantity of material(s) involved;
(d) The extent of injuries, if any;
(e) An assessment of actual or potential hazards to human health or the environment, where this is applicable; and
(f) The estimated quantity and disposition of recovered material that resulted from the incident.

R315-15-10. Financial Requirements.
(a) Used oil activities. An owner or operator of an off-specification burner, transportation, processing, re-refining, or transfer facility, or a group of such facilities, is financially responsible for:
(1) cleanup and closure costs,
(2) general liabilities, including operation of motor vehicles, worker compensation and contractor liability, and
(3) environmental pollution legal liability for bodily injury

or property damage to third parties resulting from sudden or non-sudden used oil releases. The owner or operator of a permitted used oil facility or operation shall present evidence satisfactory to the Executive Secretary of its ability to meet these financial requirements. The owner or operator shall present with its permit application the information the Executive Secretary requires to demonstrate its general comprehensive liability coverage. The owner or operator shall use the financial mechanisms described in Section R315-15-12 to demonstrate its ability to meet the financial requirements of Subsection R315-15-10(a)(1) and (a)(3). In approving the financial mechanisms used to satisfy the financial requirements, the Executive Secretary will take into account existing financial mechanisms already in place by the facility if required by Sections R315-7-15, R315-8-8, and R311-201-6. Additionally, the Executive Secretary will consider other relevant factors in approving the financial mechanisms, such as the volumes of used oil handled and existing secondary containment. Financial responsibility, environmental pollution legal liability and general liability coverage shall be provided to the Executive Secretary as part of the permit application and approval process and shall be maintained until released by Executive Secretary. Changes in extent, type, or amount of the environmental pollution legal liability and financial responsibility shall be considered a permit modification requiring notification to and approval from the Executive Secretary.

(b) Environmental pollution legal liability coverage for third party damages at used oil facilities. Each used oil processor, re-refiner, transfer facility, and off-specification burner shall obtain and maintain environmental pollution liability coverage for bodily injury and property damage to third parties resulting from sudden and non-sudden accidental releases of used oil at its facility. This liability coverage shall be maintained for the duration of the permit or until released by the Executive Secretary as provided for in this section. Changes in extent, type, or amount of the financial mechanism will be considered a permit modification requiring notification to and approval from the Executive Secretary. The minimum amount of environmental pollution legal liability coverage using an assurance mechanism as specified in this section for third-party damages shall be:

(1) For operations where individual volumes of used oil are greater than 55 gallons, such as tanks, storage vessels, used oil processing equipment, and that are raised above grade-level sufficiently to allow for visual inspection of the underside for releases shall be required to obtain coverage in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs, and

(2) For operations in whole or part that do not qualify under Subsection R315-15-10(b)(1), coverage shall be in the amount of $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, and $3 million per occurrence for non-sudden releases, with an annual aggregate coverage of $6 million, exclusive of legal defense costs.

(3) For operations covered under Subsection R315-15-10(b)(2), the owner or operator may choose to use a combined liability coverage for sudden and non-sudden accidental releases in the amount of $4 million per occurrence, with an annual aggregate coverage of $8 million, exclusive of legal defense costs.

(c) Used oil transporter environmental pollution legal liability coverage for third party damages. Each used oil transporter shall obtain environmental pollution legal liability coverage for bodily injury and property damage to third parties covering sudden accidental releases of used oil from its vehicles and other equipment and containers used during transit, loading, and unloading in Utah, and shall maintain this coverage for the duration of the permit or until released by the Executive Secretary as provided for in this section. The minimum amount of the coverage for used oil transporters shall be $1 million per occurrence for sudden releases, with an annual aggregate coverage of $2 million, exclusive of legal defense costs. Changes in extent, type, or amount of the liability coverage shall be considered a permit modification requiring notification to and approval from the Executive Secretary.

(d) An owner or operator responsible for cleanup and closure under Section R315-15-11 or environmental pollution legal liability for bodily injury and property damage to third parties under Subsections R315-15-10(b) and (c) shall demonstrate its ability to satisfy its responsibility to the Executive Secretary through the use of an acceptable financial assurance mechanism indicated under Section R315-15-12.

(e) Used Oil Collection Centers. An owner of a used oil collection center shall be subject to the same liability requirements as a permitted facility under Subsection R315-15-10(a) and (b) unless these requirements are waived by the Executive Secretary. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility that may be incurred in collecting or storing used oil if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system;

(3) The storage tank or container is clearly labeled with the words "Used Oil";

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received; and

(5) Oil sorbent material is readily available on site for immediate cleanup of spills.

(f) The Executive Secretary shall release an owner or operator from its existing financial responsibility mechanism as described in Section R315-15-10 when:

(1) The Executive Secretary approves an alternative mechanism;

(2) The owner or operator has achieved cleanup and closure according to Section R315-15-11; or

(3) The Executive Secretary determines that financial responsibility is no longer applicable under Rule R315-15.

(g) State of Utah and Federal government used oil permittees are exempt from the requirements of Section R315-15-10.

R315-15-11. Cleanup and Closure.

11.1 The owner or operator of a used oil collection, aggregation, transfer, processing/re-refining, or off-specification used oil burning facility shall remove all used oil and used oil residues from the site of operation and return the site to a post-operational land use in a manner that:

(a) Minimizes the need for further maintenance;

(b) Controls, minimizes, or eliminates, to the extent necessary to protect human health and the environment, post-closure escape of used oil, used oil constituents, leachate, contaminated run-off, or used oil decomposition products to the ground or surface waters, or to the atmosphere; and

(c) Complies with the closure requirements of Section R315-15-11 or supplies evidence acceptable to the Executive Secretary demonstrating a closure mechanism meeting the requirements of Section R315-7-15, R315-8-8, or 311-201-6.

(d) The permittee shall be responsible for used oil, used oil contaminants, or used oil residual materials that have been discharged or migrate beyond the facility property boundary.

The permittee is not relieved of all or any responsibility to cleanup, remedy or remediate a release that has discharged or migrated beyond the facility boundary where off-site access is denied. When off-site access is denied, the permittee shall demonstrate to the satisfaction of the Executive Secretary that, despite the permittee's best efforts, the permittee was unable to obtain the necessary permission to undertake the actions to cleanup, remedy or remediate the discharge or migration. The responsibility for discharges or migration beyond the facility property boundary does not convey any property rights of any sort, or any exclusive privilege to the permittee.

11.2 CLEANUP AND CLOSURE PLAN

(a) Written plan.

(1) The owner or operator of a used oil transfer, off-specification burner, or processing/re-refining facility shall have a written cleanup and closure plan. The cleanup and closure plan shall be submitted to the Executive Secretary for approval as part of the permit application.

(2) When physical or operational conditions at the facility change that result in a change in the nature or extent of cleanup and closure or an increase in the estimated costs of cleanup and closure, the owner or operator shall submit a modified plan for review and approval by the Executive Secretary.

(3) Changes in the amount or face value of a financial mechanism that are the result of the annual inflation update from the application of the implicit price deflator multiplier to a permit cleanup and closure plan cost estimate shall not require approval by the Executive Secretary.

(4) The adjustment shall be made by recalculating the cleanup closure cost estimate in current dollars or by using an inflation factor derived from the most recent Implicit Price Deflator for Gross Domestic Product published by the U.S. Department of Commerce, Bureau of Economic Analysis in its Survey of Current Business as specified in Section 264.145(b)(1) and (2). The inflation factor is the incremental increase of the latest published annual Deflator to the Deflator for the previous year divided by the previous year Deflator. The first adjustment is made by multiplying the cleanup closure cost estimate by the inflation factor. The result is the adjusted cleanup closure cost estimate. Subsequent adjustments are made by multiplying the latest adjusted cleanup closure cost estimate by the latest inflation factor.

(b) Content of plan. The plan shall identify steps necessary to perform partial or final cleanup and closure of the facility at any point during its active life.

(1) The cleanup and closure plan shall be based on third-party, direct-estimated costs or on third-party costs using RS Means methods, applications, procedures, and use cost values applicable to the location of the facility and include, at least:

(i) A description of how each used oil management unit at the facility will be closed.

(ii) A description of how final cleanup and closure of the facility will be conducted. The description shall identify the maximum extent of the operations which will be cleaned, closed, or both during the active life of the facility.

(iii) An estimate of the maximum inventory of used oil to be stored onsite at any one time during the life of the facility and a detailed description of the methods to be used during partial cleanup and closure final cleanup and closure, or both, including, but not limited to, methods for removing, transporting, or disposing of all used oil, and identification of the off-site used oil facilities to be used, if applicable.

(iv) A detailed description of the steps needed to remove or decontaminate all used oil and used oil residues and contaminated containment system components, equipment, structures, and soils during partial or final cleanup and closure, including procedures for cleaning equipment and removing contaminated soils, methods for sampling and testing surrounding soils, and criteria for determining the extent of decontamination required to satisfy closure. This description shall address the management and disposal of all residues resulting from the decontamination activity, including, but not limited to, rinse waters, rags, personal protective equipment, small hand implements, vehicles, and mechanized equipment.

(v) A detailed description of other activities necessary during the cleanup and closure period to ensure that all partial closures shall satisfy the final cleanup and closure plan.

(vi) A cleanup and closure cost estimate and a mechanism for financial responsibility to cover the cost of cleanup and closure.

(vii) State of Utah and Federal government used oil permittees are exempt from the requirements of Subsection R315-15-11(b)(1)(vi).

(2) The owner or operator shall update its cleanup and closure plan cost estimate and provide the updated estimate to the Executive Secretary, in writing, within 60 days following a facility modification that causes an increase in the amount of the financial responsibility required under Section R315-15-10. Within 30 days of the Executive Secretary's approval of a permit modification for the cleanup and closure plan that would result in an increased cost estimate, the owner or operator shall provide to the Executive Secretary:

(i) evidence that the financial assurance mechanism amount or value includes the cleanup and closure cost estimate increase; or

(ii) other mechanisms covering the increased closure plan cost estimate and a summary document indicating the multiple financial mechanisms, by mechanism name, account number, and the amounts to satisfy Sections R315-15-10 and 11.

(c) The owner or operator shall update the cleanup and closure cost estimate to adjust for inflation and include the updated estimate in the permitted facility's annual report due by March 1st of each year, using either:

(1) the multiplier formed from the gross domestic product implicit price deflator ratio of the current calendar year to the past calendar year as published by the federal government Bureau of Economic Analysis; or

(2) new cleanup and closure cost estimate from the recalculation of the cleanup and closure plan costs to account for all changes in scope and nature of the facility or facilities, in current dollars.

11.3 TIME ALLOWED TO INITIATE CLOSURE

(a) The owner or operator shall initiate closure in accordance with the approved cleanup and closure plan and notify the Executive Secretary of this fact:

(1) Within 90 days after the owner or operator receives the final volume of used oil; or

(2) The Executive Secretary revokes the facility's used oil permit.

(b) During the cleanup and closure period or at any other time, if the Executive Secretary determines that the owner or operator has failed to comply with Rule R315-15, the Executive Secretary may, after 30 days, on written notice to the owner or operator, draw upon the financial mechanism associated with the cleanup and closure plan for the facility or facilities covered by the financial responsibility requirements of Section R315-15-10.

11.4 CERTIFICATION OF CLOSURE

(a) Within 60 days of completion of cleanup and closure, the owner or operator of a permitted used oil facility shall submit to the Executive Secretary, by registered mail, a certification that the used oil facility has been cleaned and closed in accordance with the specifications in the approved cleanup and closure plan. The certification shall be signed by the owner or operator and by an independent, Utah-registered professional engineer.

(b) The Executive Secretary shall make the determination of whether cleanup and closure has been completed according

to the cleanup and closure plan and Rule R315-15.

R315-15-12. Financial Assurance.

12.1 DEFINITIONS

For the purposes of Section R315-15-12, the following definitions apply:

(a) "Existing used oil facility" means any used oil transfer facility, off-specification burner, or used oil processing/re-refining facility in operation on July 1, 1993 under a used oil operating permit issued by the Division of Oil, Gas and Mining and in effect on or before June 30, 1993. An existing used oil facility is also required to obtain a permit from the Executive Secretary in accordance with Section R315-15-13.

(b) "New used oil facility" means any used oil transfer, off-specification burner, or used oil processing/re-refining facility that was not in operation as a used oil facility on July 1, 1993, and received an operating permit in accordance with Section R315-15-13 from the Executive Secretary after July 1, 1993.

(c) "Financial assurance mechanism" means "reclamation surety" as used in Sections 19-6-709 and 19-6-710 of the Used Oil Management Act.

12.2 APPLICABILITY

(a) The owner or operator of an existing or new used oil facility requiring a permit under Section R315-15-13 shall establish a financial assurance mechanism as evidence of financial responsibility under Section R315-15-10 sufficient to assure cleanup and closure of the facility in conformity with Subsection R315-15-11.1 with one or more of the financial assurance mechanisms of Subsection R315-15-12.3 prior to receiving a permit from the Executive Secretary.

(b) Any increase in capacity to store or process used oil at a used oil facility permitted by the Executive Secretary, above the storage or processing capacity identified in the permit application approved by the Executive Secretary, shall require the owner or operator of the permitted used oil facility to increase the amount or face value of the financial assurance mechanism to meet the additional capacity. The additional amount or increase in face value of financial assurance mechanism shall be in place and effective before operation of the increased storage or processing capacity and shall meet the requirements of Subsections R315-15-12.3 and R315-15-12.4.

(c) DIYer used oil collection centers, generator used oil collection centers, and used oil aggregation points are not required to post a financial assurance mechanism, but are subject to the cleanup and closure requirements of Sections R315-15-10 and R315-15-11 unless they have received a waiver in writing from the Executive Secretary under Subsection R315-15-10(e).

12.3 FINANCIAL ASSURANCE MECHANISMS

(a) Any financial assurance mechanism used to show financial responsibility under Sections R315-15-10 and 11 for an existing or new used oil facility shall:

(1) be legally valid, binding, and enforceable under Utah and federal law;

(2) be approved by the Executive Secretary;

(3) ensure that funds will be available in a timely fashion for:

(i) completing all cleanup and closure activities indicated in the closure plan of the permit approved by the Executive Secretary; and

(ii) environmental pollution legal liability for third party damages for bodily injury and property damage resulting from a sudden or non-sudden accidental release of used oil from or arising from permitted operations; and

(4) require a written notice sent by certified mail to the Executive Secretary 120 days prior to cancellation or termination of the financial mechanism.

(5) be updated each year to adjust for inflation, using either:

(i) the gross domestic product implicit price deflator ratio of the increase of the current calendar year to the past calendar year or

(ii) a new estimated cleanup and closure cost estimate recalculated to account for all changes in scope and nature of the permitted operation.

(b) The owner or operator of an existing or new used oil facility shall establish a financial assurance mechanism for cleanup and closure by one of the following mechanisms and shall submit a signed original or an original signed duplicate of the financial assurance mechanism to the Executive Secretary for approval as part of the permit application:

(1) Trust Fund.

(i) The trustee shall be an entity which has the authority to act as a trustee and whose operations are regulated and examined by a federal or state agency.

(ii) A signed original or an original signed duplicate of the trust agreement and accompanied by a formal certification of acknowledgement shall be submitted to the Executive Secretary.

(iii) For trust funds not fully funded at the time of permit approval by the Executive Secretary, incremental payments into the trust fund shall be made annually by the owner or operator to fully fund the trust within five years of the Executive Secretary's approval of the permit as follows:

(A) initial payment value shall be the initial cleanup and closure cost estimate value divided by the pay-in period, not to exceed five years, and

(B) next payment value shall be the difference of the approved current cleanup and closure cost estimate less the trust fund value, all divided by the remaining number of years in the pay-in period, and

(C) subsequent next payments shall be made into the trust fund annually on or before the anniversary date of the initial payment made into the trust fund, and

(D) no latter than 30 days after the last incremental payment to fully fund the trust, the permittee shall provide proof to the Executive Secretary in writing that the trust fund has been fully funded according the current permitted cleanup and closure cost estimate.

(iv) For a new used oil facility, the payment into the trust fund shall be made before the initial receipt of used oil.

(v) For an existing used oil facility, the payment into the trust fund shall be made on or before April 1, 1994.

(vi) The owner or operator, or other person authorized to conduct cleanup and closure activities may request reimbursement from the trustee for cleanup and closure completed when approved in writing by the Executive Secretary.

(vii) The request for reimbursement may be granted by the trustee as follows:

(A) only if sufficient funds exist to cover the reimbursement request; and

(B) if justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Executive Secretary in writing prior to the trustee granting reimbursement.

(viii) The Executive Secretary may cancel the incremental trust funding option at any time and require the permittee to provide either a fully funded trust or other cleanup and closure financial mechanism as provided in Section R315-15-12 under the following conditions:

(A) upon the insolvency of the permittee, or

(B) when a violation of Sections R315-15-10, 11 or 12 has been determined.

(ix) The trust agreement shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.2.

(2) Surety Bond Guaranteeing Payment.

(i) The bond shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of

used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) The surety company issuing the bond shall, at a minimum, be among those listed as acceptable sureties on Federal bonds in Circular 570 of the U.S. Department of the Treasury and the owner or operator shall notify the Executive Secretary that a copy of the bond has been placed in the operating record.

(iii) The penal sum of the bond shall be in an amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.

(iv) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond.

(v) The owner or operator shall establish a standby trust agreement at the time the bond is established.

(A) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the standby trust agreement shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.14.

(B) Payment made under the terms of the bond shall be deposited by the surety directly into the standby trust agreement and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(vi) The surety bond shall automatically be renewed on the expiration date unless cancelled by the surety company 120 days in advance by sending both the bond applicant and the Executive Secretary a written cancellation notice by certified mail.

(vii) The bond applicant may terminate the bond for nonpayment of fee by providing written notice, by certified mail, to the Executive Secretary 120 days prior to termination.

(viii) Any change to the form or content of the surety bond shall be submitted to the Executive Secretary for approval and acceptance.

(ix) The surety bond shall follow the language provided by the Executive Secretary found in Subsection R315-15-17.3.

(3) Letter of Credit

(i) The letter of credit shall be effective as follows:

(A) For a new used oil facility, before the initial receipt of used oil; or

(B) For an existing used oil facility, on or before April 1, 1994.

(ii) The financial institution issuing the letter of credit shall be an entity that has the authority to issue letters of credit and whose letter of credit operations are regulated and examined by a state or federal agency.

(iii) The letter of credit shall be issued in an amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.

(iv) The owner or operator shall establish a standby trust agreement at the time the letter of credit is established.

(A) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (viii), and (ix) and the surety bond shall follow the language incorporated by reference in Subsection R315-15-17.14.

(B) Payment made under the terms of the letter of credit shall be deposited by the surety directly into the standby trust and payments from the standby trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(vi) The letter of credit shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.4.

(4) Insurance.

(i) The insurance shall be effective as follows:

(A) For a new used oil facility before the initial receipt of used oil; or

(B) For an existing used oil facility on or before April 1, 1994.

(C) Insurance coverage period shall be the earliest date of permit issuance or a retroactive date established by the earliest period of coverage for any financial assurance mechanism.

(ii) At a minimum, the insurer shall be licensed to transact the business of insurance, or eligible to provide insurance as an excess or surplus lines insurer, in one or more states.

(iii) The insurance policy shall guarantee that funds will be available to perform the cleanup and closure activities approved by the Executive Secretary.

(iv) The policy shall guarantee that the insurer will be responsible for the paying out of funds to the owner or operator or person authorized to conduct the cleanup and closure activities, as approved by the Executive Secretary, up to an amount equal to the face amount of the policy. Payment of any funds by the insurer shall be made with the written concurrence of the Executive Secretary.

(A) The Insurer shall establish at a standby trust agreement for only the benefit of the Executive Secretary when the Executive Secretary notifies the Insurer that the Executive Secretary is making a claim, as provided for in Rule R315-15, for cleanup and closure of a permitted used oil transfer, processor, re-refiner, or off-specification burner facility.

(B) The Insurer shall place the face value of the applicable coverage in the trust within thirty (30) days of establishing the standby trust agreement.

(C) The standby trust agreement shall meet the requirements of Subsection R315-15-12.3(b)(1), except for Subsections R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (xi), and the standby trust agreement shall follow the language provided by the Executive Secretary incorporated by reference in Subsection R315-15-17.14.

(v) The insurance policy shall be issued for a face amount at least equal to the cleanup and closure cost estimate developed under Subsection R315-15-11.2.

(vi) An owner or operator, or other authorized person may receive reimbursements for cleanup and closure activities completed if:

(A) the value of the policy is sufficient to cover the reimbursement request; and

(B) justification and documentation of the cleanup and closure expenditures are submitted to and approved by the Executive Secretary, prior to receiving reimbursement.

(vii) Each policy shall contain a provision allowing assignment of the policy to a successor owner or operator.

(viii) The insurance policy shall provide that the insurer may not cancel, terminate, or fail to renew the policy except for failure to pay the premium. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner or operator and the Executive Secretary 120 days in advance of cancellation. If the insurer cancels the policy, the owner or operator shall obtain an alternate financial assurance mechanism meeting the requirements for financial responsibility under Section R315-15-10 and of this subsection within 60 days of notice of cancellation of the policy.

(ix) The policy coverage amount for cleanup and closure is exclusive of legal and defense costs.

(x) Bankruptcy or insolvency of the Insured shall not relieve the Insurer of its obligations under the policy.

(xi) The Insurer as first-payer is liable for the payment of amounts within any deductible, retention, self-insured retention (SIR), or reserve applicable to the policy, with a right of reimbursement by the Insured for any such payment made by the Insurer. This provision does not apply with respect to that amount of any deductible, retention, self-insured retention, or

reserve for which coverage is otherwise demonstrated as specified in Section R315-15-12.

(xii) Whenever requested by the Executive Secretary, the Insurer agrees to furnish to the Executive Secretary a signed duplicate original of the policy and all endorsements.

(xiii) Cancellation of the policy, whether by the Insurer, the Insured, a parent corporation providing insurance coverage for its subsidiary, or by a firm having an insurable interest in and obtaining liability insurance on behalf of the owner or operator of the used oil management facility, will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Executive Secretary for those facilities which are located in Utah.

(xiv) Any other termination of the policy will be effective only upon written notice and only after the expiration of 120 days after a copy of such written notice is received by the Executive Secretary for those facilities which are located in Utah.

(xv) All policy provisions related to Rule R315-15 shall be construed pursuant to the laws of the Sate of Utah. In the event of the failure of the Insurer to pay any amount claimed to be due hereunder, the Insurer and the Insured will submit to the jurisdiction of the appropriate court of the State of Utah, and will comply with all the requirements necessary to give such court jurisdiction. All matters arising hereunder, including questions related to the interpretation, performance and enforcement of this policy, shall be determined in accordance with the law and practice of the State of Utah (notwithstanding Utah conflicts of law rules).

(xvi) Endorsement(s) added to, or removed from the policy that have the effect of affecting the environmental pollution liability language, directly or indirectly, shall be approved in writing by the Executive Secretary before said endorsement(s) become effective.

(xvii) Neither the Insurer or Insured shall contest the state of Utah's use of the drafting history of the insurance policy in a judicial interpretation of the policy or endorsement(s) to said policy.

(xviii) The Insurer shall establish a standby trust fund for the benefit of the Executive Secretary at the time the Executive Secretary first makes a claim against the insurance policy.

(A) The standby trust fund shall meet the requirements of Subsection R315-15-12.3(b)(1), except for item Subsections R315-15-12.3(b)(1)(iii), (iv), (v), (viii), and (ix) and the standby trust agreement shall follow the wording found in Subsection R315-15-17.14.

(B) Payment made under the terms of the insurance policy shall be deposited by the Insurer as grantor directly into the standby trust fund and payments from the trust fund shall be approved by the trustee with the written concurrence of the Executive Secretary.

(5) The owner or operator of an existing or new used oil facility may establish a financial assurance mechanism by a combination of the above mechanisms as approved by the Executive Secretary.

(c) The owner or operator of an existing or new used oil facility or operation shall establish a financial assurance mechanism for bodily injury and property damage to third parties resulting from sudden and/or non-sudden accidental releases of used oil from a permitted used oil facility or operation as follows:

(1) An owner or operator that is a used oil processor, transfer facility, or off-specification burner, or a group of such facilities regulated under Rule R315-15 shall demonstrate financial responsibility for bodily injury and property damage to third parties caused by sudden and/or non-sudden accidental release of used oil arising from operations or operations of the facility or group of facilities shall have and maintain liability coverage in the amount as specified in Subsection R315-15-10(b). This liability coverage shall be demonstrated by one or more of the financial mechanisms in Subsection R315-15-12.3(c)(3).

(2) An owner or operator that is a used oil transporter regulated under Rule R315-15, must demonstrate financial responsibility for bodily injury and property damage to third-parties resulting from sudden release of used oil arising from transit, loading and unloading, to or from facilities within Utah. The owner or operator shall maintain liability coverage for sudden accidental occurrences in the amount specified in Subsection R315-15-10(c). This liability coverage shall be demonstrated by one or more of the financial mechanisms in Subsection R315-15-12.3(c)(3).

(3) The owner or operator using insurance to demonstrate compliance with Subsection R315-15-10(b) or (c) shall use one or more of the following financial assurance mechanisms:

(i) Insurance. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsections R315-15-17.5 through R315-15-17.9, as may be applicable.

(ii) Trust. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.12.

(iii) Surety Bond. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.11.

(iv) Letter of Credit. The owner or operator shall follow the wording provided by the Executive Secretary found in Subsection R315-15-17.10.

(d) Adjustments by the Executive Secretary. If the Executive Secretary determines that the levels of financial responsibility required by Subsection R315-15-10(b) or (c), as applicable are not consistent with the degree and duration of risk associated with used oil operations or facilities, the Executive Secretary may adjust the level of financial responsibility required under Subsection R315-15-10(b) or (c), as applicable, as may be necessary to protect human health and the environment. This adjusted level will be based on the Executive Secretary's assessment of the degree and duration of risk associated with the used oil operations or facilities. In addition, if the Executive Secretary determines that there is a significant risk to human health and the environment from non-sudden release of used oil resulting from the used oil operations or facilities, the Executive Secretary may require that an owner or operator of the used oil facility or operation comply with Subsection R315-15-10(b) and (c), as applicable. An owner or operator must furnish, within a reasonable time to the Executive Secretary when requested in writing, any information which the Executive Secretary requests to determine whether cause exists for an adjustment to the financial responsibility under Subsection R315-15-10(b) or (c) with the used oil operations or facilities. Failure to provide the requested information as and when requested under this section may result in the Executive Secretary revoking the owner's or operator's used oil permit(s). Any adjustment of the level or type of coverage for a facility that has a permit will be treated as a permit modification.

(e) When the owner or operator of a permitted used oil facility or operation believes that its responsibility for cleanup and closure or for environmental pollution liability as described in Subsection R315-15-10(d) has changed, it may submit a written request to the Executive Secretary to modify its permit to reflect the changed responsibility.

(f) The Executive Secretary may release the requirement for cleanup and closure financial assurance after the owner or operator has clean-closed the facility according to Section R315-15-11.

(g) The owner or operator of a permitted used oil facility or operation may request the Executive Secretary to modify its permit to change its financial assurance mechanism or

mechanisms as described in Section R315-15-12.

(h) The Executive Secretary may modify the permit to change financial assurance mechanism or mechanisms after the owner or operator has established a replacement financial assurance mechanism or mechanisms acceptable to the Executive Secretary.

(i) Incapacity of owners or operators, guarantor, or financial institution. An owner or operator of a permitted used oil facility or operation shall notify the Executive Secretary by certified mail within 10 days of the commencement of a bankruptcy proceeding naming the owner or operator as debtor.

(1) An owner or operator who fulfills the financial responsibility requirements by obtaining a trust fund, surety bond, letter of credit, or insurance policy will be considered to be without the required financial responsibility or liability coverage in the event of:

(i) bankruptcy of the trustee or issuing institution; or

(ii) a suspension or revocation of the authority of the trustee institution to act as trustee; or

(iii) a suspension or revocation of the authority of the institution to issue a surety bond, a letter of credit, or an insurance policy.

(2) The owner or operator of a permitted used oil facility or operation must establish other financial responsibility or liability coverage within 60 days after such an event.

12.4 ANNUAL UPDATE OF CLOSURE COST ESTIMATE AND FINANCIAL ASSURANCE MECHANISM

(a) The financial responsibility information required by Sections R315-15-10, 11, and 12 and submitted to the Executive Secretary with the initial permit application for a used oil facility or operation, or information provided as part of subsequent modifications to the permit made thereafter, shall be updated annually.

(b) The following annual updated financial responsibility information for the previous calendar year shall be submitted to the Executive Secretary by March 1 of each year for each permitted facility or operation:

(1) The cleanup and closure cost estimate shall be based on a third party performing cleanup and closure of the facility to a post-operational land use in accordance with Subsection R315-15-11.1.

(2) The financial assurance mechanism shall be adjusted to reflect the new cleanup and closure cost estimate.

(3) The type of financial assurance mechanism, its current face value, and corresponding financial institution's instrument control number shall be provided.

(4) The type of environmental pollution liability financial responsibility for third-party damage mechanism shall be provided, including:

(i) policy number or other mechanism control number,

(ii) effective date of policy or other mechanism, and

(iii) coverage types and amounts.

(5) The type of general liability insurance information shall be provided, including:

(i) policy number,

(ii) date of policy, effective date of policy, retroactive date of coverage, if applicable, and

(iii) coverage types and amounts.

(c) Other type of information deemed necessary to evaluate compliance with a permitted used oil facilities or operations and Sections R315-15-10, 11, and 12, shall be provided upon request by the Executive Secretary.

R315-15-13. Registration and Permitting of Used Oil Handlers.

13.1 DO-IT-YOURSELFER USED OIL COLLECTION CENTERS

(a) Applicability. A person may not operate a do-it-yourselfer (DIYer) used oil collection center without holding a registration number issued by the Executive Secretary.

(b) General. The application for a registration number shall include the following information regarding the DIYer used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) the type of storage and secondary containment to be used;

(4) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(5) a spill containment plan in the event of a release of used oil; and

(6) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.2 GENERATOR USED OIL COLLECTION CENTERS

(a) Applicability. A person may not operate a generator used oil collection center without holding a registration number issued by the Executive Secretary.

(b) General. The application for registration shall include the following information regarding the generator used oil collection center:

(1) the name and address of the operator;

(2) the location of the center;

(3) whether the center will accept DIYer used oil;

(4) the type of storage and secondary containment to be used;

(5) the status of the business, zoning, or other licenses and permits if required by federal, state and local governmental entities;

(6) a spill containment plan in the event of a release of used oil; and

(7) proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil.

(c) permit. Waiver of proof of insurance or other means of financial responsibility for liabilities that may be incurred in collecting or storing used oil. Pursuant to Section 19-6-710, the Executive Secretary may waive the requirement of proof of

liability insurance or other means of financial responsibility if the following criteria are satisfied:

(1) The used oil storage tank or container is in good condition with no severe rusting, apparent structural defects or deterioration, and no visible leaks;

(2) There is adequate secondary containment for the tank or container that is impervious to used oil to prevent any used oil released into the secondary containment system from migrating out of the system to the soil, groundwater or surface water;

(3) The storage tank or container is clearly labeled with the words "Used Oil;"

(4) DIYer log entries are complete including the name and address of the generator, date and quantity of used oil received;

(5) EPA approved test kits for total halogens are readily available and operators are trained to perform halogen tests on any used oil received that may have been mixed with hazardous waste; and

(6) Oil sorbent material is readily available on site for immediate clean up of spills.

(d) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration number within 20 days of the change.

13.3 USED OIL AGGREGATION POINTS

(a) Applicability. A person may operate a used oil aggregation point without holding a registration number issued by the Executive Secretary unless that aggregation point also accepts used oil from household do-it-yourselfers (DIYers) or other generators.

(b) If an aggregation point accepts used oil from household DIYers, it must register with the Division as a DIYer collection center and comply with the DIYer standards in Section R315-15-3.1.

(c) If an aggregation point accepts used oil from other generators it must register with the Division as a generator collection center and comply with the standards in Section R315-15-3.2.

13.4 USED OIL TRANSPORTERS AND USED OIL TRANSFER FACILITIES

(a) Applicability. Except as provided by Section R315-15-13.4(f), a person may not operate as a used oil transporter or operate a transfer facility without holding a permit issued by the Executive Secretary.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the transporter's base of operations and the location of any transfer facilities, if applicable;

(3) Maps of all transfer facilities, if applicable;

(4) The methods to be used for collecting, storing, and delivering used oil;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in collecting, transporting, or storing used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(12) A closure plan meeting the requirements of Section R315-15-11.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and permit approvals.

(d) Annual Reporting. Each transporter/transfer facility shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The Annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(1) the EPA identification number, name, and address of the transporter/transfer facility;

(2) the calendar year covered by the report;

(3) the total amount of used oil transported;

(4) the itemized amounts and types of used oil transferred to permitted transporters/transfer facilities, used oil processors/re-refiners, off-specification used oil burners, and used oil fuel marketers; and

(5) the itemized amounts and types of used oil transferred inside and outside the state, indicating the state of transfer, and the specific name, address and telephone number of the operations or facility to which used oil was transferred.

(e) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

(f) Permits by rule. Notwithstanding any other provisions of Section R315-15-13.4, a used oil generator who transports used oil generated at a non-contiguous operation to a central collection facility for the purpose of storing it shall be deemed to have an approved used oil transporter permit if the generator meets all of the following conditions:

(1) Transports only used oil generated by the generator;

(2) Transports the used oil in a service vehicle owned by the generator;

(3) Transports the used oil to a facility that the generator owns, operates, or both;

(4) Subsequently burns the stored used oil for energy recovery at that facility, or arranges for a permitted used oil transporter to pick up the used oil;

(5) Complies with Sections R315-15-4.3, R315-15-4.4, and R315-15-4.8, and Subsections R315-15-4.6(b) through (f) and R315-15-4.7(b) and (d);

(6) Notifies the Executive Secretary with the information required by Subsection R315-15-13.4(b)(6);

(7) Registers as a used oil fuel marketer and complies with Section R315-15-7; and

(8) Is defined by one of the following Standard Industrial Classification (SIC) codes found in the Standard Industrial Classification Manual, 1987, published by the US Office of Management and Budget:

(i) 10 (metal mining);

(ii) 12 (coal mining);

(iii) 13 (oil and gas extraction);

(iv) 14 (mining and quarrying of nonmetallic minerals, except fuels;

(v) 15 (building construction--general contractors and operative builders);

(vi) 16 (heavy construction other than building construction);

(vii) 1791 (miscellaneous special trade contractors);

(viii) 1794 (excavation work); and

(ix) 1795 (wrecking and demolition work).

13.5 USED OIL PROCESSORS/RE-REFINERS

(a) Applicability. A person may not operate as a used oil

processing/re-refining facility without holding a permit issued by the Executive Secretary.

(b) General. The application for a permit shall include the following information:

(1) The name and address of the operator;

(2) The location of the facility;

(3) A map of the facility;

(4) The grades of oil to be produced;

(5) The methods to be used to determine if used oil received by the transporter or facility is on-specification or off-specification;

(6) The type of containment and the volume, including type and number of storage vessels to be used and the number and type of transportation vehicles, if applicable;

(7) The methods of disposing of any waste by-products;

(8) The status of business, zoning, and other applicable licenses and permits if required by federal, state, and local government entities;

(9) An emergency spill containment plan;

(10) Proof of liability insurance or other means of financial responsibility for liabilities that may be incurred in processing or rerefining used oil;

(11) Proof of form and amount of reclamation surety for any facility used in conjunction with transportation or storage of used oil; and

(12) A closure plan meeting the requirements of Section R315-15-11.

(c) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers and permit approvals.

(d) Annual Reporting. Each used oil processing or rerefining facility shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(1) the EPA identification number, name, and address of the processor/re-refiner facility;

(2) the calendar year covered by the report;

(3) the quantities of used oil accepted for processing/rerefining and the manner in which the used oil is processed/rerefined, including the specific processes employed;

(4) the average daily quantities of used oil processed at the beginning and end of the reporting period;

(5) an itemization of the total amounts of used oil processed or rerefined during the reporting period year specifying the type and amounts of products produced, i.e., lubricating oil, fuel oil, etc.; and

(6) the amounts of used oil prepared for reuse as a lubricating oil, as a fuel, and for other uses, specifying each type of use, the amounts of used oil consumed or used in the process of preparing used oil for reuse, specifying the amounts and types of waste by-products generated including waste, water, and the methods and specific locations utilized for disposal.

(e) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a permit within 20 days of the change.

13.6 USED OIL BURNERS

(a) Specification used oil fuel burners. Facilities burning only on-specification used oil fuel are not required to register as used oil burners with the Executive Secretary.

(1) Applicability. These requirements apply to persons burning only used oil that meets the used oil fuel specification of Section R315-15-1.2, provided that the burner also complies with the requirements of Section R315-15-7.3. Persons burning specification used oil fuel shall be considered to have an authorization from the Department, for the purpose of this section, if they hold a valid air quality operating order, or are exempt under Section R315-15-2.4.

(2) Notification. Specification used oil fuel burners are required to notify the Executive Secretary by submitting a letter that includes the following information:

(i) Company name and location;

(ii) Owner of the company; and

(iii) Name and telephone number for the company point of contact.

(b) Off-specification used oil fuel burners

(1) Applicability. The permitting requirements of this section apply to used oil burners who burn off-specification used oil for energy recovery except as specified in Subsections R315-15-6.1(a)(1) through (3). A person may not burn off-specification used oil fuel for energy recovery without holding a permit issued by the Executive Secretary.

(2) Permit application. The application for a permit shall include the following information regarding the facility:

(i) the name and address of the operator;

(ii) the location of the facility;

(iii) the type of containment and type and capacity of storage;

(iv) the type of burner to be used;

(v) the methods of disposing of any waste by-products;

(vi) the status of business, zoning, and other applicable licenses and permits required by federal, state, and local governmental entities;

(vii) an emergency spill containment plan;

(viii) proof of insurance or other means of financial responsibility for liabilities that may be incurred in storing and burning off-specification used oil fuels.

(ix) proof of form and amount of reclamation surety for any facility receiving and burning off-specification used oil.

(x) A closure plan meeting the requirements of Section R315-15-11.

(3) Permit fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers or permit approvals.

(4) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted during permit application within 20 days of the change.

(5) Annual Reporting. Each off-specification used oil burner shall submit an annual report to the Division of their activities during the calendar year. The annual report shall be submitted to the Division no later than March 1, of the year following the reported activities. The annual report shall either be submitted on a form provided by the Division or shall contain the following information:

(i) the EPA identification number, name, and address of the burner facility;

(ii) the calendar year covered by the report; and

(iii) the total amount of used oil burned.

13.7 USED OIL FUEL MARKETERS

(a) Applicability. A person may not act as a used oil fuel marketer, as defined in Section R315-15-7, without holding a registration number issued by the Executive Secretary.

(b) General. The application for a registration number shall include the following information regarding the facility acting as a used oil fuel marketer:

(1) The name and address of the marketer.

(2) The location of any facilities used by the marketer to collect, transport, process, or store used oil subject to separate permits, or registrations under this section.

(3) the status of business, zoning, and other applicable

licenses and permits required by federal, state, and local governmental entities, including registrations or permits required under this part to collect, process/re-refine, transport, or store used oil.

(4) Registration fees. Registration and permitting fees are established under the terms and conditions of Section 63J-1-303. A copy of the Division's Fee Schedule is available upon request. Payment of appropriate fees is required prior to issuance of registration numbers.

(5) Changes in information. The owner or operator of the facility shall notify the Executive Secretary in writing of any changes in the information submitted to apply for a registration within 20 days of the change.

R315-15-14. DIYer Reimbursement.

14.1 DIYER USED OIL COLLECTION CENTER INCENTIVE PAYMENT APPLICABILITY

(a) The Division shall pay a quarterly recycling fee incentive to registered DIYer used oil collection centers and curbside programs approved by the Executive Secretary for each gallon of used oil collected from DIYer used oil generators on and after July 1, 1994, and transported by a permitted used oil transporter to a permitted used oil processor/re-refiner, burner, or registered marketer.

(b) All registered DIYer used oil collection centers can qualify for a recycling incentive payment of up to $0.16 per gallon, subject to availability of funds and the priorities of Section 19-6-720.

14.2 REIMBURSEMENT PROCEDURES

In order for DIYer collection centers to qualify for the recycling incentive payment they are required to comply with the following procedures.

(a) Submit a copy of all records and receipts from permitted transporters of DIYer used oil collected during the quarter for which the reimbursement is requested, quarterly, beginning July 1, 1994 and ending September 30, 1994, and each quarter thereafter. These records shall be submitted within 30 days following the end of the calendar quarter in which the DIYer oil was collected and for which reimbursement is requested.

(b) Reimbursements will be issued by the Executive Secretary within 30 days following the report filling period.

(c) Reports received later than 30 days after the end of the calendar quarter for which reimbursement is requested will be paid during the next quarterly reimbursement period.

R315-15-15. Issuance and Revocation of Permits and Registrations.

15.1 PUBLIC COMMENTS AND HEARING.

In considering permit applications under these Rules, the Executive Secretary shall adhere to the requirements of Section 19-6-712.

15.2 REVOCATION OF PERMITS AND REGISTRATIONS.

Violation of any permit/registration conditions or failure to comply with any provisions of the applicable statutes and rules, shall be grounds for imposing statutory sanctions, including revocation of the permit or registration and denial of an application for permit or registration. The Executive Secretary shall notify, in writing, the owner or operator of any facility of intent to revoke a permit or registration.

R315-15-16. Grants.

16.1 STATUTORY AUTHORITY.

Section 19-6-720 authorizes the Division of Solid and Hazardous Waste to award grants, as funds are available, for the following:

(a) Used oil collection centers; and

(b) Curbside used oil collection programs, including costs of retrofitting trucks, curbside containers, and other costs of collection programs.

16.2 ELIGIBILITY AND APPLICATION.

(a) The establishment of new or the enhancement of existing used oil collection centers or curbside collection programs that address the proper management of used lubricating oil may be eligible for grant assistance.

(b) A Used Oil Recycling Block Grant Package, published by the Division, shall be completed and submitted to the Executive Secretary for consideration.

16.3 LIMITATIONS.

(a) The grantee must commit to perform the permitted used oil handling activity for a minimum of two years.

(b) If the two-year commitment is not fulfilled, the grantee may be required to repay all or a portion of the grant amount.

R315-15-17. Wording of Financial Assurance Mechanisms.

17.1 APPLICABILITY

Section R315-15-17 presents the standard wording forms to be used for the financial assurance mechanisms found in Section R315-15-12. The following forms are hereby incorporated by reference and are available at the Division of Solid and Hazardous Waste located at 288 North 1460 West, Salt Lake City, Utah, during normal business hours or on the Division's web site, http://www.hazardouswaste.utah.gov/.

17.1.2 The Division requires that the forms described in this rule shall be used for all filings. Actual copies may be used or facilities may adapt them to their word processing system. If adapted, the content, size, font, and format must be similar.

17.1.3 The Executive Secretary may substitute new wording for the wording found in any of the financial assurance mechanism forms when such language changes are necessary to conform to applicable financial industry changes, when industry-wide consensus language changes are submitted to the Executive Secretary.

17.2 TRUST AGREEMENTS

The trust agreement for a trust fund must be worded as found in the Trust Agreement Form published January 10, 2008 by the Executive Secretary.

17.3 SURETY BOND GUARANTEEING PAYMENT INTO A STANDBY TRUST AGREEMENT TRUST FUND

The surety bond guaranteeing payment into a standby trust agreement trust fund must be worded as found in the Surety Bond Guaranteeing Payment into a Standby Trust Agreement Trust Fund Form published January 10, 2008 by the Executive Secretary.

17.4 IRREVOCABLE STANDBY LETTER OF CREDIT WITH STANDBY TRUST AGREEMENT

The letter of credit must be worded as found in the Irrevocable Standby Letter of Credit with Standby Trust Agreement Form published January 10, 2008 by the Executive Secretary.

17.5 UTAH USED OIL POLLUTION LIABILITY INSURANCE ENDORSEMENT FOR CLEANUP AND CLOSURE

The insurance endorsement of cleanup and closure must be worded as found in the Utah Used Oil Pollution Liability Insurance Endorsement for Cleanup and Closure Form published January 10, 2008 by the Executive Secretary.

17.6 UTAH USED OIL TRANSPORTER POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil transporter pollution liability endorsement for sudden occurrence must be worded as found in the Utah Used Oil Transporter Pollution Liability Endorsement for Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

17.7 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR SUDDEN OCCURRENCE

The used oil pollution liability endorsement for sudden occurrence for permitted facilities other than permitted transporters must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

17.8 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR NON-SUDDEN OCCURRENCE

The used oil pollution liability endorsement for non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement Non-Sudden Occurrence Form published January 10, 2008 by the Executive Secretary.

17.9 UTAH USED OIL POLLUTION LIABILITY ENDORSEMENT FOR COMBINED SUDDEN AND NON-SUDDEN OCCURRENCES

The used oil pollution liability endorsement combined for sudden and non-sudden occurrence must be worded as found in the Utah Used Oil Pollution Liability Endorsement for Combined Sudden and Non-Sudden Occurrences Form published January 10, 2008 by the Executive Secretary.

17.10 LETTER OF CREDIT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY WITH OPTIONAL STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The letter of credit must be worded as found in the Letter of Credit for Third Party Damages from Environmental Pollution Liability with Optional Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

17.11 PAYMENT BOND FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A surety bond must be worded as found in the Payment Bond for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification burner Facility Form published January 10, 2008 by the Executive Secretary.

17.12 TRUST AGREEMENT FOR THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A trust agreement must be worded as found in the Trust Agreement for Third Party Damages from Environmental Pollution Liability to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

17.13 STANDBY TRUST AGREEMENT ASSOCIATED WITH THIRD-PARTY DAMAGES FROM ENVIRONMENTAL POLLUTION LIABILITY REQUIRING A STANDBY TRUST AGREEMENT TO BE USED BY TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

A standby trust agreement must be worded as found in the Standby Trust Agreement Associated with Third Party Damages from Environmental Pollution Liability Requiring Standby Trust Agreement to be used by Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

17.14 STANDBY TRUST AGREEMENT,OTHER THAN LIABILITY, FOR TRANSFER/PROCESSOR/RE-REFINER/OFF-SPECIFICATION BURNER FACILITY

The standby trust agreement for a trust fund must be worded as found in the Standby Trust Agreement, other than Liability for Transfer/Processor/Re-refiner/Off-specification Burner Facility Form published January 10, 2008 by the Executive Secretary.

KEY: hazardous waste, used oil
January 22, 2009 **19-6-704**
Notice of Continuation October 4, 2007

R317. Environmental Quality, Water Quality.
R317-2. Standards of Quality for Waters of the State.
R317-2-1A. Statement of Intent.

Whereas the pollution of the waters of this state constitute a menace to public health and welfare, creates public nuisances, is harmful to wildlife, fish and aquatic life, and impairs domestic, agricultural, industrial, recreational and other legitimate beneficial uses of water, and whereas such pollution is contrary to the best interests of the state and its policy for the conservation of the water resources of the state, it is hereby declared to be the public policy of this state to conserve the waters of the state and to protect, maintain and improve the quality thereof for public water supplies, for the propagation of wildlife, fish and aquatic life, and for domestic, agricultural, industrial, recreational and other legitimate beneficial uses; to provide that no waste be discharged into any waters of the state without first being given the degree of treatment necessary to protect the legitimate beneficial uses of such waters; to provide for the prevention, abatement and control of new or existing water pollution; to place first in priority those control measures directed toward elimination of pollution which creates hazards to the public health; to insure due consideration of financial problems imposed on water polluters through pursuit of these objectives; and to cooperate with other agencies of the state, agencies of other states and the federal government in carrying out these objectives.

R317-2-1B. Authority.

These standards are promulgated pursuant to Sections 19-5-104 and 19-5-110.

R317-2-1C. Triennial Review.

The water quality standards shall be reviewed and updated, if necessary, at least once every three years. The Executive Secretary will seek input through a cooperative process from stakeholders representing state and federal agencies, various interest groups, and the public to develop a preliminary draft of changes. Proposed changes will be presented to the Water Quality Board for information. Informal public meetings may be held to present preliminary proposed changes to the public for comments and suggestions. Final proposed changes will be presented to the Water Quality Board for approval and authorization to initiate formal rulemaking. Public hearings will be held to solicit formal comments from the public. The Executive Secretary will incorporate appropriate changes and return to the Water Quality Board to petition for formal adoption of the proposed changes following the Division of Administrative Rules' rulemaking procedures.

R317-2-2. Scope.

These standards shall apply to all waters of the state and shall be assigned to specific waters through the classification procedures prescribed by Sections 19-5-104(5) and 19-5-110 and R317-2-6.

R317-2-3. Antidegradation Policy.

3.1 Maintenance of Water Quality

Waters whose existing quality is better than the established standards for the designated uses will be maintained at high quality unless it is determined by the Board, after appropriate intergovernmental coordination and public participation in concert with the Utah continuing planning process, allowing lower water quality is necessary to accommodate important economic or social development in the area in which the waters are located. However, existing instream water uses shall be maintained and protected. No water quality degradation is allowable which would interfere with or become injurious to existing instream water uses.

In those cases where potential water quality impairment associated with a thermal discharge is involved, the antidegradation policy and implementing method shall be consistent with Section 316 of the Federal Clean Water Act.

3.2 Category 1 Waters

Waters which have been determined by the Board to be of exceptional recreational or ecological significance or have been determined to be a State or National resource requiring protection, shall be maintained at existing high quality through designation, by the Board after public hearing, as Category 1 Waters. New point source discharges of wastewater, treated or otherwise, are prohibited in such segments after the effective date of designation. Protection of such segments from pathogens in diffuse, underground sources is covered in R317-5 and R317-7 and the Regulations for Individual Wastewater Disposal Systems (R317-501 through R317-515). Other diffuse sources (nonpoint sources) of wastes shall be controlled to the extent feasible through implementation of best management practices or regulatory programs.

Projects such as, but not limited to, construction of dams or roads will be considered where pollution will result only during the actual construction activity, and where best management practices will be employed to minimize pollution effects.

Waters of the state designated as Category 1 Waters are listed in R317-2-12.1.

3.3 Category 2 Waters

Category 2 Waters are designated surface water segments which are treated as Category 1 Waters except that a point source discharge may be permitted provided that the discharge does not degrade existing water quality. Waters of the state designated as Category 2 Waters are listed in R317-2-12.2.

3.4 Category 3 Waters

For all other waters of the state, point source discharges are allowed and degradation may occur, pursuant to the conditions and review procedures outlined in Section 3.5.

3.5 Antidegradation Review (ADR)

An antidegradation review will determine whether the proposed activity complies with the applicable antidegradation requirements for receiving waters that may be affected.

An antidegradation review (ADR) may consist of two parts or levels. A Level I review is conducted to insure that existing uses will be maintained and protected. In addition, a Level I review evaluates the criteria in Section 3.5b to determine if any degradation is de minimis in nature and therefore does not require a Level II review. A Level II review as described in Section 3.5c is needed when the impacts are not de minimus.

Both Level I and Level II reviews will be conducted on a parameter-by-parameter basis. A decision to move to a Level II review for one parameter does not require a Level II review for other parameters. Discussion of parameters of concern is those expected to be affected by the proposed activity.

Antidegradation reviews shall include opportunities for public participation, as described in Section 3.5e.

a. Activities Subject to Antidegradation Review (ADR)

1. For all State waters, antidegradation reviews will be conducted for proposed federally regulated activities, such as those under Clean Water Act Sections 401 (FERC and other Federal actions), 402 (UPDES permits), and 404 (Army Corps of Engineers permits). The Executive Secretary may conduct an ADR on other projects with the potential for major impact on the quality of waters of the state. The review will determine whether the proposed activity complies with the applicable antidegradation requirements for the particular receiving waters that may be affected.

2. For Category 1 Waters and Category 2 Waters, reviews shall be consistent with the requirement established in Sections 3.2 and 3.3, respectively.

3. For Category 3 Waters, reviews shall be consistent with the requirements established in this section

b. An Anti-degradation Level II review is not required where any of the following conditions apply:

1. Water quality will not be lowered by the proposed activity (e.g., a UPDES permit is being renewed and the proposed effluent concentration value and pollutant loading is equal to or less than the existing effluent concentrations value and pollutant loading).

2. Assimilative capacity (based upon concentration) is not available or has previously been allocated, as indicated by water quality monitoring or modeling information. This includes situations where:

(a) the water body is included on the current 303(d) list for the parameter of concern; or

(b) existing water quality for the parameter of concern does not satisfy applicable numeric or narrative water quality criteria; or

(c) discharge limits are established in an approved TMDL that is consistent with the current water quality standards for the receiving water (i.e., where TMDLs are established, and changes in effluent limits that are consistent with the existing load allocation would not trigger an antidegradation review).

Under conditions (a) or (b) the effluent limit in an UPDES permit may be equal to the water quality numeric criterion for the parameter of concern.

3. Water quality impacts will be temporary and related only to sediment or turbidity and fish spawning will not be impaired,

4. The water quality effects of the proposed activity are expected to be temporary and limited. As general guidance, CWA Section 402 general permits, CWA Section 404 nationwide and general permits, or activities of short duration, will be deemed to have a temporary and limited effect on water quality where there is a reasonable factual basis to support such a conclusion. The 404 nationwide permits decision will be made at the time of permit issuance, as part of the Division's water quality certification under CWA Section 401. Where it is determined that the category of activities will result in temporary and limited effects, subsequent individual activities authorized under such permits will not be subject to further antidegradation review. Factors to be considered in determining whether water quality effects will be temporary and limited may include the following:

(a) Length of time during which water quality will be lowered.

(b) Percent change in ambient concentrations of pollutants of concern

(c) Pollutants affected

(d) Likelihood for long-term water quality benefits to the segment (e.g., dredging of contaminated sediments)

(e) Potential for any residual long-term influences on existing uses.

(f) Impairment of the fish spawning, survival and development of aquatic fauna excluding fish removal efforts.

5. The proposed concentration downstream of the mixing zone:

(a) would be equal to or less than 50% of the applicable criterion, and the project would consume less than 20% of remaining assimilative capacity; or

(b) is greater than 50% and less than 75% of the criterion, and the project would consume less than 10% of the remaining assimilative capacity.

Exception: Level II reviews are required if the proposed concentration below the mixing zone is equal to or greater than 75% of the criterion.

c. Anti-degradation Review Process

For all activities requiring a Level II review, the Division will notify affected agencies and the public with regards to the requested proposed activity and discussions with stakeholders may be held. In the case of Section 402 discharge permits, if it is determined that a discharge will be allowed, the Division of Water Quality will develop any needed UPDES permits for public notice following the normal permit issuance process.

The ADR will cover the following requirements or determinations:

1. Will all Statutory and regulatory requirements be met?

The Executive Secretary will review to determine that there will be achieved all statutory and regulatory requirements for all new and existing point sources and all required cost-effective and reasonable best management practices for nonpoint source control in the area of the discharge. If point sources exist in the area that have not achieved all statutory and regulatory requirements, the Executive Secretary will consider whether schedules of compliance or other plans have been established when evaluating whether compliance has been assured. Generally, the "area of the discharge" will be determined based on the parameters of concern associated with the proposed activity and the portion of the receiving water that would be affected.

2. Are there any reasonable less-degrading alternatives?

There will be an evaluation of whether there are any reasonable non-degrading or less degrading alternatives for the proposed activity. This question will be addressed by the Division based on information provided by the project proponent. Control alternatives for a proposed activity will be evaluated in an effort to avoid or minimize degradation of the receiving water. Alternatives to be considered, evaluated, and implemented to the extent feasible, could include pollutant trading, water conservation, water recycling and reuse, land application, total containment, etc.

For proposed UPDES permitted discharges, the following list of alternatives should be considered, evaluated and implemented to the extent feasible:

(a) innovative or alternative treatment options

(b) more effective treatment options or higher treatment levels

(c) connection to other wastewater treatment facilities

(d) process changes or product or raw material substitution

(e) seasonal or controlled discharge options to minimize discharging during critical water quality periods

(f) pollutant trading

(g) water conservation

(h) water recycle and reuse

(i) alternative discharge locations or alternative receiving waters

(j) land application

(k) total containment

(l) improved operation and maintenance of existing treatment systems

(m) other appropriate alternatives

An option more costly than the cheapest alternative may have to be implemented if a substantial benefit to the stream can be realized. Alternatives would generally be considered feasible where costs are no more than 20% higher than the cost of the discharging alternative, and (for POTWs) where the projected per connection service fees are not greater than 1.4% of MAGHI (median adjusted gross household income), the current affordability criterion now being used by the Water Quality Board in the wastewater revolving loan program. Alternatives within these cost ranges should be carefully considered by the discharger. Where State financing is appropriate, a financial assistance package may be influenced by this evaluation, i.e., a less polluting alternative may receive a more favorable funding arrangement in order to make it a more financially attractive alternative.

It must also be recognized in relationship to evaluating options that would avoid or reduce discharges to the stream, that in some situations it may be more beneficial to leave the water in the stream for instream flow purposes than to remove the

discharge to the stream.

3. Special Procedures for 404 Permits.

For 404 permitted activities, all appropriate alternatives to avoid and minimize degradation should be evaluated. Activities involving a discharge of dredged or fill materials that are considered to have more than minor adverse affects on the aquatic environment are regulated by individual CWA Section 404 permits. The decision-making process relative to the 404 permitting program is contained in the 404(b)(1) guidelines (40 CFR Part 230). Prior to issuing a permit under the 404(b)(1) guidelines, the Corps of Engineers:

(a) makes a determination that the proposed activity discharges are unavoidable (i.e., necessary):

(b) examines alternatives to the proposed activity and authorize only the least damaging practicable alternative; and

(c) requires mitigation for all impacts associated with the activity. A 404(b)(1) finding document is produced as a result of this procedure and is the basis for the permit decision. Public participation is provided for in the process. Because the 404(b)(1) guidelines contains an alternatives analysis, the executive secretary will not require development of a separate alternatives analysis for the anti-degradation review. The division will use the analysis in the 404(b)(1) finding document in completing its anti-degradation review and 401 certification.

4. Does the proposed activity have economic and social importance?

Although it is recognized that any activity resulting in a discharge to surface waters will have positive and negative aspects, information must be submitted by the applicant that any discharge or increased discharge will be of economic or social importance in the area.

The factors addressed in such a demonstration may include, but are not limited to, the following:

(a) employment (i.e., increasing, maintaining, or avoiding a reduction in employment);

(b) increased production;

(c) improved community tax base;

(d) housing;

(e) correction of an environmental or public health problem; and

(f) other information that may be necessary to determine the social and economic importance of the proposed surface water discharge.

5. The applicant may submit a proposal to mitigate any adverse environmental effects of the proposed activity (e.g., instream habitat improvement, bank stabilization). Such mitigation plans should describe the proposed mitigation measures and the costs of such mitigation. Mitigation plans will not have any effect on effluent limits or conditions included in a permit (except possibly where a previously completed mitigation project has resulted in an improvement in background water quality that affects a water quality-based limit). Such mitigation plans will be developed and implemented by the applicant as a means to further minimize the environmental effects of the proposed activity and to increase its socio-economic importance. An effective mitigation plan may, in some cases, allow the Executive Secretary to authorize proposed activities that would otherwise not be authorized.

6. Will water quality standards be violated by the discharge?

Proposed activities that will affect the quality of waters of the state will be allowed only where the proposed activity will not violate water quality standards.

7. Will existing uses be maintained and protected?

Proposed activities can only be allowed if "existing uses" will be maintained and protected. No UPDES permit will be allowed which will permit numeric water quality standards to be exceeded in a receiving water outside the mixing zone. In the case of nonpoint pollution sources, the non-regulatory Section 319 program now in place will address these sources through application of best management practices to ensure that numeric water quality standards are not exceeded.

8. If a situation is found where there is an existing use which is a higher use (i.e., more stringent protection requirements) than that current designated use, the Division will apply the water quality standards and anti-degradation policy to protect the existing use. Narrative criteria may be used as a basis to protect existing uses for parameters where numeric criteria have not been adopted. Procedures to change the stream use designation to recognize the existing use as the designated use would be initiated.

d. Special Procedures for Drinking Water Sources

An Antidegradation Level II Review will be required by the Executive Secretary for discharges to waters with a Class 1C drinking water use assigned.

Depending upon the locations of the discharge and its proximity to downstream drinking water diversions, additional treatment or more stringent effluent limits or additional monitoring, beyond that which may otherwise be required to meet minimum technology standards or in stream water quality standards, may be required by the Executive Secretary in order to adequately protect public health and the environment. Such additional treatment may include additional disinfection, suspended solids removal to make the disinfection process more effective, removal of any specific contaminants for which drinking water maximum contaminant levels (MCLs) exists, and/or nutrient removal to reduce the organic content of raw water used as a source for domestic water systems.

Additional monitoring may include analyses for viruses, Giardia, Cryptosporidium, other pathogenic organisms, and/or any contaminant for which drinking water MCLs exist. Depending on the results of such monitoring, more stringent treatment may then be required.

The additional treatment/effluent limits/monitoring which may be required will be determined by the Executive Secretary after consultation with the Division of Drinking Water and the downstream drinking water users.

e. Public Notice

The public will be provided notice and an opportunity to comment on the conclusions of all completed antidegradation reviews. Where possible, public notice on the antidegradation review conclusions will be combined with the public notice on the proposed permitting action. In the case of UPDES permits, public notice will be provided through the normal permitting process, as all draft permits are public noticed for 30 days, and public comment solicited, before being issued as a final permit. The Statement of Basis for the draft UPDES permit will contain information on how the ADR was addressed including results of the Level I and Level II reviews. In the case of Section 404 permits from the Corps of Engineers, the Division of Water Quality will develop any needed 401 Certifications and the public notice will be published in conjunction with the US Corps of Engineers public notice procedures. Other permits requiring a Level II review will receive a separate public notice according to the normal State public notice procedures.

R317-2-4. Colorado River Salinity Standards.

In addition to quality protection afforded by these regulations to waters of the Colorado River and its tributaries, such waters shall be protected also by requirements of "Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975" and a supplement dated August 26, 1975, entitled "Supplement, including Modifications to Proposed Water Quality Standards for Salinity including Numeric Criteria and Plan of Implementation for Salinity Control, Colorado River System, June 1975", as approved by the seven Colorado River Basin States and the U.S.

Environmental Protection Agency, as updated by the 1978 Revision and the 1981, 1984, 1987, 1990, 1993, 1996, 1999, 2002, 2005, and 2008 Reviews of the above documents.

R317-2-5. Mixing Zones.

A mixing zone is a limited portion of a body of water, contiguous to a discharge, where dilution is in progress but has not yet resulted in concentrations which will meet certain standards for all pollutants. At no time, however, shall concentrations within the mixing zone be allowed which are acutely lethal as determined by bioassay or other approved procedure. Mixing zones may be delineated for the purpose of guiding sample collection procedures and to determine permitted effluent limits. The size of the chronic mixing zone in rivers and streams shall not to exceed 2500 feet and the size of an acute mixing zone shall not exceed 50% of stream width nor have a residency time of greater than 15 minutes. Streams with a flow equal to or less than twice the flow of a point source discharge may be considered to be totally mixed. The size of the chronic mixing zone in lakes and reservoirs shall not exceed 200 feet and the size of an acute mixing zone shall not exceed 35 feet. Domestic wastewater effluents discharged to mixing zones shall meet effluent requirements specified in R317-1-3.

5.1 Individual Mixing Zones. Individual mixing zones may be further limited or disallowed in consideration of the following factors in the area affected by the discharge:

a. Bioaccumulation in fish tissues or wildlife,

b. Biologically important areas such as fish spawning/nursery areas or segments with occurrences of federally listed threatened or endangered species,

c. Potential human exposure to pollutants resulting from drinking water or recreational activities,

d. Attraction of aquatic life to the effluent plume, where toxicity to the aquatic life is occurring.

e. Toxicity of the substance discharged,

f. Zone of passage for migrating fish or other species (including access to tributaries), or

g. Accumulative effects of multiple discharges and mixing zones.

R317-2-6. Use Designations.

The Board as required by Section 19-5-110, shall group the waters of the state into classes so as to protect against controllable pollution the beneficial uses designated within each class as set forth below. Surface waters of the state are hereby classified as shown in R317-2-13.

6.1 Class 1 -- Protected for use as a raw water source for domestic water systems.

a. Class 1A -- Reserved.

b. Class 1B -- Reserved.

c. Class 1C -- Protected for domestic purposes with prior treatment by treatment processes as required by the Utah Division of Drinking Water

6.2 Class 2 -- Protected for recreational use and aesthetics.

a. Class 2A -- Protected for frequent primary contact recreation where there is a high likelihood of ingestion of water or a high degree of bodily contact with the water. Examples include, but are not limited to, swimming, rafting, kayaking, diving, and water skiing.

b. Class 2B -- Protected for infrequent primary contact recreation. Also protected for secondary contact recreation where there is a low likelihood of ingestion of water or a low degree of bodily contact with the water. Examples include, but are not limited to, wading, hunting, and fishing.

6.3 Class 3 -- Protected for use by aquatic wildlife.

a. Class 3A -- Protected for cold water species of game fish and other cold water aquatic life, including the necessary aquatic organisms in their food chain.

b. Class 3B -- Protected for warm water species of game fish and other warm water aquatic life, including the necessary aquatic organisms in their food chain.

c. Class 3C -- Protected for nongame fish and other aquatic life, including the necessary aquatic organisms in their food chain.

d. Class 3D -- Protected for waterfowl, shore birds and other water-oriented wildlife not included in Classes 3A, 3B, or 3C, including the necessary aquatic organisms in their food chain.

e. Class 3E -- Severely habitat-limited waters. Narrative standards will be applied to protect these waters for aquatic wildlife.

6.4 Class 4 -- Protected for agricultural uses including irrigation of crops and stock watering.

6.5 Class 5 -- The Great Salt Lake.

a. Class 5A Gilbert Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation south of the Union Pacific Causeway, excluding all of the Farmington Bay south of the Antelope Island Causeway and salt evaporation ponds.

Beneficial Uses -- Protected for frequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

b. Class 5B Gunnison Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and west of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

c. Class 5C Bear River Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation north of the Union Pacific Causeway and east of the Promontory Mountains, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

d. Class 5D Farmington Bay

Geographical Boundary -- All open waters at or below approximately 4,208-foot elevation east of Antelope Island and south of the Union Pacific Causeway, excluding salt evaporation ponds.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

e. Class 5E Transitional Waters along the Shoreline of the Great Salt Lake Geographical Boundary -- All waters below approximately 4,208-foot elevation to the current lake elevation of the open water of the Great Salt Lake receiving their source water from naturally occurring springs and streams, impounded wetlands, or facilities requiring a UPDES permit. The geographical areas of these transitional waters change corresponding to the fluctuation of open water elevation.

Beneficial Uses -- Protected for infrequent primary and secondary contact recreation, waterfowl, shore birds and other water-oriented wildlife including their necessary food chain.

R317-2-7. Water Quality Standards.

7.1 Application of Standards

The numeric criteria listed in R317-2-14 shall apply to each of the classes assigned to waters of the State as specified in R317-2-6. It shall be unlawful and a violation of these regulations for any person to discharge or place any wastes or other substances in such manner as may interfere with designated uses protected by assigned classes or to cause any of the applicable standards to be violated, except as provided in R317-1-3.1. At a minimum, assessment of the beneficial use

support for waters of the state will be conducted biennially and available for a 30-day period of public comment and review. Monitoring locations and target indicators of water quality standards shall be prioritized and published yearly. For water quality assessment purposes, up to 10 percent of the representative samples may exceed the minimum or maximum criteria for dissolved oxygen, pH, E. coli, total dissolved solids, and temperature, including situations where such criteria have been adopted on a site-specific basis. The Board may allow site specific modifications based upon bioassay or other tests performed in accordance with standard procedures determined by the Board.

7.2 Narrative Standards

It shall be unlawful, and a violation of these regulations, for any person to discharge or place any waste or other substance in such a way as will be or may become offensive such as unnatural deposits, floating debris, oil, scum or other nuisances such as color, odor or taste; or cause conditions which produce undesirable aquatic life or which produce objectionable tastes in edible aquatic organisms; or result in concentrations or combinations of substances which produce undesirable physiological responses in desirable resident fish, or other desirable aquatic life, or undesirable human health effects, as determined by bioassay or other tests performed in accordance with standard procedures.

R317-2-8. Protection of Downstream Uses.

All actions to control waste discharges under these regulations shall be modified as necessary to protect downstream designated uses.

R317-2-9. Intermittent Waters.

Failure of a stream to meet water quality standards when stream flow is either unusually high or less than the 7-day, 10-year minimum flow shall not be cause for action against persons discharging wastes which meet both the requirements of R317-1 and the requirements of applicable permits.

R317-2-10. Laboratory and Field Analyses.

10.1 Laboratory Analyses

All laboratory examinations of samples collected to determine compliance with these regulations shall be performed in accordance with standard procedures as approved by the Utah Division of Water Quality by the Utah Office of State Health Laboratory or by a laboratory certified by the Utah Department of Health.

10.2 Field Analyses

All field analyses to determine compliance with these regulations shall be conducted in accordance with standard procedures specified by the Utah Division of Water Quality.

R317-2-11. Public Participation.

Public hearings will be held to review all proposed revisions of water quality standards, designations and classifications, and public meetings may be held for consideration of discharge requirements set to protect water uses under assigned classifications.

R317-2-12. Category 1 and Category 2 Waters.

12.1 Category 1 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 1 Waters:

a. All surface waters geographically located within the outer boundaries of U.S. National Forests whether on public or private lands with the following exceptions:

Category 2 Waters as listed in R317-2-12.2.

Weber River, a tributary to the Great Salt Lake, in the Weber River Drainage from Uintah to Mountain Green.

b. Other surface waters, which may include segments within U.S. National Forests as follows:

1. Colorado River Drainage

Calf Creek and tributaries, from confluence with Escalante River to headwaters.

Sand Creek and tributaries, from confluence with Escalante River to headwaters.

Mamie Creek and tributaries, from confluence with Escalante River to headwaters.

Deer Creek and tributaries, from confluence with Boulder Creek to headwaters (Garfield County).

Indian Creek and tributaries, through Newspaper Rock State Park to headwaters.

2. Green River Drainage

Price River (Lower Fish Creek from confluence with White River to Scofield Dam.

Range Creek and tributaries, from confluence with Green River to headwaters.

Strawberry River and tributaries, from confluence with Red Creek to headwaters.

Ashley Creek and tributaries, from Steinaker diversion to headwaters.

Jones Hole Creek and tributaries, from confluence with Green River to headwaters.

Green River, from state line to Flaming Gorge Dam.

Tollivers Creek, from confluence with Green River to headwaters.

Allen Creek, from confluence with Green River to headwaters.

3. Virgin River Drainage

North Fork Virgin River and tributaries, from confluence with East Fork Virgin River to headwaters.

East Fork Virgin River and tributaries from confluence with North Fork Virgin River to headwaters.

4. Kanab Creek Drainage

Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters.

5. Bear River Drainage

Swan Creek and tributaries, from Bear Lake to headwaters.

North Eden Creek, from Upper North Eden Reservoir to headwaters.

Big Creek and tributaries, from Big Ditch diversion to headwaters.

Woodruff Creek and tributaries, from Woodruff diversion to headwaters.

6. Weber River Drainage

Burch Creek and tributaries, from Harrison Boulevard in Ogden to headwaters.

Hardscrabble Creek and tributaries, from confluence with East Canyon Creek to headwaters.

Chalk Creek and tributaries, from U.S. Highway 189 to headwaters.

Weber River and tributaries, from U.S. Highway 189 near Oakley to headwaters.

7. Jordan River Drainage

City Creek and tributaries, from City Creek Water Treatment Plant to headwaters (Salt Lake County).

Emigration Creek and tributaries, from Hogle Zoo to headwaters (Salt Lake County).

Red Butte Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters.

Parley's Creek and tributaries, from 13th East in Salt Lake City to headwaters.

Mill Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Big Cottonwood Creek and tributaries, from Wasatch Boulevard in Salt Lake City to headwaters.

Little Willow Creek and tributaries, from diversion to headwaters (Salt Lake County.)

Bell Canyon Creek and tributaries, from Lower Bells

Canyon Reservoir to headwaters (Salt Lake County).

South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters (Salt Lake County).

8. Provo River Drainage

Upper Falls drainage above Provo City diversion (Utah County).

Bridal Veil Falls drainage above Provo City diversion (Utah County).

Lost Creek and tributaries, above Provo City diversion (Utah County).

9. Sevier River Drainage

Chicken Creek and tributaries, from diversion at canyon mouth to headwaters.

Pigeon Creek and tributaries, from diversion to headwaters.

East Fork of Sevier River and tributaries, from Kingston diversion to headwaters.

Parowan Creek and tributaries, from Parowan City to headwaters.

Summit Creek and tributaries, from Summit City to headwaters.

Braffits Creek and tributaries, from canyon mouth to headwaters.

Right Hand Creek and tributaries, from confluence with Coal Creek to headwaters.

10. Raft River Drainage

Clear Creek and tributaries, from state line to headwaters (Box Elder County).

Birch Creek (Box Elder County), from state line to headwaters.

Cotton Thomas Creek from confluence with South Junction Creek to headwaters.

11. Western Great Salt Lake Drainage

All streams on the south slope of the Raft River Mountains above 7000' mean sea level.

Donner Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Bettridge Creek (Box Elder County), from irrigation diversion to Utah-Nevada state line.

Clover Creek, from diversion to headwaters.

All surface waters on public land on the Deep Creek Mountains.

12. Farmington Bay Drainage

Holmes Creek and tributaries, from Highway US-89 to headwaters (Davis County).

Shepard Creek and tributaries, from Height Bench diversion to headwaters (Davis County).

Farmington Creek and tributaries, from Height Bench Canal diversion to headwaters (Davis County).

Steed Creek and tributaries, from Highway US-89 to headwaters (Davis County).

12.2 Category 2 Waters.

In addition to assigned use classes, the following surface waters of the State are hereby designated as Category 2 Waters:

a. Green River Drainage

Deer Creek, a tributary of Huntington Creek, from the forest boundary to 4800 feet upstream.

Electric Lake.

R317-2-13. Classification of Waters of the State (see R317-2-6).

13.1 Upper Colorado River Basin

a. Colorado River Drainage

TABLE

Paria River and tributaries, from state line to headwaters		2B	3C	4
All tributaries to Lake Powell, except as listed below		2B	3B	4
Tributaries to Escalante River from confluence with Boulder Creek to headwaters, including Boulder Creek		2B	3A	4
Dirty Devil River and tributaries, from Lake Powell to Fremont River		2B	3C	4
Deer Creek and tributaries, from confluence with Boulder Creek to headwaters		2B	3A	4
Fremont River and tributaries, from confluence with Muddy Creek to Capitol Reef National Park, except as listed below	1C	2B	3C	4
Pleasant Creek and tributaries, from confluence with Fremont Rive to East boundary of Capitol Reef National Park		2B	3C	4
Pleasant Creek and tributaries, from East boundary of Capitol Reef National Park to headwaters	1C	2B	3A	
Fremont River and tributaries, through Capitol Reef National Park to headwaters	1C	2B	3A	4
Muddy Creek and tributaries, from confluence with Fremont River to Highway U-10 crossing, except as listed below		2B	3C	4
Quitchupah Creek and Tributaries, from Highway U-10 crossing to headwaters		2B	3A	4
Ivie Creek and tributaries, from Highway U-10 to headwaters		2B	3A	4
Muddy Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A	4
San Juan River and Tributaries, from Lake Powell to state line except As listed below:	1C	2A	3B	4
Johnson Creek and tributaries, from confluence with Recapture Creek to headwaters	1C	2B	3A	4
Verdure Creek and tributaries, from Highway US-191 crossing to headwaters		2B	3A	4
North Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
South Creek and tributaries, from confluence with Montezuma Creek to headwaters	1C	2B	3A	4
Spring Creek and tributaries, from confluence with Vega Creek to headwaters		2B	3A	4
Montezuma Creek and tributaries, from U.S. Highway 191 to headwaters	1C	2B	3A	4
Colorado River and tributaries, from Lake Powell to state line except as listed below	1C	2A	3B	4
Indian Creek and tributaries, through Newspaper Rock State Park to headwaters	1C	2B	3A	4

Kane Canyon Creek and tributaries, from confluence with Colorado River to headwaters		2B		3C	4
Mill Creek and tributaries, from confluence with Colorado River to headwaters	1C	2B	3A		4
Dolores River and tributaries, from confluence with Colorado River to state line		2B		3C	4
Roc Creek and tributaries, from confluence with Dolores River to headwaters		2B	3A		4
LaSal Creek and tributaries, from state line to headwaters		2B	3A		4
Lion Canyon Creek and tributaries, from state line to headwaters		2B	3A		4
Little Dolores River and tributaries, from confluence with Colorado River to state line		2B		3C	4
Bitter Creek and tributaries, from confluence with Colorado River to headwaters		2B		3C	4

b. Green River Drainage

TABLE

Green River and tributaries, from confluence with Colorado River to state line except as listed below:	1C	2A	3B		4
Thompson Creek and tributaries from Interstate Highway 70 to headwaters		2B		3C	4
San Rafael River and tributaries, from confluence with Green River to confluence with Ferron Creek		2B		3C	4
Ferron Creek and tributaries, from confluence with San					
Rafael River to Millsite Reservoir		2B		3C	4
Ferron Creek and tributaries, from Millsite Reservoir to headwaters	1C	2B	3A		4
Huntington Creek and tributaries, from confluence with Cottonwood Creek to Highway U-10 crossing		2B		3C	4
Huntington Creek and tributaries, from Highway U-10 crossing to headwaters	1C	2B	3A		4
Cottonwood Creek and tributaries, from confluence with Huntington Creek to					
Highway U-57 crossing		2B		3C	4
Cottonwood Creek and tributaries, from Highway U-57 crossing to headwaters	1C	2B	3A		4
Cottonwood Canal, Emery County	1C	2B		3E	4
Price River and tributaries, from confluence with Green River to Carbon Canal Diversion at Price City Golf Course		2B		3C	4
Except as listed below Grassy Trail Creek and tributaries, from Grassy					
Trail Creek Reservoir to headwaters	1C	2B	3A		4
Price River and tributaries, from Carbon Canal Diversion at Price City Golf Course to Price City Water Water Treatment Plant intake.		2B	3A		4
Price River and tributaries, from Price City Water Treatment Plant intake to headwaters	1C	2B	3A		4
Range Creek and tributaries, from confluence with Green River to Range Creek Ranch		2B	3A		4
Range Creek and tributaries, from Range Creek Ranch to headwaters	1C	2B	3A		4
Rock Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Nine Mile Creek and tributaries, from confluence with Green River to headwaters		2B	3A		4
Pariette Draw and tributaries, from confluence with Green River to headwaters		2B	3B	3D	4
Willow Creek and tributaries (Uintah County), from confluence with Green River to headwaters		2B	3A		4
White River and tributaries, from confluence with Green River to state line, except as listed below		2B	3B		4
Bitter Creek and Tributaries from White River to Headwaters		2B	3A		4
Duchesne River and tributaries, from confluence with Green River to Myton Water Treatment Plant intake, except as listed below	2B	3B		4	
Uinta River and tributaries, From confluence with Duchesne River to Highway US-40 crossing		2B	3B		4
Uinta River and tributaries, From Highway US-4- crossing to headwaters		2B	3A		4
Power House Canal from Confluence with Uinta River to headwaters		2B	3A		4
Whiterocks River and Canal, From Tridell Water Treatment Plant to Headwaters	1C	2B	3A		4
Duchesne River and tributaries, from Myton Water Treatment Plant intake to headwaters	1C	2B	3A		4
Lake Fork River and tributaries, from confluence with Duchesne River to headwaters	1C	2B	3A		4
Lake Fork Canal from Dry Gulch Canal Diversion to Moon Lake	1C	2B		3E	4
Dry Gulch Canal, from Myton Water Treatment Plant to Lake Fork Canal	1C	2B		3E	4
Ashley Creek and tributaries, from confluence with Green River to Steinaker diversion		2B	3B		4

Ashley Creek and tributaries, from Steinaker diversion to headwaters	1C	2B	3A	4
Big Brush Creek and tributaries, from confluence with Green River to Tyzack (Red Fleet) Dam		2B	3B	4
Big Brush Creek and tributaries, from Tyzack (Red Fleet) Dam to headwaters	1C	2B	3A	4
Jones Hole Creek and tributaries, from confluence with Green River to headwaters		2B	3A	
Diamond Gulch Creek and tributaries, from confluence with Green River to headwaters		2B	3A	4
Pot Creek and tributaries, from Crouse Reservoir to headwaters		2B	3A	4
Green River and tributaries, from Utah-Colorado state line to Flaming Gorge Dam except as listed below:		2A	3A	4
Sears Creek and tributaries, Daggett County		2B	3A	
Tolivers Creek and tributaries, Daggett County		2B	3A	
Red Creek and tributaries, from confluence with Green River to state line		2B	3C	4
Jackson Creek and tributaries, Daggett County		2B	3A	
Davenport Creek and tributaries, Daggett County		2B	3A	
Goslin Creek and tributaries, Daggett County		2B	3A	
Gorge Creek and tributaries, Daggett County		2B	3A	
Beaver Creek and tributaries, Daggett County		2B	3A	
O-Wi-Yu-Kuts Creek and tributaries, County		2B	3A	
Tributaries to Flaming Gorge Reservoir, except as listed below		2B	3A	4
Birch Spring Draw and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3C	4
Spring Creek and tributaries, from Flaming Gorge Reservoir to headwaters		2B	3A	
All Tributaries of Flaming Gorge Reservoir from Utah-Wyoming state line to headwaters		2B	3A	4

13.2 Lower Colorado River Basin

a. Virgin River Drainage

TABLE

Beaver Dam Wash and tributaries, from Motoqua to headwaters		2B	3B	4
Virgin River and tributaries from state line to Quail Creek diversion		2B	3B	4
Santa Clara River from confluence with Virgin River to Gunlock Reservoir	1C	2B	3B	4
Santa Clara River and tributaries, from Gunlock Reservoir to headwaters		2B	3A	4
Leed's Creek, from confluence with Quail Creek to headwaters		2B	3A	4
Quail Creek from Quail Creek Reservoir to headwaters	1C	2B	3A	4
Ash Creek and tributaries, from confluence with Virgin River to Ash Creek Reservoir		2B	3A	4
Ash Creek and tributaries, From Ash Creek Reservoir to headwaters		2B	3A	4
Virgin River and tributaries, from the Quail Creek diversion to headwaters, except as listed below	1C	2B	3C	4
North Fork Virgin River and tributaries	1C	2B	3A	4
East Fork Virgin River, from town of Glendale to headwaters		2B	3A	4
Kolob Creek, from confluence with Virgin River to headwaters		2B	3A	4

b. Kanab Creek Drainage

TABLE

Kanab Creek and tributaries, from state line to irrigation diversion at confluence with Reservoir Canyon		2B	3C	4
Kanab Creek and tributaries, from irrigation diversion at confluence with Reservoir Canyon to headwaters		2B	3A	4
Johnson Wash and tributaries, from state line to confluence with Skutumpah Canyon	2B	3C	4	
Johnson Wash and tributaries, from confluence with Skutumpah Canyon to headwaters		2B	3A	4

13.3 Bear River Basin

a. Bear River Drainage

TABLE

Bear River and tributaries, from Great Salt Lake to Utah-Idaho border, except as listed below:		2B	3B	3D 4
Perry Canyon Creek from U.S. Forest boundary to headwaters		2B	3A	4
Box Elder Creek from confluence with Black Slough to Brigham City Reservoir (the Mayor's Pond)		2B	3C	4
Box Elder Creek, from Brigham City Reservoir (the Mayor's Pond) to headwaters		2B	3A	4
Salt Creek, from confluence with Bear River to Crystal Hot Springs		2B	3B	3D
Malad River and tributaries, from confluence with Bear River to state line		2B	3C	
Little Bear River and				

tributaries, from Cutler Reservoir to headwaters		2B	3A 3D	4
Logan River and tributaries, from Cutler Reservoir to headwaters		2B	3A 3D	4
Blacksmith Fork and tributaries, from confluence with Logan River to headwaters		2B	3A	4
Newton Creek and tributaries, from Cutler Reservoir to Newton Reservoir		2B	3A	4
Clarkston Creek and tributaries, from Newton Reservoir to headwaters		2B	3A	4
Birch Creek and tributaries, from confluence with Clarkston Creek to headwaters		2B	3A	4
Summit Creek and tributaries, from confluence with Bear River to headwaters		2B	3A	4
Cub River and tributaries, from confluence with Bear River to state line, except as listed below:		2B	3B	4
High Creek and tributaries, from confluence with Cub River to headwaters		2B	3A	4
All tributaries to Bear Lake from Bear Lake to headwaters, except as listed below		2B	3A	4
Swan Springs tributary to Swan Creek	1C	2B	3A	
Bear River and tributaries in Rich County		2B	3A	4
Bear River and tributaries, from Utah-Wyoming state line to headwaters (Summit County)		2B	3A	4
Mill Creek and tributaries, from state line to headwaters (Summit County)		2B	3A	4

13.4 Weber River Basin
a. Weber River Drainage

TABLE

Willard Creek, from Willard Bay Reservoir to headwaters		2B	3A	4
Weber River, from Great Salt Lake to Slaterville diversion, except as listed below:		2B	3C 3D	4
Four Mile Creek from I-15 To headwaters		2B	3A	4
Weber River and tributaries, from Slaterville diversion to Stoddard diversion, except as listed below		2B	3A	4
Ogden River and tributaries, From confluence with Weber River To Pineview Dam, except as listed Below		2B	3A	4
Wheeler Creek from Confluence with Ogden River to headwaters	1C	2B	3A	4
All tributaries to Pineview Reservoir	1C	2B	3A	4
Strongs Canyon Creek and Tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Burch Creek and tributaries, from Harrison Boulevard in Ogden to Headwaters	1C	2B	3A	
Spring Creek and tributaries, From U.S. National Forest Boundary to headwaters	1C	2B	3A	4
Weber River and tributaries, from Stoddard diversion to headwaters	1C	2B	3A	4

13.5 Utah Lake-Jordan River Basin
a. Jordan River Drainage

TABLE

Jordan River, from Farmington Bay to North Temple Street, Salt Lake City		2B	3B * 3D	4
State Canal, from Farmington Bay to confluence with the Jordan River		2B	3B * 3D	4
Jordan River, from North TempleStreet in Salt Lake City to confluence with Little Cottonwood Creek		2B	3B *	4
Surplus Canal from Great Salt Lake to the diversion from the Jordan River		2B	3B * 3D	4
Jordan River from confluence with Little Cottonwood Creek to Narrows Diversion		2B	3A	4
Jordan River, from Narrows Diversion to Utah Lake	1C	2B	3B	4
City Creek, from Memory Park in Salt Lake City to City Creek Water Treatment Plant		2B	3A	
City Creek, from City Creek Water Treatment Plant to headwaters	1C	2B	3A	
Red Butte Creek and tributaries, from Red Butte Reservoir to headwaters	1C	2B	3A	
Emigration Creek and tributaries, from Foothill Boulevard in Salt Lake City to headwaters		2B	3A	
Parley's Creek and tributaries, from 1300 East in Salt Lake City to Mountain Dell Reservoir to headwaters	1C	2B	3A	
Parley's Creek and tributaries, from Mountain Dell Reservoir to headwaters	1C	2B	3A	
Mill Creek (Salt Lake County) from confluence with Jordan River to Interstate Highway 15		2B	3C	4
Mill Creek (Salt Lake County) and tributaries from Interstate Highway 15 to headwaters		2B	3A	4
Big Cottonwood Creek and tributaries, from confluence with Jordan River to Big Cottonwood Water Treatment Plant		2B	3A	4
Big Cottonwood Creek and tributaries, from Big Cottonwood Water Treatment Plant to headwaters	1C	2B	3A	
Deaf Smith Canyon Creek and tributaries	1C	2B	3A	4
Little Cottonwood Creek and				

tributaries, from confluence with Jordan River to Metropolitan Water Treatment Plant		2B	3A	4
Little Cottonwood Creek and tributaries, from Metropolitan Water Treatment Plant to headwaters	1C	2B	3A	
Bell Canyon Creek and tributaries, from lower Bell's Canyon reservoir to headwaters	1C	2B	3A	
Little Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
Big Willow Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
South Fork of Dry Creek and tributaries, from Draper Irrigation Company diversion to headwaters	1C	2B	3A	
All permanent streams on east slope of Oquirrh Mountains (Coon, Barney's, Bingham, Butterfield, and Rose Creeks)		2B	3D	4
Kersey Creek from confluence of C-7 Ditch to headwaters		2B	3D	

* Site specific criteria for dissolved oxygen. See Table 2.14.5.

b. Provo River Drainage

TABLE

Provo River and tributaries, from Utah Lake to Murdock diversion		2B	3A	4
Provo River and tributaries, from Murdock Diversion to headwaters, except as listed below	1C	2B	3A	4
Upper Falls drainage above Provo City diversion	1C	2B	3A	
Bridal Veil Falls drainage above Provo City diversion	1C	2B	3A	
Lost Creek and tributaries above Provo City diversion	1C	2B	3A	

c. Utah Lake Drainage

TABLE

Dry Creek and tributaries (above Alpine), from U.S. National Forest boundary to headwaters		2B	3A	4
American Fork Creek and tributaries, from diversion at mouth of American Fork Canyon to headwaters		2B	3A	4
Spring Creek and tributaries, from Utah Lake near Lehi to headwaters		2B	3A	4
Lindon Hollow Creek and tributaries, from Utah Lake to headwaters		2B	3B	4
Rock Canyon Creek and tributaries (East of Provo) from U.S. National Forest boundary to headwaters	1C	2B	3A	4
Mill Race (except from Interstate Highway 15 to the Provo City WWTP discharge) and tributaries from Utah Lake to headwaters		2B	3B	4
Mill Race from Interstate Highway 15 to the Provo City wastewater treatment plant discharge		2B	3B	4
Spring Creek and tributaries from Utah Lake (Provo Bay) to 50 feet upstream from the east boundary of the Industrial Parkway Road Right-of-way		2B	3B	4
Tributary to Spring Creek (Utah County) which receives the Springville City WWTP effluent from confluence with Spring Creek to headwaters		2B	3D	4
Spring Creek and tributaries from 50 feet upstream from the east boundary of the Industrial Parkway Road right-of-way to the headwaters		2B	3A	4
Ironton Canal from Utah Lake (Provo Bay) to the east boundary of the Denver and Rio Grande Western Railroad right-of-way		2B	3C	4
Ironton Canal from the east boundary of the Denver and Rio Grande Western Railroad right-of-way to the point of diversion from Spring Creek		2B	3A	4
Hobble Creek and tributaries, from Utah Lake to headwaters		2B	3A	4
Dry Creek and tributaries from Utah Lake (Provo Bay) to Highway-US 89		2B		3E 4
Dry Creek and tributaries from Highway-US 89 to headwaters		2B	3A	4
Spanish Fork River and tributaries, from Utah Lake to diversion at Moark Junction		2B	3B 3D	4
Spanish Fork River and tributaries, from diversion at Moark Junction to headwaters		2B	3A	4
Benjamin Slough and tributaries from Utah Lake to headwaters, except as listed below		2B	3B	4
Beer Creek (Utah County) from 4850 West (in NE1/4NE1/4 sec. 36, T.8 S., R.1 E.) to headwaters		2B	3C	4
Salt Creek, from Nephi diversion to headwaters		2B	3A	4
Currant Creek, from mouth of Goshen Canyon to Mona Reservoir		2B	3A	4
Burriston Creek, from Mona Reservoir to headwaters		2B	3A	4
Peteetneet Creek and tributaries, from irrigation diversion above Maple Dell to headwaters		2B	3A	4
Summit Creek and tributaries (above Santaquin), from U.S. National Forest boundary to headwaters		2B	3A	4
All other permanent streams entering Utah Lake		2B	3B	4

13.6 Sevier River Basin

a. Sevier River Drainage

TABLE

Sevier River and tributaries from Sevier Lake to Gunnison Bend Reservoir to U.S.National Forest boundary except				

as listed below	2B	3C	4
Beaver River and tributaries from Minersville City to headwaters	2B	3A	4
Little Creek and tributaries, From irrigation diversion to Headwaters	2B	3A	4
Pinto Creek and tributaries, From Newcastle Reservoir to Headwaters	2B	3A	4
Coal Creek and tributaries	2B	3A	4
Summit Creek and tributaries	2B	3A	4
Parowan Creek and tributaries	2B	3A	4
Tributaries to Sevier River from Sevier Lake to Gunnison Bend Reservoir from U.S. National Forest boundary to headwaters, including:	2B	3A	4
Pioneer Creek and tributaries, Millard County	2B	3A	4
Chalk Creek and tributaries, Millard County	2B	3A	4
Meadow Creek and tributaries, Millard County	2B	3A	4
Corn Creek and tributaries, Millard County	2B	3A	4
Sevier River and tributaries below U.S. National Forest boundary from Gunnison Bend Reservoir to Annabella Diversion except except as listed below	2B	3B	4
Oak Creek and tributaries, Millard County	2B	3A	4
Round Valley Creek and tributaries, Millard County	2B	3A	4
Judd Creek and tributaries, Juab County	2B	3A	4
Meadow Creek and tributaries, Juab County	2B	3A	4
Cherry Creek and tributaries Juab County	2B	3A	4
Tanner Creek and tributaries, Juab County	2B	3E	4
Baker Hot Springs, Juab County	2B	3D	4
Chicken Creek and tributaries, Juab County	2B	3A	4
San Pitch River and tributaries, from confluence with Sevier River to Highway U-132 crossing except As listed below:	2B	3C 3D	4
Twelve Mile Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A	4
Six Mile Creek and tributaries, Sanpete County	2B	3A	4
Manti Creek (South Creek) and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A	4
Ephraim Creek (Cottonwood Creek) and tributaries, from U.S. Forest Service to headwaters	2B	3A	4
Oak Creek and tributaries, from U.S. Forest Service boundary near Spring City to headwaters	2B	3A	4
Fountain Green Creek and tributaries, from U.S. Forest Service boundary to headwaters	2B	3A	4
San Pitch River and tributaries, from Highway U-132 crossing to headwaters	2B	3A	4
Tributaries to Sevier River from Gunnison Bend Reservoir to Annabelle Diversion from U.S. National Forest boundary to headwaters	2B	3A	4
Sevier River and tributaries, from Annabella diversion to headwaters	2B	3A	4
Monroe Creek and tributaries, from diversion to headwaters	2B	3A	4
Little Creek and tributaries, from irrigation diversion to headwaters	2B	3A	4
Pinto Creek and tributaries, from Newcastle Reservoir to headwaters	2B	3A	4
Coal Creek and tributaries	2B	3A	4
Summit Creek and tributaries	2B	3A	4
Parowan Creek and tributaries	2B	3A	4
Duck Creek and tributaries	1C 2B	3A	4

13.7 Great Salt Lake Basin
a. Western Great Salt Lake Drainage

TABLE

Grouse Creek and tributaries, Box Elder County	2B	3A	4
Muddy Creek and tributaries, Box Elder County	2B	3A	4
Dove Creek and tributaries, Box Elder County	2B	3A	4
Pine Creek and tributaries, Box Elder County	2B	3A	4
Rock Creek and tributaries, Box Elder County	2B	3A	4
Fisher Creek and tributaries, Box Elder County	2B	3A	4
Dunn Creek and tributaries, Box Elder County	2B	3A	4
Indian Creek and tributaries, Box Elder County	2B	3A	4
Tenmile Creek and tributaries, Box Elder County	2B	3A	4
Curlew (Deep) Creek, Box Elder County	2B	3A	4
Blue Creek and tributaries, from Great Salt Lake to Blue Creek Reservoir	2B	3D	4
Blue Creek and tributaries, from Blue Creek Reservoir to headwaters	2B	3B	4
All perennial streams on the east slope of the Pilot Mountain Range	1C 2B	3A	4

Donner Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A		4
Bettridge Creek and tributaries, from irrigation diversion to Utah-Nevada state line		2B	3A		4
North Willow Creek and tributaries, Tooele County		2B	3A		4
South Willow Creek and tributaries, Tooele County		2B	3A		4
Hickman Creek and tributaries, Tooele County		2B	3A		4
Barlow Creek and tributaries, Tooele County		2B	3A		4
Clover Creek and tributaries, Tooele County		2B	3A		4
Faust Creek and tributaries, Tooele County		2B	3A		4
Vernon Creek and tributaries, Tooele County		2B	3A		4
Ophir Creek and tributaries, Tooele County		2B	3A		4
Soldier Creek and Tributaries from the Drinking Water Treatment Facility Headwaters, Tooele County	1C	2B	3A		4
Settlement Canyon Creek and tributaries, Tooele County		2B	3A		4
Middle Canyon Creek and tributaries, Tooele County		2B	3A		4
Tank Wash and tributaries, Tooele County		2B	3A		4
Basin Creek and tributaries, Juab and Tooele Counties		2B	3A		4
Thomas Creek and tributaries, Juab County		2B	3A		4
Indian Farm Creek and tributaries, Juab County		2B	3A		4
Cottonwood Creek and tributaries, Juab County		2B	3A		4
Red Cedar Creek and tributaries, Juab County		2B	3A		4
Granite Creek and tributaries, Juab County		2B	3A		4
Trout Creek and tributaries, Juab County		2B	3A		4
Birch Creek and tributaries, Juab County		2B	3A		4
Deep Creek and tributaries, from Rock Spring Creek to headwaters, Juab and Tooele Counties		2B	3A		4
Cold Spring, Juab County		2B		3C	3D
Cane Spring, Juab County		2B		3C	3D
Lake Creek, from Garrison (Pruess) Reservoir to Nevada state line		2B	3A		4
Snake Creek and tributaries, Millard County		2B	3B		4
Salt Marsh Spring Complex, Millard County		2B	3A		
Twin Springs, Millard County		2B	3B		
Tule Spring, Millard County		2B		3C	3D
Coyote Spring Complex, Millard County		2B		3C	3D
Hamblin Valley Wash and tributaries, from Nevada state line to headwaters (Beaver and Iron Counties)		2B		3D	4
Indian Creek and tributaries, Beaver County, from Indian Creek Reservoir to headwaters		2B	3A		4
Shoal Creek and tributaries, Iron County		2B	3A		4

b. Farmington Bay Drainage

TABLE

Corbett Creek and tributaries, from Highway to headwaters		2B	3A		4
Kays Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B		4
North Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A		4
Middle Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
South Fork Kays Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Snow Creek and tributaries		2B		3C	4
Holmes Creek and tributaries, from Farmington Bay to U.S. National Forest boundary		2B	3B		4
Holmes Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Baer Creek and tributaries, from Farmington Bay to Interstate Highway 15		2B		3C	4
Baer Creek and tributaries, from Interstate Highway 15 to Highway US-89		2B	3B		4
Baer Creek and tributaries, from Highway US-89 to headwaters	1C	2B	3A		4
Shepard Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Farmington Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3B		4
Farmington Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Rudd Creek and tributaries, from Davis aqueduct to headwaters		2B	3A		4
Steed Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Davis Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Lone Pine Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Ricks Creek and tributaries, from Highway I-15 to headwaters	1C	2B	3A		4
Barnard Creek and tributaries, from Highway US-89 to headwaters		2B	3A		4
Parrish Creek and tributaries, from Davis Aqueduct to headwaters		2B	3A		4
Deuel Creek and tributaries, (Centerville Canyon) from Davis Aqueduct to headwaters		2B	3A		4
Stone Creek and tributaries, from Farmington Bay Waterfowl Management Area to U.S. National Forest boundary		2B	3A		4
Stone Creek and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A		4
Barton Creek and tributaries, from U.S. National Forest					

boundary to headwaters		2B	3A	4
Mill Creek (Davis County) and tributaries, from confluence with State Canal to U.S. National Forest boundary		2B	3B	4
Mill Creek (Davis County) and tributaries, from U.S. National Forest boundary to headwaters	1C	2B	3A	4
North Canyon Creek and tributaries, from U.S. National Forest boundary to headwaters		2B	3A	4
Howard Slough		2B	3C	4
Hooper Slough		2B	3C	4
Willard Slough		2B	3C	4
Willard Creek to Headwaters	1C	2B	3A	4
Chicken Creek to Headwaters	1C	2B	3A	4
Cold Water Creek to Headwaters	1C	2B	3A	4
One House Creek to Headwaters	1C	2B	3A	4
Garner Creek to Headwaters	1C	2B	3A	4

13.8 Snake River Basin

a. Raft River Drainage (Box Elder County)

TABLE

Raft River and tributaries		2B	3A	4
Clear Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Onemile Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
George Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Johnson Creek and tributaries, from Utah-Idaho state line to headwaters		2B	3A	4
Birch Creek and tributaries, from state line to headwaters		2B	3A	4
Pole Creek and tributaries, from state line to headwaters		2B	3A	4
Goose Creek and tributaries		2B	3A	4
Hardesty Creek and tributaries, from state line to headwaters		2B	3A	4
Meadow Creek and tributaries, from state line to headwaters		2B	3A	4

13.9 All irrigation canals and ditches statewide, except as otherwise designated: 2B 3E 4

13.10 All drainage canals and ditches statewide, except as otherwise designated: 2B 3E

13.11 National Wildlife Refuges and State Waterfowl Management Areas, and other Areas Associated with the Great Salt Lake

TABLE

Bear River National Wildlife Refuge, Box Elder County		2B	3B	3D
Bear River Bay				
Open Water below approximately 4,208 ft.				5C
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Brown's Park Waterfowl Management Area, Daggett County		2B	3A	3D
Clear Lake Waterfowl Management Area, Millard County		2B	3C	3D
Desert Lake Waterfowl Management Area, Emery County		2B	3C	3D
Farmington Bay Waterfowl Management Area, Davis and Salt Lake Counties		2B	3C	3D
Farmington Bay				
Open Water below approximately 4,208 ft.				5D
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Fish Springs National Wildlife Refuge, Juab County		2B	3C	3D
Harold Crane Waterfowl Management Area, Box Elder County		2B	3C	3D
Gilbert Bay				
Open Water below approximately 4,208 ft.				5A
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Gunnison Bay				
Open Water below approximately 4,208 ft.				5B
Transitional Waters approximately 4,208 ft. to Open Water				5E
Open Water above approximately 4,208 ft.		2B	3B	3D
Howard Slough Waterfowl Management Area, Weber County		2B	3C	3D
Locomotive Springs Waterfowl Management Area, Box Elder County		2B	3B	3D
Ogden Bay Waterfowl Management Area, Weber County		2B	3C	3D
Ouray National Wildlife Refuge, Uintah County		2B	3B	3D
Powell Slough Waterfowl Management Area, Utah County		2B	3C	3D
Public Shooting Grounds Waterfowl Management Area, Box Elder County		2B	3C	3D
Salt Creek Waterfowl Management Area, Box Elder County		2B	3C	3D
Stewart Lake Waterfowl Management Area, Uintah County		2B	3B	3D
Timpie Springs Waterfowl Management Area, Tooele County		2B	3B	3D

13.12 Lakes and Reservoirs. All lakes and any reservoirs greater than 10 acres not listed in 13.12 are assigned by default to the classification of the stream with which they are associated.

a. Beaver County

TABLE

Anderson Meadow Reservoir		2B	3A	4
Manderfield Reservoir		2B	3A	4
LaBaron Reservoir		2B	3A	4
Kent's Lake		2B	3A	4
Minersville Reservoir		2B	3A	3D 4
Puffer Lake		2B	3A	
Three Creeks Reservoir		2B	3A	4

b. Box Elder County

TABLE

Cutler Reservoir (including portion in Cache County)		2B	3B	3D	4
Etna Reservoir		2B	3A		4
Lynn Reservoir		2B	3A		4
Mantua Reservoir		2B	3A		4
Willard Bay Reservoir	1C 2A	2B	3B	3D	4

c. Cache County

TABLE

Hyrum Reservoir	2A	2B	3A	**	4
Newton Reservoir		2B	3A		4
Porcupine Reservoir		2B	3A		4
Pelican Pond		2B	3B		4
Tony Grove Lake		2B	3A		4

d. Carbon County

TABLE

Grassy Trail Creek Reservoir	1C	2B	3A		4
Olsen Pond		2B	3B		4
Scofield Reservoir	1C	2B	3A		4

e. Daggett County

TABLE

Browne Reservoir		2B	3A		4
Daggett Lake		2B	3A		4
Flaming Gorge Reservoir (Utah portion)	1C 2A	2B	3A		4
Long Park Reservoir	1C	2B	3A		4
Sheep Creek Reservoir		2B	3A		4
Spirit Lake		2B	3A		4
Upper Potter Lake		2B	3A		4

f. Davis County

TABLE

Farmington Ponds		2B	3A		4
Kaysville Highway Ponds		2B	3A		4
Holmes Creek Reservoir		2B	3B		4

g. Duchesne County

TABLE

Allred Lake		2B	3A		4
Atwine Lake		2B	3A		4
Atwood Lake		2B	3A		4
Betsy Lake		2B	3A		4
Big Sandwash Reservoir	1C	2B	3A		4
Bluebell Lake		2B	3A		4
Brown Duck Reservoir		2B	3A		4
Butterfly Lake		2B	3A		4
Cedarview Reservoir		2B	3A		4
Chain Lake #1		2B	3A		4
Chepeta Lake		2B	3A		4
Clements Reservoir		2B	3A		4
Cleveland Lake		2B	3A		4
Cliff Lake		2B	3A		4
Continent Lake		2B	3A		4
Crater Lake		2B	3A		4
Crescent Lake		2B	3A		4
Daynes Lake		2B	3A		4
Dean Lake		2B	3A		4
Doll Lake		2B	3A		4
Drift Lake		2B	3A		4
Elbow Lake		2B	3A		4
Farmer's Lake		2B	3A		4
Fern Lake		2B	3A		4
Fish Hatchery Lake		2B	3A		4
Five Point Reservoir		2B	3A		4
Fox Lake Reservoir		2B	3A		4
Governor's Lake		2B	3A		4
Granddaddy Lake		2B	3A		4
Hoover Lake		2B	3A		4
Island Lake		2B	3A		4
Jean Lake		2B	3A		4
Jordan Lake		2B	3A		4
Kidney Lake		2B	3A		4
Kidney Lake West		2B	3A		4
Lily Lake		2B	3A		4
Midview Reservoir (Lake Boreham)		2B	3B		4
Milk Reservoir		2B	3A		4
Mirror Lake		2B	3A		4
Mohawk Lake		2B	3A		4
Moon Lake	1C	2A	2B	3A	4
North Star Lake		2B	3A		4
Palisade Lake		2B	3A		4
Pine Island Lake		2B	3A		4
Pinto Lake		2B	3A		4
Pole Creek Lake		2B	3A		4
Potter's Lake		2B	3A		4
Powell Lake		2B	3A		4
Pyramid Lake	2A	2B	3A		4
Queant Lake		2B	3A		4
Rainbow Lake		2B	3A		4
Red Creek Reservoir		2B	3A		4
Rudolph Lake		2B	3A		4
Scout Lake	2A	2B	3A		4

Spider Lake		2B	3A	4
Spirit Lake		2B	3A	4
Starvation Reservoir	1C 2A	2B	3A	4
Superior Lake		2B	3A	4
Swasey Hole Reservoir		2B	3A	4
Taylor Lake		2B	3A	4
Thompson Lake		2B	3A	4
Timothy Reservoir #1		2B	3A	4
Timothy Reservoir #6		2B	3A	4
Timothy Reservoir #7		2B	3A	4
Twin Pots Reservoir	1C	2B	3A	4
Upper Stillwater Reservoir	1C	2B	3A	4
X - 24 Lake		2B	3A	4

h. Emery County

TABLE

Cleveland Reservoir		2B	3A	4
Electric Lake		2B	3A	4
Huntington Reservoir		2B	3A	4
Huntington North Reservoir	2A	2B	3B	4
Joe's Valley Reservoir	2A	2B	3A	4
Millsite Reservoir	1C 2A	2B	3A	4

i. Garfield County

TABLE

Barney Lake		2B	3A	4
Cyclone Lake		2B	3A	4
Deer Lake		2B	3A	4
Jacob's Valley Reservoir		2B	3C 3D	4
Lower Bowns Reservoir		2B	3A	4
North Creek Reservoir		2B	3A	4
Panguitch Lake		2B	3A	4
Pine Lake		2B	3A	4
Oak Creek Reservoir (Upper Bowns)		2B	3A	4
Pleasant Lake		2B	3A	4
Posey Lake		2B	3A	4
Purple Lake		2B	3A	4
Raft Lake		2B	3A	4
Row Lake #3		2B	3A	4
Row Lake #7		2B	3A	4
Spectacle Reservoir		2B	3A	4
Tropic Reservoir		2B	3A	4
West Deer Lake		2B	3A	4
Wide Hollow Reservoir		2B	3A	4

j. Iron County

TABLE

Newcastle Reservoir		2B	3A	4
Red Creek Reservoir		2B	3A	4
Yankee Meadow Reservoir		2B	3A	4

k. Juab County

TABLE

Chicken Creek Reservoir		2B	3C 3D	4
Mona Reservoir		2B	3B	4
Sevier Bridge (Yuba) Reservoir	2A	2B	3B	4

l. Kane County

TABLE

Navajo Lake		2B	3A	4

m. Millard County

TABLE

DMAD Reservoir		2B	3B	4
Fools Creek Reservoir		2B	3C 3D	4
Garrison Reservoir (Pruess Lake)		2B	3B	4
Gunnison Bend Reservoir		2B	3B	4

n. Morgan County

TABLE

East Canyon Reservoir	1C 2A	2B	3A	4
Lost Creek Reservoir	1C	2B	3A	4

o. Piute County

TABLE

Barney Reservoir		2B	3A	4
Lower Boxcreek Reservoir		2B	3A	4
Manning Meadow Reservoir 4		2B	3A	
Otter Creek Reservoir		2B	3A	4
Piute Reservoir		2B	3A	4
Upper Boxcreek Reservoir		2B	3A	4

p. Rich County

TABLE

Bear Lake (Utah portion)	2A	2B	3A	4
Birch Creek Reservoir		2B	3A	4
Little Creek Reservoir		2B	3A	4
Woodruff Creek Reservoir		2B	3A	4

q. Salt Lake County

TABLE

Decker Lake		2B	3B	3D	4
Lake Mary	1C	2B	3A		
Little Dell Reservoir	1C	2B	3A		
Mountain Dell Reservoir	1C	2B	3A		

r. San Juan County

TABLE

Blanding Reservoir #4	1C	2B	3A	4
Dark Canyon Lake	1C	2B	3A	4
Ken's Lake		2B	3A**	4
Lake Powell (Utah portion)	1C	2A 2B	3B	4
Lloyd's Lake	1C	2B	3A	4
Monticello Lake		2B	3A	4
Recapture Reservoir		2B	3A	4

s. Sanpete County

TABLE

Duck Fork Reservoir		2B	3A	4
Fairview Lakes	1C	2B	3A	4
Ferron Reservoir		2B	3A	4
Lower Gooseberry Reservoir	1C	2B	3A	4
Gunnison Reservoir		2B	3C	4
Island Lake		2B	3A	4
Miller Flat Reservoir		2B	3A	4
Ninemile Reservoir		2B	3A	4
Palisade Reservoir		2A 2B	3A	4
Rolfson Reservoir		2B	3C	4
Twin Lakes		2B	3A	4
Willow Lake		2B	3A	4

t. Sevier County

TABLE

Annabella Reservoir		2B	3A	4
Big Lake		2B	3A	4
Farnsworth Lake		2B	3A	4
Fish Lake		2B	3A	4
Forsythe Reservoir		2B	3A	4
Johnson Valley Reservoir		2B	3A	4
Koosharem Reservoir		2B	3A	4
Lost Creek Reservoir		2B	3A	4
Redmond Lake		2B	3B	4
Rex Reservoir		2B	3A	4
Salina Reservoir		2B	3A	4
Sheep Valley Reservoir		2B	3A	4

u. Summit County

TABLE

Abes Lake		2B	3A	4
Alexander Lake		2B	3A	4
Amethyst Lake		2B	3A	4
Beaver Lake		2B	3A	4
Beaver Meadow Reservoir		2B	3A	4
Big Elk Reservoir		2B	3A	4
Blanchard Lake		2B	3A	4
Bridger Lake		2B	3A	4
China Lake		2B	3A	4
Cliff Lake		2B	3A	4
Clyde Lake		2B	3A	4
Coffin Lake		2B	3A	4
Cuberant Lake		2B	3A	4
East Red Castle Lake		2B	3A	4
Echo Reservoir	1C	2A 2B	3A	4
Fish Lake		2B	3A	4
Fish Reservoir		2B	3A	4
Haystack Reservoir #1		2B	3A	4
Henry's Fork Reservoir		2B	3A	4
Hoop Lake		2B	3A	4
Island Lake		2B	3A	4
Island Reservoir		2B	3A	4
Jesson Lake		2B	3A	4
Kamas Lake		2B	3A	4
Lily Lake		2B	3A	4
Lost Reservoir		2B	3A	4
Lower Red Castle Lake		2B	3A	4
Lyman Lake		2A 2B	3A	4
Marsh Lake		2B	3A	4
Marshall Lake		2B	3A	4
McPheters Lake		2B	3A	4
Meadow Reservoir		2B	3A	4
Meeks Cabin Reservoir		2B	3A	4
Notch Mountain Reservoir		2B	3A	4
Red Castle Lake		2B	3A	4
Rockport Reservoir	1C	2A 2B	3A	4
Ryder Lake		2B	3A	4
Sand Reservoir		2B	3A	4
Scow Lake		2B	3A	4
Smith Moorehouse Reservoir	1C	2B	3A	4
Star Lake		2B	3A	4
Stateline Reservoir		2B	3A	4
Tamarack Lake		2B	3A	4
Trial Lake	1C	2B	3A	4
Upper Lyman Lake		2B	3A	4
Upper Red Castle		2B	3A	4
Wall Lake Reservoir		2B	3A	4
Washington Reservoir		2B	3A	4
Whitney Reservoir		2B	3A	4

v. Tooele County

TABLE

Blue Lake		2B	3B		4
Clear Lake		2B	3B		4
Grantsville Reservoir		2B	3A		4
Horseshoe Lake		2B	3B		4
Kanaka Lake		2B	3B		4
Rush Lake		2B	3B		
Settlement Canyon Reservoir		2B	3A		4
Stansbury Lake		2B	3B		4
Vernon Reservoir		2B	3A		4

w. Uintah County

TABLE

Ashley Twin Lakes (Ashley Creek)	1C	2B	3A		4
Bottle Hollow Reservoir		2B	3A		4
Brough Reservoir		2B	3A		4
Calder Reservoir		2B	3A		4
Crouse Reservoir		2B	3A		4
East Park Reservoir		2B	3A		4
Fish Lake		2B	3A		4
Goose Lake #2		2B	3A		4
Matt Warner Reservoir		2B	3A		4
Oaks Park Reservoir		2B	3A		4
Paradise Park Reservoir		2B	3A		4
Pelican Lake		2B		3B	4
Red Fleet Reservoir	1C	2A	2B	3A	4
Steinaker Reservoir	1C	2A	2B	3A	4
Towave Reservoir			2B	3A	4
Weaver Reservoir			2B	3A	4
Whiterocks Lake			2B	3A	4
Workman Lake			2B	3A	4

x. Utah County

TABLE

Salem Pond		2A	3A		4
Silver Flat Lake Reservoir			2B	3A	4
Tibble Fork Resevoir			2B	3A	4
Utah Lake			2B	3B 3D	4

y. Wasatch County

TABLE

Currant Creek Reservoir	1C	2B	3A		4
Deer Creek Reservoir	1C	2A	2B	3A	4
Jordanelle Reservoir	1C	2A	3A		4
Mill Hollow Reservoir			2B	3A	4
Strawberry Reservoir	1C		2B	3A	4

z. Washington County

TABLE

Baker Dam Reservoir			2B	3A	4
Gunlock Reservoir	1C	2A	2B	3B	4
Ivins Reservoir			2B	3B	4
Kolob Reservoir			2B	3A	4
Lower Enterprise Reservoir			2B	3A	4
Quail Creek Reservoir	1C	2A	2B	3B	4
Upper Enterprise Reservoir			2B	3A	4

aa. Wayne County

TABLE

Blind Lake			2B	3A	4
Cook Lake			2B	3A	4
Donkey Reservoir			2B	3A	4
Fish Creek Reservoir			2B	3A	4
Mill Meadow Reservoir			2B	3A	4
Raft Lake			2B	3A	4

bb. Weber County

TABLE

Causey Reservoir			2B	3A	4
Pineview Reservoir	1C	2A	2B	3A**	4

13.13 Unclassified Waters

All waters not specifically classified are presumptively classified as 2B, 3D.

R317-2-14. Numeric Criteria.

TABLE 2.14.1
NUMERIC CRITERIA FOR DOMESTIC, RECREATION, AND AGRICULTURAL USES

Parameter	Domestic Source 1C	Recreation and Aesthetics 2A	Recreation and Aesthetics 2B	Agriculture 4
BACTERIOLOGICAL (30-DAY GEOMETRIC MEAN) (NO.)/100 ML) (7)				
E. coli	206	126	206	
MAXIMUM (NO.)/100 ML) (7)				
E. coli	668	409	668	
PHYSICAL				
pH (RANGE)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)		10	10	
METALS (DISSOLVED, MAXIMUM MG/L) (2)				
Arsenic	0.01			0.1
Barium	1.0			
Beryllium	<0.004			
Cadmium	0.01			0.01
Chromium	0.05			0.10
Copper				0.2
Lead	0.015			0.1
Mercury	0.002			
Selenium	0.05			0.05
Silver	0.05			
INORGANICS (MAXIMUM MG/L)				
Bromate	0.01			
Boron				0.75
Chlorite	<1.0			
Fluoride (3)	1.4-2.4			
Nitrates as N	10			
Total Dissolved				

Solids (4)				1200
	RADIOLOGICAL			
(MAXIMUM pCi/L)				
Gross Alpha	15			15
Gross Beta	4 mrem/yr			
Radium 226, 228 (Combined)	5			
Strontium 90	8			
Tritium	20000			
Uranium	30			
ORGANICS (MAXIMUM UG/L)				
Chlorophenoxy Herbicides				
2,4-D	70			
2,4,5-TP	10			
Methoxychlor	40			
POLLUTION INDICATORS (5)				
BOD (MG/L)		5	5	5
Nitrate as N (MG/L)		4	4	
Total Phosphorus as P (MG/L)(6)		0.05	0.05	

FOOTNOTES:

(1) Reserved

(2) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the field, no digestion process in the laboratory, and analysis by approved laboratory methods for the required detection levels.

(3) Maximum concentration varies according to the daily maximum mean air temperature.

TEMP (C)	MG/L
12.0	2.4
12.1-14.6	2.2
14.7-17.6	2.0
17.7-21.4	1.8
21.5-26.2	1.6
26.3-32.5	1.4

(4) Site-specific criteria for total dissolved solids may be adopted by rulemaking where it is demonstrated that: (a) a less stringent criterion is appropriate because of natural or un-alterable conditions; or (b) a less stringent, site-specific criterion and/or date-specified criterion is protective of existing and attainable agricultural uses; or (c) a more stringent criterion is attainable and necessary for the protection of sensitive crops. For water quality assessment purposes, up to 10% of representative samples may exceed the standard.

SITE SPECIFIC STANDARDS FOR TOTAL DISSOLVED SOLIDS (TDS)

Castle Creek from confluence with the Colorado River to Seventh Day Adventist Diversion: 1,800 mg/l;

Cottonwood Creek from the confluence with Huntington Creek to I-57: 3,500 mg/l;

Ferron Creek from the confluence with San Rafael River to Highway 10: 3,500 mg/l;

Huntington Creek and tributaries from the confluence with Cottonwood
Creek to U-10: 4,800 mg/l;

Ivie Creek and its tributaries from the confluence with Muddy Creek to U-10: 2,600 mg/l;

Lost Creek from the confluence with Sevier River to U.S. Forest Service Boundary: 4,600 mg/l;

Muddy Creek and tributaries from the confluence with Ivie Creek to U-10: 2,600 mg/l;

Muddy Creek from confluence with Fremont River to confluence with Quitchupah Creek: 5,800 mg/l;

North Creek from the confluence with Virgin River to headwaters: 2,035 mg/l;

Onion Creek from the confluence with Colorado River to road crossing
above Stinking Springs: 3000 mg/l;

Brine Creek-Petersen Creek, from the confluence with the Sevier River to U-119 Crossing: 9,700 mg/l;

Price River and tributaries from
confluence with Green River to confluence with Soldier Creek: 3,000 mg/l;

Price River and tributaries from the
confluence with Coal Creek to Carbon Canal Diversion: 1,700 mg/l

Price River and tributaries from the confluence with Green River to
confluence with Soldier Creek: 3,000 mg/l;

Quitchupah Creek from the confluence with Ivie Creek to U-10: 1,700 mg/l;

Rock Canyon Creek from the confluence with Cottonwood Creek to headwaters: 3,500 mg/l;

San Pitch River from below Gunnison Reservoir to the Sevier River: 2,400 mg/l;

San Rafael River from the confluence with the Green River to Buckhorn Crossing: 4,100 mg/l;

San Rafael River from the Buckhorn Crossing to the confluence with Huntington Creek and Cottonwood Creek: 3,500 mg/l;

Sevier River between Gunnison Bend Reservoir and DMAD Reservoir: 1,725 mg/l;

Sevier River from Gunnison Bend Reservoir to Clear Lake: 3,370 mg/l;

South Fork Spring Creek from confluence with Pelican Pond
Slough Stream to US 89 1,450 mg/l (Apr.-Sept.)
1,950 mg/l (Oct.-March)

Virgin River from the Utah/Arizona border to Pah Tempe Springs: 2,360 mg/l

(5) Investigations should be conducted to develop more information where these pollution indicator levels are exceeded.

(6) Total Phosphorus as P (mg/l) indicator for lakes and reservoirs shall be 0.025.

(7) Where the criteria are exceeded and there is a reasonable basis for concluding that the indicator bacteria E. coli are primarily from natural sources (wildlife), e.g., in National Wildlife Refuges and State Waterfowl Management Areas, the criteria may be considered attained provided the density attributable to non-wildlife sources is less than the criteria. Exceedences of E. coli from nonhuman nonpoint sources will generally be addressed through appropriate Federal, State, and local nonpoint source programs.

Measurement of E. coli using the "Quanti-Tray 2000" procedure is approved as a field analysis. Other EPA approved methods may also be used.

For water quality assessment purposes, up to 10% of representative samples may exceed the 668 per 100 ml criterion (for 1C and 2B waters) and 409 per 100 ml (for 2A waters). For small datasets, where exceedences of these criteria are observed, follow-up ambient monitoring should be conducted to better characterize water quality.

TABLE 2.14.2
NUMERIC CRITERIA FOR AQUATIC WILDLIFE

Parameter	Aquatic Wildlife 3A	3B	3C	3D
PHYSICAL				
Total Dissolved Gases	(1)	(1)		
Minimum Dissolved Oxygen (MG/L) (2)				
30 Day Average	6.5	5.5	5.0	5.0
7 Day Average	9.5/5.0	6.0/4.0		
Minimum	8.0/4.0	5.0/3.0	3.0	3.0
Max. Temperature(C)(3)	20	27	27	
Max. Temperature Change (C)(3)	2	4	4	

pH (Range)	6.5-9.0	6.5-9.0	6.5-9.0	6.5-9.0
Turbidity Increase (NTU)	10	10	15	15
METALS (4) (DISSOLVED, UG/L)(5)				
Aluminum				
4 Day Average (6)	87	87	87	87
1 Hour Average	750	750	750	750
Arsenic (Trivalent)				
4 Day Average	150	150	150	150
1 Hour Average	340	340	340	340
Cadmium (7)				
4 Day Average	0.25	0.25	0.25	0.25
1 Hour Average	2.0	2.0	2.0	2.0
Chromium (Hexavalent)				
4 Day Average	11	11	11	11
1 Hour Average	16	16	16	16
Chromium (Trivalent) (7)				
4 Day Average	74	74	74	74
1 Hour Average	570	570	570	570
Copper (7)				
4 Day Average	9	9	9	9
1 Hour Average	13	13	13	13
Cyanide (Free)				
4 Day Average	5.2	5.2	5.2	
1 Hour Average	22	22	22	22
Iron (Maximum)	1000	1000	1000	1000
Lead (7)				
4 Day Average	2.5	2.5	2.5	2.5
1 Hour Average	65	65	65	65
Mercury				
4 Day Average	0.012	0.012	0.012	0.012
1 Hour Average	2.4	2.4	2.4	2.4
Nickel (7)				
4 Day Average	52	52	52	52
1 Hour Average	468	468	468	468
Selenium				
4 Day Average	4.6	4.6	4.6	4.6
1 Hour Average	18.4	18.4	18.4	18.4
Selenium (14)				
Gilbert Bay (Class 5A)				
Great Salt Lake				
Geometric Mean over Nesting Season (mg/kg dry wt)				12.5
Silver				
1 Hour Average (7)	1.6	1.6	1.6	1.6
Zinc (7)				
4 Day Average	120	120	120	120
1 Hour Average	120	120	120	120
INORGANICS (MG/L) (4)				
Total Ammonia as N (9)				
30 Day Average	(9a)	(9a)	(9a)	(9a)
1 Hour Average	(9b)	(9b)	(9b)	(9b)
Chlorine (Total Residual)				
4 Day Average	0.011	0.011	0.011	0.011
1 Hour Average	0.019	0.019	0.019	0.019
Hydrogen Sulfide (13) (Undissociated, Max. UG/L)	2.0	2.0	2.0	2.0
Phenol(Maximum)	0.01	0.01	0.01	0.01
RADIOLOGICAL (MAXIMUM pCi/L)				
Gross Alpha (10)	15	15	15	15
ORGANICS (UG/L) (4)				
Aldrin				
1 Hour Average	1.5	1.5	1.5	1.5
Chlordane				
4 Day Average	0.0043	0.0043	0.0043	0.0043
1 Hour Average	1.2	1.2	1.2	1.2
4,4' -DDT				
4 Day Average	0.0010	0.0010	0.0010	0.0010
1 Hour Average	0.55	0.55	0.55	0.55
Diazinon				
4 Day Average	0.17	0.17	0.17	0.17
1 Hour Average	0.17	0.17	0.17	0.17
Dieldrin				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.24	0.24	0.24	0.24
Alpha-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Hour Average	0.11	0.11	0.11	0.11
beta-Endosulfan				
4 Day Average	0.056	0.056	0.056	0.056
1 Day Average	0.11	0.11	0.11	0.11
Endrin				
4 Day Average	0.036	0.036	0.036	0.036
1 Hour Average	0.086	0.086	0.086	0.086
Heptachlor				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Heptachlor epoxide				
4 Day Average	0.0038	0.0038	0.0038	0.0038
1 Hour Average	0.26	0.26	0.26	0.26
Hexachlorocyclohexane (Lindane)				
4 Day Average	0.08	0.08	0.08	0.08
1 Hour Average	1.0	1.0	1.0	1.0
Methoxychlor (Maximum)	0.03	0.03	0.03	0.03
Mirex (Maximum)	0.001	0.001	0.001	0.001
Nonylphenol				
4 Day Average	6.6	6.6	6.6	6.6
1 Hour Average	28.0	28.0	28.0	28.0
Parathion				
4 Day Average	0.013	0.013	0.013	0.013
1 Hour Average	0.066	0.066	0.066	0.066
PCB's				
4 Day Average	0.014	0.014	0.014	0.014
Pentachlorophenol (11)				
4 Day Average	15	15	15	15
1 Hour Average	19	19	19	19
Toxaphene				
4 Day Average	0.0002	0.0002	0.0002	0.0002
1 Hour Average	0.73	0.73	0.73	0.73
POLLUTION INDICATORS (11)				
Gross Beta (pCi/L)	50	50	50	50
BOD (MG/L)	5	5	5	5
Nitrate as N (MG/L)	4	4	4	
Total Phosphorus as P (MG/L) (12)			0.05	0.05

FOOTNOTES:

(1) Not to exceed 110% of saturation.

(2) These limits are not applicable to lower water levels in deep impoundments. First number in column is for when early life stages are present, second number is for when all other life stages present.

(3) The temperature standard shall be at background where it can be shown that natural or un-alterable conditions prevent its attainment. In such cases rulemaking will be undertaken to modify the standard accordingly.

Site Specific Standards for Temperature

Ken's Lake: From June 1st - September 20th, 27 degrees C.

(4) Where criteria are listed as 4-day average and 1-hour average concentrations, these concentrations should not be exceeded more often than once every three years on the average.

(5) The dissolved metals method involves filtration of the sample in the field, acidification of the sample in the

field, no digestion process in the laboratory, and analysis by EPA approved laboratory methods for the required detection levels.

(6) The criterion for aluminum will be implemented as follows: Where the pH is equal to or greater than 7.0 and the hardness is equal to or greater than 50 ppm as CaCO3 in the receiving water after mixing, the 87 ug/l chronic criterion (expressed as total recoverable) will not apply, and aluminum will be regulated based on compliance with the 750 ug/l acute aluminum criterion (expressed as total recoverable).

(7) Hardness dependent criteria. 100 mg/l used. Conversion factors for ratio of total recoverable metals to dissolved metals must also be applied. In waters with a hardness greater than 400 mg/l as CaCO3, calculations will assume a hardness of 400 mg/l as CaCO3. See Table 2.14.3 for complete equations for hardness and conversion factors.

(8) Reserved

(9) The following equations are used to calculate Ammonia criteria concentrations:

(9a) The thirty-day average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average, the chronic criterion calculated using the following equations.

Fish Early Life Stages are Present:

$mg/l\ as\ N\ (Chronic) = ((0.0577/1+10^{7.688-pH}) + (2.487/1+10^{PH-7.688})) * MIN\ (2.85, 1.45*10^{0.028*(25-T)})$

Fish Early Life Stages are Absent:

$mg/l\ as\ N\ (Chronic) = ((0.0577/1+10^{7.688-pH}) + (2.487/1+10^{pH-7.688})) * 1.45*10^{0.028*(25-MAX(T,7))})$

(9b) The one-hour average concentration of total ammonia nitrogen (in mg/l as N) does not exceed, more than once every three years on the average the acute criterion calculated using the following equations.

Class 3A:

$mg/l\ as\ N\ (Acute) = (0.275/(1+10^{7.204-pH})) + (39.0/1+10^{pH-7.204}))$

Class 3B, 3C, 3D:

$mg/l\ as\ N\ (Acute) = 0.411/(1+10^{7.204-pH})) + (58.4/(1+10^{pH-7.204}))$

In addition, the highest four-day average within the 30-day period should not exceed 2.5 times the chronic criterion. The "Fish Early Life Stages are Present" 30-day average total ammonia criterion will be applied by default unless it is determined by the Division, on a site-specific basis, that it is appropriate to apply the "Fish Early Life Stages are Absent" 30-day average criterion for all or some portion of the year. At a minimum, the "Fish Early Life Stages are Present" criterion will apply from the beginning of spawning through the end of the early life stages. Early life stages include the pre-hatch embryonic stage, the post-hatch free embryo or yolk-sac fry stage, and the larval stage for the species of fish expected to occur at the site. The division will consult with the Division of Wildlife Resources in making such determinations. The Division will maintain information regarding the waterbodies and time periods where application of the "Early Life Stages are Absent" criterion is determined to be appropriate.

(10) Investigation should be conducted to develop more information where these levels are exceeded. (11) pH dependent criteria. pH 7.8 used in table. See Table 2.14.4 for equation.

(12) Total Phosphorus as P (mg/l) as a pollution indicator for lakes and reservoirs shall be 0.025.

(13) Formula to convert dissolved sulfide to un-disassociated hydrogen sulfide is: $H_2S = Dissolved\ Sulfide * e^{((-1.92 + pH) + 12.05)}$

(14) The selenium water quality standard of 12.5 (mg/kg dry weight) for Gilbert Bay is a tissue based standard using the complete egg/embryo of aquatic dependent birds using Gilbert Bay based upon a minimum of five samples over the nesting season. Assessment procedures are incorporated as a part of this standard as follows:

Egg Concentration Triggers: DWQ Responses

Below 5.0 mg/kg: Routine monitoring with sufficient intensity to determine if selenium concentrations within the Great Salt Lake ecosystem are increasing.

5.0 mg/kg: Increased monitoring to address data gaps, loadings, and areas of uncertainty identified from initial Great Salt Lake selenium studies.

6.4 mg/kg: Initiation of a Level II Antidegradation review by the State for all discharge permit renewals or new discharge permits to Great Salt Lake. The Level II Antidegradation review may include an analysis of loading reductions.

9.8 mg/kg: Initiation of preliminary TMDL studies to evaluate selenium loading sources.

12.5 mg/kg and above: Declare impairment. Formalize and implement TMDL.

Antidegradation

Level II Review procedures associated with this standard are referenced at R317-2-3.5.C.

TABLE
1-HOUR AVERAGE (ACUTE) CONCENTRATION OF TOTAL AMMONIA AS N (MG/L)

pH	Class 3A	Class 3B, 3C, 3D
6.5	32.6	48.8
6.6	31.3	46.8
6.7	29.8	44.6
6.8	28.1	42.0
6.9	26.2	39.1
7.0	24.1	36.1
7.1	22.0	32.8
7.2	19.7	29.5
7.3	17.5	26.2
7.4	15.4	23.0
7.5	13.3	19.9
7.6	11.4	17.0
7.7	9.65	14.4
7.8	8.11	12.1
7.9	6.77	10.1
8.0	5.62	8.40
8.1	4.64	6.95
8.2	3.83	5.72
8.3	3.15	4.71
8.4	2.59	3.88
8.5	2.14	3.20
8.6	1.77	2.65
8.7	1.47	2.20
8.8	1.23	1.84
8.9	1.04	1.56
9.0	0.89	1.32

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Present
Temperature, C

pH	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.80	2.80	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.90
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.88	0.77
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.97	0.86	0.75	0.66
8.3	1.52	1.52	1.39	1.22	1.07	0.94	0.83	0.73	0.64	0.56
8.4	1.29	1.29	1.17	1.03	0.91	0.80	0.70	0.62	0.54	0.48
8.5	1.09	1.09	0.99	0.87	0.76	0.67	0.59	0.52	0.46	0.40
8.6	0.92	0.92	0.84	0.73	0.65	0.57	0.50	0.44	0.39	0.34
8.7	0.78	0.78	0.71	0.62	0.55	0.48	0.42	0.37	0.33	0.29
8.8	0.66	0.66	0.60	0.53	0.46	0.41	0.36	0.32	0.28	0.24
8.9	0.56	0.56	0.51	0.45	0.40	0.35	0.31	0.27	0.24	0.21
9.0	0.49	0.49	0.44	0.39	0.34	0.30	0.26	0.23	0.20	0.18

TABLE
30-DAY AVERAGE (CHRONIC) CONCENTRATION OF TOTAL AMMONIA AS N (MG/l)

Fish Early Life Stages Absent
Temperature, C

pH	0-7	8	9	10	11	12	13	14	16
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.36	6.89	6.06
6.6	10.7	10.1	9.37	9.37	8.79	8.24	7.72	7.24	6.36
6.7	10.5	9.99	9.20	8.62	8.08	7.58	7.11	6.66	5.86
6.8	10.2	9.81	8.98	8.42	7.90	7.40	6.94	6.51	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.15

7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	0.990
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.707
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.601
8.9	0.917	0.860	0.806	0.758	0.709	0.664	0.623	0.584	0.513
9.0	0.790	0.740	.694	0.651	0.610	0.572	0.536	0.503	0.442

pH	18	20	22	24	26	28	30
6.5	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	4.41	3.78	3.33	2.92	2.57	2.26	1.99
7.3	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	3.49	3.06	2.69	2.37	2.08	1.83	1.61
7.6	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	0.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	0.68	1.47	1.29	1.14	1.00	0.879	0.733
8.2	0.43	1.26	1.11	0.073	0.855	0.752	0.661
8.3	0.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	0.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.735	0.646	0.568	0.499	0.439	0.396	0.339
8.7	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 2.14.3a

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	4-Day Average (Chronic) Concentration (UG/L)
CADMIUM	$CF * e^{(0.7409\ (In(hardness))\ -4.719}$ CF = 1.101672 - (In hardness) (0.041838)
CHROMIUM III	$CF * e^{(0.8190(In(hardness))\ +\ 0.6848}$ CF = 0.860
COPPER	$CF * e^{(0.8545(ln(hardness))\ -1.702)}$ CF = 0.960
LEAD	$CF * e^{(1.273(ln(hardness))-4.705)}$ CF = 1.46203 - (ln hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(ln(hardness))+0.0584)}$ CF = 0.997
SILVER	N/A
ZINC	$Cf * e^{(0.8473(ln(hardness))+0.884)}$ CF = 0.986

TABLE 2.14.3b

EQUATIONS TO CONVERT TOTAL RECOVERABLE METALS STANDARD WITH HARDNESS (1) DEPENDENCE TO DISSOLVED METALS STANDARD BY APPLICATION OF A CONVERSION FACTOR (CF).

Parameter	1-Hour Average (Acute) Concentration (UG/L)
CADMIUM	$CF * e^{(1.0166(In(hardness))-3.924)}$ CF = 1.136672 - (ln hardness)(0.041838)
CHROMIUM (III)	$CF * e^{(0.8190(ln(hardness))\ +3.7256)}$ CF = 0.316
COPPER	$CF * e^{(0.9422(ln(hardness))-\ 1.700)}$ CF = 0.960
LEAD	$CF * e^{(1.273(ln(hardness))-1.460)}$ CF = 1.46203 - (ln hardness)(0.145712)
NICKEL	$CF * e^{(0.8460(ln(hardness))\ +2.255}$ CF= 0.998
SILVER	$CF * e^{(1.72(ln(hardness))-\ 6.59}$ CF = 0.85
ZINC	$CF * e^{(0.8473(ln(hardness))\ +0.884}$ CF = 0.978

FOOTNOTE:
(1) Hardness as mg/l $CaCO_3$.

TABLE 2.14.4
EQUATIONS FOR PENTACHLOROPHENOL
(pH DEPENDENT)

4-Day Average (Chronic) Concentration (UG/L)	1-Hour Average (Acute) Concentration (UG/L)
$e^{(1.005(pH))-5.134}$	$e^{(1.005(pH))-4.869}$

TABLE 2.14.5
SITE SPECIFIC CRITERIA FOR
DISSOLVED OXYGEN FOR JORDAN RIVER, SURPLUS CANAL, AND STATE CANAL
(SEE SECTION 2.13)

DISSOLVED OXYGEN:	
May-July	
7-day average	5.5 mg/l
30-day average	5.5 mg/l
Instantaneous minimum	4.5 mg/l
August-April	
30-day average	5.5 mg/l
Instantaneous minimum	4.0 mg/l

TABLE 2.14.6
LIST OF HUMAN HEALTH CRITERIA (CONSUMPTION)

Chemical Parameter	Water and Organism (ug/L) Class 1C	Organism Only (ug/L) Class 3A,3B,3C,3D
Antimony	5.6	640
Arsenic	A	A
Beryllium	C	C
Cadmium	C	C
Chromium III	C	C
Chromium VI	C	C
Copper	1,300	
Lead	C	C
Mercury	A	A
Nickel	100 MCL	4,600
Selenium	A	4,200
Silver		
Thallium	0.24	0.47
Zinc	7,400	26,000
Cyanide	140	140
Asbestos	7 million Fibers/L	
2,3,7,8-TCDD Dioxin	5.0 E -9 B	5.1 E-9 B
Acrolein	190	290
Acrylonitrile	0.051 B	0.25 B
Alachlor	2.0	
Atrazine	3.0	
Benzene	2.2 B	51 B
Bromoform	4.3 B	140 B
Carbofuran	40	
Carbon Tetrachloride	0.23 B	1.6 B
Chlorobenzene	100 MCL	1,600
Chlorodibromomethane	0.40 B	13 B
Chloroethane		
2-Chloroethylvinyl Ether		
Chloroform	5.7 B	470 B
Dalapon	200	
Di(2ethylhexl)adipate	400	
Dibromochloropropane	0.2	

Dichlorobromomethane	0.55 B	17 B
1,1-Dichloroethane		
1,2-Dichloroethane	0.38 B	37 B
1,1-Dichloroethylene	7 MCL	7,100
Dichloroethylene (cis-1,2)	70	
Dinoseb	7.0	
Diquat	20	
1,2-Dichloropropane	0.50 B	15 B
1,3-Dichloropropene	0.34	21
Endothall	100	
Ethylbenzene	530	2,100
Ethylene Dibromide	0.05	
Glyphosate	700	
Haloacetic acids	60 E	
Methyl Bromide	47	1,500
Methyl Chloride	F	F
Methylene Chloride	4.6 B	590 B
Ocamyl (vidate)	200	
Picloram	500	
Simazine	4	
Styrene	100	
1,1,2,2-Tetrachloroethane	0.17 B	4.0 B
Tetrachloroethylene	0.69 B	3.3 B
Toluene	1,000	15,000
1,2 -Trans-Dichloroethylene	100 MCL	10,000
1,1,1-Trichloroethane	200 MCL	F
1,1,2-Trichloroethane	0.59 B	16 B
Trichloroethylene	2.5 B	30 B
Vinyl Chloride	0.025	2.4
Xylenes	10,000	
2-Chlorophenol	81	150
2,4-Dichlorophenol	77	2902,4-
Dimethylphenol	380	850
2-Methyl-4,6-Dinitrophenol	13.0	280
2,4-Dinitrophenol	69	5,300
2-Nitrophenol		
4-Nitrophenol		
3-Methyl-4-Chlorophenol		
Penetachlorophenol	0.27 B	3.0 B
Phenol	21,000	1,700,000
2,4,6-Trichlorophenol	1.4 B	2.4 B
Acenaphthene	670	990
Acenaphthylene		
Anthracene	8,300	40,000
Benzidine	0.000086 B	0.00020 B
BenzoaAnthracene	0.0038 B	0.018 B
BenzoaPyrene	0.0038 B	0.018 B
BenzobFluoranthene	0.0038 B	0.018 B
BenzoghiPerylene		
BenzokFluoranthene	0.0038 B	0.018 B
Bis2-ChloroethoxyMethane		
Bis2-ChloroethylEther	0.030 B	0.53 B
Bis2-Chloroisopropy1Ether	1,400	65,000
Bis2-EthylhexylPhthalate	1.2 B	2.2 B
4-Bromophenyl Phenyl Ether		
Butylbenzyl Phthalate	1,500	1,900
2-Chloronaphthalene	1,000	1,600
4-Chlorophenyl Phenyl Ether		
Chrysene	0.0038 B	0.018 B
Dibenzoa, hAnthracene	0.0038 B	0.018 B
1,2-Dichlorobenzene	420	1,300
1,3-Dichlorobenzene	320	960
1,4-Dichlorobenzene	63	190
3,3-Dichlorobenzidine	0.021 B	0.028 B
Diethyl Phthalate	17,000	44,000
Dimethyl Phthalate	270,000	1,100,000
Di-n-Butyl Phthalate	2,000	4,500
2,4-Dinitrotoluene	0.11 B	3.4 B
2,6-Dinitrotoluene		
Di-n-Octyl Phthalate		
1,2-Diphenylhydrazine	0.036 B	0.20 B
Fluoranthene	130	140
Fluorene	1,100	5,300
Hexachlorobenzene	0.00028 B	0.00029 B
Hexachlorobutedine	0.44 B	18 B
Hexachloroethane	1.4 B	3.3 B
Hexachlorocyclopentadiene	40	1,100
Ideno 1,2,3-cdPyrene	0.0038 B	0.018 B
Isophorone	35 B	960 B
Naphthalene		
Nitrobenzene	17	690
N-Nitrosodimethylamine	0.00069 B	3.0 B
N-Nitrosodi-n-Propylamine	0.005 B	0.51 B
N-Nitrosodiphenylamine	3.3 B	6.0 B
Phenanthrene		
Pyrene	830	4,000
1,2,4-Trichlorobenzene	35	70
Aldrin	0.000049 B	0.000050 B
alpha-BHC	0.0026 B	0.0049 B
beta-BHC	0.0091 B	0.017 B
gamma-BHC (Lindane)	0.2 MCL	1.8
delta-BHC		
Chlordane	0.00080 B	0.00081 B
4,4-DDT	0.00022 B	0.00022 B
4,4-DDE	0.00022 B	0.00022 B
4,4-DDD	0.00031 B	0.00031 B
Dieldrin	0.000052 B	0.000054 B
alpha-Endosulfan	62	89
beta-Endosulfan	62	89
Endosulfan Sulfate	62	89
Endrin	0.059	0.060
Endrin Aldehyde	0.29	0.30
Heptachlor	0.000079 B	0.000079 B
Heptachlor Epoxide	0.000039 B	0.000039 B
Polychlorinated Biphenyls	0.000064 B,D	0.000064 B,D
PCB's		
Toxaphene	0.00028 B	0.00028 B

Footnotes:

A. See Table 2.14.2

B. Based on carcinogenicity of 10-6 risk.

C. EPA has not calculated a human criterion for this contaminant. However, permit authorities should address this contaminant in NPDES permit actions using the State's existing narrative criteria for toxics

D. This standard applies to total PCBs.

KEY: water pollution, water quality standards
January 12, 2009 19-5
Notice of Continuation October 2, 2007

R382. Health, Children's Health Insurance Program.
R382-10. Eligibility.
R382-10-1. Authority.

This rule sets forth the eligibility requirements for coverage under the Children's Health Insurance Program (CHIP). It is authorized by Title 26, Chapter 40.

R382-10-2. Definitions.

(1) The Department adopts the definitions found in Sections 2110(b) and (c) of the Social Security Act as enacted by Pub. L. No. 105-33 which is incorporated by reference in this rule.

(2) "Agency" means any local office or outreach location of either the Department of Health or Department of Workforce Services that accepts and processes applications for CHIP.

(3) "Applicant" means a child on whose behalf an application has been made for benefits under the Children's Health Insurance Program, but who is not an enrollee.

(4) "Best estimate" means the Department's determination of a household's income for the upcoming eligibility period, based on past and current circumstances and anticipated future changes.

(5) "Children's Health Insurance Program" or "CHIP" means the program for benefits under the Utah Children's Health Insurance Act, Title 26, Chapter 40.

(6) "Department" means the Utah Department of Health.

(7) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2(8) (a) (b) (c) (d) and (e).

(8) "Income averaging" means a process of using a history of past or current income and averaging it over a determined period of time that is representative of future income.

(9) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(10) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(11) "Local office" means any office location, outreach location, or telephone location where an individual may apply for medical assistance.

(12) "Quarterly Premium" means a payment that enrollees must pay every three months to receive coverage under CHIP.

(13) "Renewal month" means the last month of the eligibility period for an enrollee.

(14) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

(15) "Verifications" means the proofs needed to decide if a child meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of a child.

R382-10-3. Actions on Behalf of a Minor.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply for CHIP enrollment, provide information required by this rule, or otherwise act on behalf of a child in all respects under the statutes and rules governing the CHIP program.

(a) The child, if 18 years old or an emancipated minor, the child's parent or legal guardian must indicate in writing to the Department who is authorized as the child's representative.

(b) The Department may designate an authorized representative if the child needs a representative but is unable to make a choice either in writing or orally in the presence of a witness.

(2) Where the statutes or rules governing the CHIP program require a child to take an action, the parent or adult who has assumed responsibility for the care or supervision of the child is responsible to take the action on behalf of the child. If the parent or adult who has assumed responsibility for the care or supervision of the child fails to take an action, the failure is attributable as the child's failure to take the action.

(3) Notice to the parent or adult who has assumed responsibility for the care or supervision of the child is notice to the child.

R382-10-4. Applicant and Enrollee Rights and Responsibilities.

(1) A parent or an adult who has assumed responsibility for the care or supervision of a child may apply or reapply for Children's Health Insurance Program benefits on behalf of a child. An emancipated child or an 18 year old child may apply on his own behalf.

(2) The applicant must provide verifications to establish the eligibility of the child, including information about the parents.

(3) Anyone may look at the eligibility policy manuals located at any local office, except at outreach or telephone locations.

(4) The parent or other individual who arranged for medical services on behalf of the child shall repay the Department for services paid for by the Department under this program if the child is determined not to be eligible for CHIP.

(5) The parent(s) or child, or other responsible person acting on behalf of a child must report certain changes to the local office within ten days of the day the change becomes known. Some examples of reportable changes include:

(a) An enrollee begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee leaves the household or dies.

(d) An enrollee or the household moves out of state.

(e) Change of address of an enrollee or the household.

(f) An enrollee enters a public institution or an institution for mental diseases.

(6) Applicants and enrollees have the right to be notified about actions the agency takes regarding their eligibility or continued eligibility, the reason the action was taken, and the right to request an agency conference or agency action.

R382-10-5. Verification and Information Exchange.

(1) The applicant and enrollee upon renewal must provide verification of eligibility factors as requested by the agency.

(a) The agency will provide the enrollee a written request of the needed verifications.

(b) The enrollee has at least 10 calendar days from the date the agency gives or mails the verification request to the enrollee to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is the close of business on the date the agency sets as the due date in a written request to the enrollee, but not less than 10 calendar days from the date such request is given to or mailed to the enrollee.

(d) The agency allows additional time to provide verifications if the enrollee requests additional time by the due date. The agency will set a new due date that is at least 10 calendar days from the date the enrollee asks for more time to provide the verifications or forms.

(e) If an enrollee has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, agency denies the application, renewal, or ends eligibility.

(2) The Department may release information concerning applicants and enrollees and their households to other state and

federal agencies to determine eligibility for other public assistance programs.

(3) The Department must release information to the Title IV-D agency and Social Security Administration to determine benefits.

(4) The Department may verify information by exchanging information with other public agencies as described in 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

R382-10-6. Citizenship and Alienage.

(1) To be eligible to enroll in the program, a child must be a citizen of the United States or a qualified alien as defined in Pub. L. No. 104-193(401) through (403), (411), (412), (421) through (423), (431), and (435), and amended by Pub. L. No. 105-33(5302)(b) and (c), (5303), (5305)(b), (5306), (5562), (5563), and (5571).

(2) Hmong or Highland Lao veterans who fought on behalf of the Armed Forces of the United States during the Vietnam conflict and who are lawfully admitted to the United States for permanent residence, and their family members who are also qualified aliens, may be eligible to enroll in the program regardless of their date of entry into the United States.

(3) One adult household member must declare the citizenship or alien status of all applicants in the household. The applicant must provide verification of his citizenship or alien status.

(4) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), admitted into the United States prior to August 22, 1996, may enroll in the program.

(5) A qualified alien, as defined in Pub. L. No. 104-193(431) and amended by Pub. L. No. 105-33(5302)(c)(3), (5562), and (5571), newly admitted into the United States on or after August 22, 1996, may enroll in the program after five years have passed from his date of entry into the United States.

R382-10-7. Utah Residence.

(1) A child must be a Utah resident to be eligible to enroll in the program.

(2) An American Indian child in a boarding school is a resident of the state where his parents reside. A child in a school for the deaf and blind is a resident of the state where his parents reside.

(3) A child is a resident of the state if he is temporarily absent from Utah due to employment, schooling, vacation, medical treatment, or military service.

(4) The child need not reside in a home with a permanent location or fixed address.

R382-10-8. Residents of Institutions.

(1) Residents of institutions described in Section 2110(b)(2)(A) of the Social Security Act as enacted by Pub. L. No. 105-33 are not eligible for the program.

(2) A child under the age of 18 is not a resident of an institution if he is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R382-10-9. Social Security Numbers.

(1) The Department may request applicants to provide the correct Social Security Number (SSN) or proof of application for a SSN for each household member at the time of application for the program.

(2) A child may not be denied CHIP enrollment for failure to provide a SSN.

R382-10-10. Creditable Health Coverage.

(1) To be eligible for enrollment in the program, a child must meet the requirements of Sections 2110(b)(1)(C) and (2)(B) of the Social Security Act as enacted by Pub. L. No. 105-33.

(2) A child who is covered under a group health plan or other health insurance coverage including coverage under a parent's or legal guardian's employer, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for CHIP assistance.

(3) A child who is covered under an absent parent's insurance coverage that does not provide coverage in the State of Utah is eligible for enrollment.

(4) A child who is covered under a group health plan or other health coverage but has reached the lifetime maximum coverage under that plan is eligible for enrollment.

(5) A child who has access to health insurance coverage, where the cost to enroll the child in the least expensive plan offered by the employer is less than 5% of the household's gross annual income, is not eligible for CHIP. The child is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(6) A child who has access to an employer-sponsored health plan where the least expensive plan is equal to or greater than 5% of the household's gross annual income, and the employer offers an employer-sponsored health plan that meets the requirements of R414-320-2 (8) (a), (b), (c), (d) and (e), may choose to enroll in the employer-sponsored health plan and receive reimbursement through the UPP program or may choose to enroll in the CHIP program.

(a) If the employer-sponsored health plan does not include dental benefits, the child may enroll in CHIP dental benefits.

(b) A child who chooses to enroll in the UPP program may switch to CHIP coverage at any time.

(7) The Department shall deny eligibility if the applicant or a custodial parent has voluntarily terminated health insurance coverage in the 90 days prior to the application date for enrollment under CHIP. An applicant or applicant's parent(s) who voluntarily terminates coverage under a COBRA plan or under the Health Insurance Pool (HIP), or who is involuntarily terminated from an employer's plan is eligible for CHIP without a 90 day waiting period.

(8) A child with creditable health coverage operated or financed by the Indian Health Services is not excluded from enrolling in the program.

(9) An applicant must report at application and renewal whether any of the children in the household for whom enrollment is being requested has access to or is covered by a group health plan, other health insurance coverage, or a state employee's health benefits plan.

(10) The Department shall deny an application or renewal if the enrollee fails to respond to questions about health insurance coverage for children the household seeks to enroll or renew in the program.

R382-10-11. Household Composition.

(1) The following individuals who reside together must be included in the household for purposes of determining the household size and whose income will be counted, whether or not the individual is eligible to enroll in the program:

(a) A child who meets the CHIP age requirement and who does not have access to and is not covered by a group health plan or other health insurance;

(b) Siblings, half-siblings, adopted siblings, and step-siblings of the child who meets the CHIP age requirement if these individuals also meet the CHIP age requirement;

(c) Parents and stepparents of any child who is included in the household size;

(d) Children of any child included in the household size;

(e) The spouse of any child who is included in the household size; and

(f) Unborn children of anyone included in the household size.

(g) Children of a former spouse when a divorce has been finalized.

(2) Any individual described in Subsection (1) of this Section who is temporarily absent solely by reason of employment, school, training, military service, or medical treatment, or who will return home to live within 30 days from the date of application, is part of the household.

(3) A household member described in Subsection (1) of this Section who does not qualify to enroll in the CHIP program due to his alien status is included in the household size and his income is counted as household income.

R382-10-12. Age Requirement.

(1) A child must be under 19 years of age to enroll in the program.

(2) The month in which a child's 19th birthday occurs is the last month of eligibility for CHIP enrollment.

R382-10-13. Income Provisions.

To be eligible to enroll in the Children's Health Insurance Program, gross household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of equal size. All gross income, earned and unearned, received by the parents and stepparents of any child who is included in the household size, is counted toward household income, unless this section specifically describes a different treatment of the income.

(1) The Department does not count as income any payments from sources that federal law specifically prohibit from being counted as income to determine eligibility for federally-funded programs.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, General Assistance, or refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 is countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Deposits to joint checking or savings accounts are countable income, even if the deposits are made by a non-household member. An applicant or enrollee who disputes household ownership of deposits to joint checking or savings accounts shall be given an opportunity to prove that the deposits do not represent income to the household. Funds that are successfully disputed are not countable income.

(6) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(7) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the eligibility period.

(8) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service or did not work to receive is not counted as income.

(9) SSI and State Supplemental Payments are countable income.

(10) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(11) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(12) Child Care Assistance under Title XX is not countable income.

(13) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(14) Needs-based Veteran's pensions are not counted as income. If the income is not needs-based, only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(15) Income of a child is excluded if the child is not the head of a household.

(16) Educational income such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(17) Reimbursements for expenses incurred by an individual are not countable income.

(18) Any payments made to an individual because of his status as a victim of Nazi persecution as defined in Pub. L. No. 103-286 are not countable income, including payments made by the Federal Republic of Germany, Austrian Social Insurance payments, and Netherlands WUV payments.

(19) Victim's Compensation payments as defined in Pub. L. No. 101-508 are not countable income.

(20) Disaster relief funds received if a catastrophe has been declared a major disaster by the President of the United States as defined in Pub. L. No. 103-286 are not countable income.

(21) Income of an alien's sponsor or the sponsor's spouse is not countable income.

(22) If the household expects to receive less than $500 per year in taxable interest and dividend income, then they are not countable income.

(23) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

R382-10-14. Budgeting.

The following section describes methods that the Department will use to determine the household's countable monthly or annual income.

(1) The gross income for parents and stepparents of any child included in the household size is counted to determine a child's eligibility, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department shall determine monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department shall multiply the weekly amount by 4.3 to obtain a monthly amount. The Department shall multiply income paid bi-weekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine a child's eligibility and cost-sharing requirements prospectively for the upcoming eligibility period at the time of application and at each renewal for continuing eligibility. The Department shall determine prospective eligibility by using the best estimate of the household's average monthly income that is expected to be

received or made available to the household during the upcoming eligibility period. The Department shall prorate income that is received less often than monthly over the eligibility period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the eligibility period, or an annual amount that is prorated over the eligibility period. Different methods may be used for different types of income received in the same household.

(5) The Department shall determine farm and self-employment income by using the individual's recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from a recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses are greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and in particular for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

R382-10-15. Assets.

An asset test is not required for CHIP eligibility.

R382-10-16. Application and Renewal.

The application is the initial request from an applicant for CHIP enrollment for a child. The application process includes gathering information and verifications to determine the child's eligibility for enrollment in the program. Renewal is the process of gathering information and verifications on a periodic basis to determine continued eligibility of an enrollee.

(1) The applicant must complete and sign a written application to become enrolled in the program.

(2) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for CHIP enrollment.

(3) Individuals may apply for enrollment during open enrollment periods in person, through the mail, by fax, or online.

(4) The Department may interview applicants, the applicant's parents, and any adult who has assumed responsibility for the care or supervision of the child to assist in determining eligibility.

(5) If eligibility for CHIP enrollment ends, the Department shall review the case for eligibility under any other medical assistance program without requiring a new application. The Department may request additional verification from the household if there is insufficient information to make a determination.

R382-10-17. Eligibility Decisions.

(1) The Department must determine eligibility for CHIP within 30 days of the date of application. If a decision can not be made in 30 days because the applicant fails to take a required action and requests additional time to complete the application process, or if circumstances beyond the Department's control delay the eligibility decision, the Department shall document the reason for the delay in the case record. The Department must inform the applicant of the status of the application and the time frame for completing the application process.

(2) The Department may not use the time standard as a waiting period before determining eligibility, or as a reason for denying eligibility because the Department has not determined eligibility within that time.

(3) The Department shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdrew the application and the Department sent a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant can not be located or has not responded to requests for information within the 30 day application period.

(4) The Department must redetermine eligibility at least every 12 months.

(5) At application and renewal, the Department must determine if any child applying for CHIP enrollment is eligible for coverage under Medicaid. A child who is eligible for Medicaid coverage is not eligible for CHIP. A child who must meet a spend-down to receive Medicaid and chooses not to meet the spenddown can be enrolled in CHIP.

R382-10-18. Effective Date of Enrollment and Renewal.

(1) The effective date of CHIP enrollment is the date a completed and signed application is received at a local office by the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the close of business on a business day, the effective date of CHIP enrollment is the next business day.

(2) The effective date of CHIP enrollment for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the effective date of enrollment is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the effective date of enrollment is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The Department may allow a grace enrollment period beginning no earlier than four days before the date a completed and signed application is received by the Department. The Department shall not pay for any services received before the effective enrollment date.

(4) For a family who has a child enrolled in CHIP and who adds a newborn or adopted child, the effective date of enrollment is the date of birth or adoption if the family requests the coverage within 30 days of the birth or adoption. If the request is made more than 30 days after the birth or adoption, enrollment in CHIP will be effective beginning the date of report, except as otherwise provided in R382-10-18(1).

(5) The effective date of enrollment for a renewal is the first day of the month after the renewal month, if the renewal process is completed by the end of the renewal month, or by the last day of the month immediately following the renewal month, and the child continues to be eligible.

(6) If the renewal process is not completed by the end of the renewal month, the case will be closed unless the enrollee has good cause for not completing the renewal process on time. Good cause includes a medical emergency, death of an immediate family member, or natural disaster, or other similar occurrence.

(7) The Department may require an interview with the parent, child, or adult who has assumed responsibility for the

care or supervision of a child, or other authorized representative as part of the renewal process.

R382-10-19. Enrollment Period.

(1) The enrollment period begins with either the date of application, or an earlier date as defined in R382-10-18, if the applicant is determined eligible for CHIP enrollment. Covered services the child received on or after the effective date of enrollment are payable by CHIP for a child who was eligible upon application.

(2) A child eligible for CHIP enrollment receives 12 months of coverage unless the child turns 19 years of age before the end of the 12-month enrollment period, moves out of the state, becomes eligible for Medicaid, begins to be covered under a group health plan or other health insurance coverage, enters a public institution, or does not pay his or her quarterly premium. The month a child turns 19 years of age is the last month the child is eligible for CHIP.

R382-10-20. Quarterly Premiums.

(1) Each family with children enrolled in the CHIP program must pay a quarterly premium based on the countable income of the family during the first month of the quarter.

(a) A family whose countable income is equal to or less than 100% of the federal poverty level or who are American Indian pays no premium.

(b) A family with countable income greater than 100% and up to 150% of the federal poverty level must pay a quarterly premium of $30.

(c) A family with countable income greater than 150% and up to 200% of the federal poverty level must pay a quarterly premium of $60.

(2) A family who does not pay its quarterly premium by the premium due date will be terminated from CHIP. Coverage may be reinstated when any of the following events occur:

(a) The family pays the premium by the last day of the month immediately following the termination;

(b) The family's countable income decreased to below 100% of the federal poverty level prior to the first month of the quarter.

(c) The family's countable income decreases prior to the first month of the quarter and the family owes a lower premium amount. The new premium must be paid within 30 days.

(3) A family who was terminated from CHIP who reapplies within one year of the termination date, must pay any outstanding premiums before the children can be re-enrolled.

R382-10-21. Termination and Notice.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or at renewal.

(2) The Department shall notify an enrollee in writing ten days before taking a proposed action adversely affecting the enrollee's eligibility.

(3) Notices under this section shall provide the following information:

(a) the action to be taken;

(b) the reason for the action;

(c) the regulations or policy that support the action;

(d) the applicant's or enrollee's right to a hearing;

(e) how an applicant or enrollee may request a hearing; and

(f) the applicant's or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(4) The Department need not give ten-day notice of termination if:

(a) the child is deceased;

(b) the child has moved out of state and is not expected to return;

(c) the child has entered a public institution; or

(d) the child has enrolled in other health insurance coverage, in which case eligibility ends the day before the new coverage begins.

R382-10-22. Case Closure or Withdrawal.

The Department shall terminate a child's enrollment upon enrollee request or upon discovery that the child is no longer eligible. An applicant may withdraw an application for CHIP benefits any time prior to approval of the application.

KEY: children's health benefits
January 22, 2009 26-1-5
Notice of Continuation May 19, 2008 26-40

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-9. Federally Qualified Health Centers.
R414-9-1. Introduction and Authority.

(1) This rule establishes Medicaid payment methodologies for federally qualified health centers (FQHCs).

(2) This rule is authorized by 42 CFR Subpart X, and Sections 26-1-5, 26-18-2.1, 26-18-2.3, UCA.

R414-9-2. Definitions.

In addition to the definitions in R414-1, the following definitions apply to this rule:

(1) "Federally Qualified Health Center" means an entity that is a Federally Qualified Health Center under the provisions of 42 CFR Subpart X.

(2) "Rural Health Clinic" (RHC) means an entity that is a Rural Health Clinic under the provisions of 42 CFR Subpart X.

R414-9-3. Payment Choices for FQHCs.

(1) An FQHC may elect to be paid under either the Prospective Payment Method (PPS) as described in R414-9-4 or the Alternate Payment Method (APM) as described in R414-9-5.

(2) If an FQHC elects to change its payment method in subsequent years, it must elect to do so no later than thirty days prior to the beginning of the FQHC's fiscal year by written notice to the Department.

R414-9-4. Prospective Payment System.

The Department pays FQHCs under a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472, 2002 edition, which are adopted by reference and modified as follows:

(1) The Department makes supplemental payments for the difference between the amounts paid by Managed Care Organizations (MCOs) that contract with FQHCs and the amounts the FQHCs are entitled to under the PPS as they are estimated and paid quarterly to the FQHCs. The Department makes quarterly interim payments no later than thirty days after the end of the quarter based on the most recent prior annual reconciliation. As necessary, the Department settles annual reconciliations with each FQHC.

(2) The Department requires FQHCs to contract with local Mental Health service (MH) providers that are paid a capitation rate by DHCF to avoid duplicate payments. FQHC MH charges are billed to MH providers which reimburse FQHCs on the basis of the MH provider fee schedule.

(3) For FQHCs servicing MCOs and capitated MH organizations, the Department annually determines and settles the difference between FQHC encounter rate and the MCO, MH, and third party liability reimbursement.

R414-9-5. Alternate Payment Method.

(1) The Department adopts an Alternate Payment Method (APM). An FQHC is required to calculate the Ratio of Beneficiary Charges to Total Charges Applied to Allowable Cost as part of its agreement with the federal government. As part of that calculation, it allocates allowable costs to Medicaid. The Department multiplies the Medicaid allowable costs by the Medicaid charge percentage to determine the amount to pay. The Department makes interim payments on the basis of billed charges from the FQHC, which reduce the annual settlement amount. Third party liability collections by the FQHC for Medicaid patients also reduce the final cost settlements.

(2) An FQHC participating in the APM must provide the Department annual cost reports and other cost information required by the Department necessary to calculate the annual settlement within ninety days from the close of its fiscal year, including its calculations of its anticipated settlement. The Department reviews submitted cost reports and provides a preliminary payment, if applicable, to FQHCs. Within six months after the end of the FQHC's fiscal year, the Department conducts a review or audit of submitted cost reports and makes a final settlement. This allow for inclusion of late filed claims and adjustments processed after the submitted cost report was prepared. If the Department overpaid an FQHC, the FQHC must repay the overpayment. If the Department underpaid an FQHC, the Department shall pay the FQHC the underpaid amount.

(3) The Department compares the APM reimbursements with the reimbursements calculated using the PPS methodology described in R414-9-4 and pays the greater amount to the FQHC.

R414-9-6. Rural Health Clinics.

(1) The Department reimburses all RHCs through a Prospective Payment System (PPS) that conforms to the Federal methodology as contained in section 702 of the federal Benefits Improvement and Protection Act of 2001 (BIPA) and 42 CFR 405.2462 through 405.2472.

(2) The Department pays each RHC the amount, on a per visit basis, equal to the amount paid in the previous RHC fiscal year, increased by the percentage increase in the Medicare Economic Index (MEI) for primary care services, and adjusted to take into account any increase or decrease in the scope of services furnished by the RHC during that fiscal year.

(3) For newly qualified RHCs after State fiscal year 2000, the Department establishes initial payments either by reference to payments to other RHCs in the same or adjacent areas with similar caseloads, or in the absence of other RHCs, by cost reporting methods. After the initial year, payment is set using the MEI used for other RHCs, and adjustments for increases or decreases in the scope of service furnished by the RHC during that fiscal year.

KEY: Medicaid, facility, reimbursement
February 3, 2004 26-1-5
Notice of Continuation January 26, 2009 26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-58. Children's Organ Transplants.
R414-58-1. Authority and Purpose.

(1) Authority for this rule is found in Title 63G, Chapter 3.

(2) The purpose of this rule is to set forth criteria to determine eligibility for and the awarding of financial assistance to children who need organ transplants.

R414-58-2. Definitions.

(1) "Eligible recipient" means a person who is 18 years of age or younger at the time an application for financial assistance is made and who has resided, or whose legal guardian has resided, within the state for at least six months prior to applying for financial assistance.

(2) "Initial Medical Expenses" include assessments and evaluations of prospective organ transplant recipients and potential organ donors, actual surgical costs, post-operative care or treatment, COBRA payments, and spenddowns or other related costs for Medicaid or other public assistance eligibility, but does not include travel and living expenses for recipients or families.

R414-58-3. Allowable Medical Expenses and Organ Transplants.

Eligible recipients may apply for financial assistance for eligible medical expenses for any type of organ transplant. Each recipient shall have a maximum lifetime benefit of $10,000.

R414-58-4. Determining Eligibility.

Eligibility for awarding financial assistance shall be based on:

(1) whether the person is an eligible recipient; and

(2) documentation, through physician assessment and evaluation, of the need for the organ transplant.

R414-58-5. Awarding Financial Assistance to Eligible Recipients.

(1) Prior to awarding financial assistance the committee shall review the recipient's request for assistance to determine:

(a) the needs of the eligible recipient both physically and financially; and

(b) the existence of other financial assistance including availability of insurance or other state aid.

(2) Each eligible recipient must apply for applicable Medicaid, Medicaid disability, and Children's Health Insurance Program assistance before the committee agrees to award any financial assistance. This does not preclude the committee from using funds to negotiate with transplant centers or hospitals to place the name of the eligible recipient on a waiting list for an organ transplant.

(3) As part of the review process a legal guardian of the eligible recipient must sign a release to allow all medical records of the child to be released to the Department of Health. The Department of Health shall provide assistance to the committee by determining:

(a) that the proposed organ transplant is not experimental; and

(b) the extent of the threat to the child's life without the organ transplant.

(4) In addition, the committee must consider the availability of funds in the Children's Organ Transplant trust account before awarding financial assistance.

R414-58-6. Terms for Repayment of Financial Assistance Loans.

Financial assistance shall be given in the form of an interest free loan. Terms, including amount and time frame for repayment of loans shall be set forth in a contract as agreed to by both parties.

R414-58-7. Waiver of Loan Repayment.

Applicants may request that all or part of the repayment due under the contract for financial assistance be waived by the committee. As a condition of granting a waiver, the committee shall make a finding that repayment of the financial assistance would impose an undue financial burden on the child.

R414-58-8. Organ Donor Awareness Activities.

The committee shall adopt policies for the award of funds from the Children's Organ Transplant trust account for Organ Donor Awareness Activities.

KEY: organ transplants
February 17, 2000 26-1-5
Notice of Continuation January 26, 2009

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-301. Medicaid General Provisions.
R414-301-1. Authority.

The Department of Health may contract with the Department of Workforce Services and the Department of Human Services to do eligibility determinations for one or more of the medical programs listed below. The Department of Health is responsible for the administration of these programs:

(1) Aged Medicaid (AM);
(2) Blind Medicaid (BM);
(3) Disabled Medicaid (DM);
(4) Family Medicaid (FM);
(5) Child Medicaid (CM);
(6) Title IV-E Foster Care Medicaid (FC);
(7) Medicaid for Pregnant Women (PG);
(8) Prenatal Medicaid (PN);
(9) Newborn Medicaid (NB);
(10) Transitional Medicaid (TR);
(11) Refugee Medicaid (RM);
(12) Utah Medical Assistance Program (UMAP);
(13) Qualified Medicare Beneficiary Program (QMB);
(14) Specified Low-Income Medicare Beneficiary Program (SLMB);
(15) Qualifying Individuals, Group 1 Program (QI-1);
(16) Medicaid Work Incentive;
(17) Medicaid Cancer Program;
(18) Primary Care Network Demonstration, which includes the Primary Care Network and the Covered-at-Work Programs.

R414-301-2. Definitions.

The following definitions apply in rules R414-301 through R414-308:

(1) "Agency" means any local office or outreach location of either the Department of Health or the Department of Workforce Services that accepts and processes applications for Medicaid and Medicare Cost-Sharing programs. In incorporated federal materials, "agency" means the Utah Department of Health.

(2) "Applicant" means any person requesting assistance under any of the programs listed in R414-301.

(3) "Assistance" means medical assistance under any of the programs listed in R414-301.

(4) "CHEC" means Child Health Evaluation and Care.

(5) "Client" means an applicant or recipient of any of the programs listed in R414-301.

(6) "Department" means the Department of Health.

(7) "Director" or "designee" means the director or designee of the Division of Health Care Financing.

(8) "Local" office means any community office location of the Department of Workforce Services, the Department of Human Services or the Department of Health where an individual may apply for medical assistance programs.

(9) "Outreach location" means any site other than a state office where state workers are located to accept applications for medical assistance programs. Locations include sites such as hospitals, clinics, homeless shelters, etc.

(10) "QI-1" means the Qualifying Individuals Group 1 program, a Medicare Cost-Sharing program.

(11) "QMB" means Qualified Medicare Beneficiary program, a Medicare Cost-Sharing program.

(12) "Recipient" means any individual receiving assistance under any of the programs listed in R414-301-1. It may also be used to mean someone who is receiving other assistance or benefits such as SSI, in which case the text will specify such other type of benefit or assistance.

(13) "Reportable change" means any change in circumstances which could affect a client's eligibility for Medicaid, including:

(a) change in the source of income;
(b) change of more than $25 in gross income;
(c) changes in household size;
(d) changes in residence;
(e) gain of a vehicle;
(f) change in resources;
(g) change of more than $25 in total allowable deductions;
(h) changes in marital status, deprivation, or living arrangements;
(i) pregnancy or termination of a pregnancy;
(j) onset of a disabling condition; and
(k) change in health insurance coverage including changes in the cost of coverage.

(14) "Resident of a medical institution" means a single client who is a resident of a medical institution from the month after entry into a medical institution until the month prior to discharge from the institution. Death in a medical institution is not considered a discharge from the institution and does not change the client's status as a resident of the medical institution. Married clients are residents of an institution in the month of entry into the institution and in the month they leave the institution.

(15) "SLMB" means Specified Low-Income Medicare Beneficiary program, a Medicare Cost-Sharing program.

(16) "Spenddown" means an amount of income in excess of the allowable income standard that must be paid in cash to the department or incurred through the medical services not paid by Medicaid, or some combination of these.

(17) "Spouse" means any individual who has been married to a client or recipient and has not legally terminated the marriage.

(18) "Worker" means a state employee who determines eligibility for Medicaid and Medicare Cost-Sharing programs.

R414-301-3. Client Rights and Responsibilities.

(1) Anyone may apply or reapply any time for any program.

(2) If someone needs help to apply he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Workers will identify themselves to clients.

(4) Clients will be treated with courtesy, dignity and respect.

(5) Workers will ask for verification and information clearly and courteously.

(6) If a client must be visited after working hours, the worker will make an appointment.

(7) Workers will not enter a client's home without the client's permission.

(8) Clients must provide requested verifications within the time limits given. The Department may grant additional time to provide information and verifications upon client request.

(9) Clients have a right to be notified about the decision made on an application or other action taken that affects their eligibility for benefits.

(10) Clients may look at most information about their case.

(11) Anyone may look at the policy manuals located at any department local office.

(12) The client must repay any understated liability. The client is responsible for repayments due to ineligibility including benefits received pending a fair hearing decision. In addition to payments made directly to medical providers, benefits include Medicare or other health insurance premiums, premium payments made in the client's behalf to Medicaid Health Plans and mental health providers even if the client does not receive a direct medical service from these entities.

(13) The client must report a reportable change as defined in R414-301-2(12) to the local office within ten days of the day the change becomes known.

R414-301-4. Safeguarding Information.

(1) The department adopts 42 CFR 431(F), 2001 ed., which is incorporated by reference. The department requires compliance with Sections 63G-2-101 through 63G-2-310.

(2) Workers shall safeguard all information about specific clients.

(3) There are no provisions for taxpayers to see any information from client records.

(4) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information released cannot include information obtained through an income match system.

R414-301-5. Complaints and Agency Conferences.

(1) A client may request an agency conference at any time to resolve a problem regarding the client's case. Requests shall be granted at the department's discretion. Clients may have an authorized representative attend the agency conference.

(2) Requesting an agency conference does not prevent a client from also requesting a fair hearing in the event the agency conference does not resolve the client's concerns.

(3) Having an agency conference does not extend the time period in which a client has to request a fair hearing. The client must request a fair hearing within 90 days of the date on the notice with which the client disagrees to assure the right to have a fair hearing if the client is not satisfied with the outcome of the agency conference.

(4) There is no appeal to the decisions made during an agency conference; however, if the client is not satisfied with the results of the agency conference, and makes a timely request for a fair hearing as defined in R414-306-6, the client may proceed with the formal fair hearing process.

(5) The department provides proper notice as defined in R414-308-5 if there are any additional adverse changes in the client's eligibility that are made as a result of the agency conference. The client then has a right to request a fair hearing based on the new decision letter of an additional adverse action.

R414-301-6. Hearings.

(1) The department adopts 42 CFR 431.220 through 431.246, 2001 ed., which is incorporated by reference. The department requires compliance with Title 63G, Chapter 4.

(2) If a client's hearing request concerns only medical assistance, the department shall conduct a formal hearing.

(3) If a client's hearing request concerns food stamps or financial assistance in addition to medical assistance, the Department of Workforce Services shall conduct an informal hearing.

(4) Hearings may be conducted by telephone if the client agrees to that procedure.

(5) Clients must request a hearing in writing. The written request must include a clear expression stating a desire to present their case.

(6) Clients must ask for the hearing within 90 days of the mailing date of the notice regarding a disagreement with any proposed action.

(7) The hearing officer may schedule one or more pre-hearing conferences to clarify the issues to be heard at the hearing and to arrange exchange of relevant documents.

(8) If the hearing was conducted by the department, the client may appeal the hearing decision to the Court of Appeals.

(9) If the hearing was conducted by the Department of Workforce Services, the client may appeal a hearing decision to the director of the Division of Adjudication within the Department of Workforce Services, or to the District Court.

(10) If an action requires advance notice, the recipient shall continue to receive assistance if the hearing is requested before the effective date of the action, or within ten days of the mailing date of the notice of action. If the agency action is upheld, the client is responsible for repayment of benefits paid by the department on behalf of the client pending a final hearing decision. The recipient may choose not to accept the benefits offered pending a hearing decision.

(11) If an agency action does not require advance notice, assistance shall be reinstated if a hearing is requested within ten days of the mailing date of the notice unless the sole issue is one of state or federal law or policy.

(12) An applicant who has requested a hearing shall receive medical assistance if the hearing decision has not been issued within 21 days of the request. To receive benefits pending the hearing decision, the applicant must request the hearing within 10 days of the mailing date of the notice with which the applicant disagrees. The benefits shall begin on the same date had the application been approved but no earlier than the first day of the application month. If the agency action is upheld, the client is responsible for repayment of benefits paid by the department on behalf of the client pending a final hearing decision. Retroactive benefits shall not be approved unless the applicant would be eligible even if the department prevailed at the hearing. The applicant may choose not to accept the benefits offered pending a hearing decision.

(13) Final administrative action shall be taken within 90 days from the request for a hearing unless the client asks for a postponement or additional time is needed to allow all parties time to present and respond to the issues. The period of postponement may be added to the 90 days.

(14) Hearings shall be conducted only at the request of a client; the client's spouse; a minor client's parent; or a guardian of the client, client's spouse, minor client or minor client's parent; or a representative chosen by the client, client's spouse, or minor client's parent.

(15) A hearing contesting resource assessment shall not be conducted until an institutionalized individual has applied for Medicaid.

KEY: client rights, Medicaid
July 2, 2005 26-18
Notice of Continuation January 31, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-308. Application, Eligibility Determinations and Improper Medical Assistance.
R414-308-1. Authority and Purpose.

(1) This rule is authorized by 26-18-3.

(2) This rule establishes requirements for medical assistance applications, eligibility decisions, eligibility period, verifications, change reporting, notification and improper medical assistance for the following programs:

(a) Medicaid;

(b) Qualified Medicare Beneficiaries;

(c) Specified Low-Income Medicare Beneficiaries; and

(d) Qualified Individuals.

R414-308-2. Definitions.

(1) The definitions in R414-1 and R414-301 apply to this rule. In addition, the following definitions apply.

(a) "Cost-of-care" means the amount of income an institutionalized individual must pay to the medical facility for long-term care services based on the individual's income and allowed deductions.

(b) "Re-certification" means the process of periodically determining that an individual or household continues to be eligible for medical assistance.

R414-308-3. Application and Signature.

(1) An individual may apply for medical assistance by completing and signing any Department-approved application form for Medicaid, Qualified Medicare Beneficiaries, Specified Low-Income Medicare Beneficiaries, or Qualified Individuals assistance and delivering it to the agency. If available, an individual may complete an on-line application for medical assistance and send it electronically to the agency.

(a) If an applicant cannot write, the applicant must make his mark on the application form and have at least one witness to the signature.

(b) For on-line applications, the individual must either send the agency an original signature on a printed signature page, or if available on-line, submit an electronic signature that conforms with state law for electronic signatures.

(c) A representative may apply on behalf of an individual. A representative may be a legal guardian, a person holding a power of attorney, a representative payee or other responsible person acting on behalf of the individual. In this case, the agency may send notices, requests and forms to both the individual and the individual's representative, or to just the individual's representative.

(d) If the Division of Child and Family Services (DCFS) has custody of a child and the child is placed in foster care, DCFS completes the application. DCFS determines eligibility for the child pursuant to a written agreement with the Department. DCFS also determines eligibility for children placed under a subsidized adoption agreement.

(e) An authorized representative may apply for the individual if unusual circumstances or death prevent an individual from applying on his own. The individual must sign the application form if possible. If the individual cannot sign the application, the representative must sign the application. The agency may assign someone to act as the authorized representative when the individual requires help to apply and is unable to appoint a representative.

(2) The date of application is determined as follows:

(a) The application date is the date the agency receives a completed, signed application at a local office by the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the Internet.

(b) For applications delivered to the agency by facsimile, Internet, or to an office dropbox after the close of business of a business day, or on a non-business day, the date of application is the next business day.

(c) The application date for applications delivered to an outreach location is as follows:

(i) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(ii) If the application is delivered on a non-business day or at a time when the outreach office is closed, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from that location.

(d) The due date for verifications needed to complete an application and determine eligibility is the close of business on the last day of the application period.

(3) The agency accepts a signed application sent via facsimile as a valid application and does not require it to be signed again.

(4) If an applicant submits an unsigned, completed application form to the agency, the agency will notify the applicant that he or she must sign the application within 30 days of the application date. The agency will send a signature page to the applicant within 10 days for the client to sign and return.

(a) If the agency receives a signature page signed by the applicant within 30 days of receiving the completed application, the original application date is retained.

(b) If the agency does not receive a signed signature page within 30 days of when it received the completed application, the application is void and the agency will send a denial notice to the applicant. The previous application date will not be protected.

(c) If the agency receives a signed signature page during the 30 days immediately after the denial notice is mailed, the agency will contact the applicant to ask if the applicant wants to reapply for medical assistance. If the applicant wants to reapply, the agency may use the previous completed application form, but the application date will be the date the agency received the signed signature page according to the same provisions in R414-308-3(2).

(d) If the agency receives a signed signature page more than 30 days after the denial notice is sent, the applicant will need to reapply. The original application date is not retained.

(5) If an application is not complete, but it is signed by the applicant, the eligibility worker will ask the applicant to complete the application. If the client completes and returns the application within 30 days of the date the agency received the application, the agency will determine eligibility based on the original application date. If the client does not complete the application within 30 days, the original application date is not retained and the agency denies the application.

R414-308-4. Verification of Eligibility and Information Exchange.

(1) Medical assistance applicants and recipients must verify all eligibility factors requested by the agency to establish or to redetermine eligibility. Medical assistance applicants and recipients must provide identifying information that the agency needs to meet the requirements of 42 CFR 435.945, 435.948, 435.952, 435.955, and 435.960.

(a) The agency will provide the client a written request of the needed verifications.

(b) The client has at least 10 calendar days from the date the agency gives or mails the verification request to the client to provide verifications.

(c) The due date for returning verifications, forms or information requested by the agency is the close of business on the date the agency sets as the due date in a written request to

the client, but not less than 10 calendar days from the date such request is given to or mailed to the client.

(d) The agency allows additional time to provide verifications if the client requests additional time by the due date. The agency will set a new due date that is at least 10 days from the date the client asks for more time to provide the verifications, forms or information.

(e) If a client has not provided required verifications by the due date, and has not contacted the agency to ask for more time to provide verifications, the agency denies the application, re-certification, or ends eligibility.

(f) If the agency receives all necessary verifications during the 30 days after denying an application for lack of verifications, the date the agency receives all the verifications is the new application date. If the agency receives verifications more than 30 days after the application has been denied, the client will need to reapply for medical assistance.

(2) The agency must receive verification of an individual's income, both unearned and earned. To be eligible under Section 1902(a)(10)(A)(ii)(XIII), the Medicaid Work Incentive program, the agency may require proof such as paycheck stubs showing deductions of FICA tax; self-employment tax filing documents; or for newly self-employed individuals who have not filed tax forms yet, a written business plan and verification of gross receipts and business expenses, to verify that the income is earned income.

R414-308-5. Eligibility Decisions or Withdrawal of an Application.

(1) The agency decides the applicant's eligibility within the time limits established in 42 CFR 435.911 and 435.912, 2006 ed., which are incorporated by reference.

(2) The agency extends the time limit if the applicant asks for more time to provide requested information before the due date. The agency gives the applicant at least 10 more days after the original due date to provide verifications upon request of the applicant. The agency can allow a longer period of time for the client to provide verifications if the delay is due to circumstances beyond the client's control, an emergency, a client illness or a similar cause.

(3) An applicant may withdraw an application for medical assistance any time before the agency makes an eligibility decision on the application. An individual requesting an assessment of assets for a married couple under Section 1924 of the Social Security Act, 42 U.S.C. 1396r-5, may withdraw the request any time before the agency has completed the assessment.

R414-308-6. Eligibility Period and Re-Certification.

(1) The eligibility period begins on the effective date of eligibility as defined in R414-306-4, which may be after the first day of a month, subject to the following requirements.

(a) If a client must pay a spenddown, the agency completes the eligibility process and grants eligibility when the agency receives the required payment or proof of incurred medical expenses equal to the required payment for the month or months, including partial months, for which the client wants medical assistance.

(b) If a client must pay a Medicaid Work Incentive premium, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the month or months, including partial months, for which the client wants medical assistance.

(c) If a client must pay an asset co-payment for prenatal coverage, the agency completes the eligibility process and grants eligibility when the agency receives the required payment for the period of prenatal coverage.

(d) The client must make the payment or provide proof of medical expenses, if applicable, within 30 calendar days from the mailing date of the notice that tells the client the amount owed.

(e) For ongoing months of eligibility, the client has until the close of business of the 10th day of the month after the benefit month to meet the spenddown or pay the Medicaid Work incentive premium. If the 10th day of the month is a non-business day, the client has until the close of business on the first business day after the 10th to meet the spenddown or pay the premium.

(f) Residents who reside in a long-term care facility and who owe a cost-of-care contribution to the medical facility must pay the medical facility directly. The resident may use unpaid past medical bills, or current incurred medical bills other than the charges from the medical facility, to meet some or all of the cost-of-care contribution subject to the limitations in R414-304-9. The resident must pay any cost-of-care contribution not met with allowable medical bills to the medical facility. An unpaid cost-of-care contribution is not allowed as a medical bill to reduce the amount the client owes the facility.

(g) No eligibility exists in a month for which the client fails to meet a required spenddown or fails to pay a required Medicaid Work Incentive premium. Eligibility for the Prenatal program does not exist when the client fails to pay a required asset co-payment for the Prenatal program.

(2) The eligibility period ends on:

(a) the last day of the re-certification month;

(b) the last day of the month in which the recipient asks the agency to discontinue eligibility;

(c) the last day of the month the agency determines the individual is no longer eligible;

(d) for the Prenatal program, the last day of the month that is at least 60 days after the date the pregnancy ends, except that for Prenatal coverage for emergency services only, eligibility ends the last day of the month in which the pregnancy ends; or

(e) the date the individual dies.

(3) Recipients must re-certify eligibility for medical assistance at least once every 12 months. The agency may require recipients to re-certify eligibility more frequently when the agency:

(a) receives information about changes in a recipient's circumstances that may affect the recipient's eligibility;

(b) has information about anticipated changes in a recipient's circumstances that may affect eligibility; or

(c) knows the recipient has fluctuating income.

(4) To receive medical assistance without interruption, a recipient must complete the re-certification process by the close of business on the date printed on the re-certification form. The client must also provide verifications by the due date specified by the agency and must continue to meet all eligibility criteria, including meeting a spenddown or paying a Medicaid Work Incentive premium if one is owed.

(a) If the recipient does not complete the re-certification process on time, eligibility ends on the last day of the re-certification month.

(b) If the recipient does not complete the re-certification process on time, but completes the recertification including providing verifications by the close of business on the last business day of the month after the review month, the agency will determine whether the recipient continues to meet all eligibility criteria.

(i) The agency will reinstate benefits effective the beginning of the month after the re-certification month if the recipient continues to meet all eligibility criteria and meets any spenddown or pays the Medicaid Work Incentive premium, if applicable. The client must meet the spenddown or pay the premium no later than the close of business on the 30th day after the date printed on the notice. Otherwise, the recipient remains ineligible for medical assistance.

(ii) If the recipient does not complete the re-certification

process before the close of business of the last business day of the month following the re-certification month, eligibility will not be reinstated. The recipient will have to reapply for medical assistance.

(c) If the recipient does not meet the spenddown or pay the Medicaid Work Incentive premium on time, then eligibility ends effective the last day of the re-certification month and the recipient will have to reapply.

(5) For individuals selected for coverage under the Qualified Individuals Program, eligibility extends through the end of the calendar year if the individual continues to meet eligibility criteria and the program still exists.

R414-308-7. Change Reporting and Benefit Changes.

(1) A client must report to the agency reportable changes in the client's circumstances. Reportable changes are defined in R414-301-2.

(a) The due date for reporting changes is the close of business on the 10th calendar day after the client learns of the change.

(b) When the change is receipt of income from a new source, or an increase in income the client receives, the due date for reporting the income change is the close of business on the day that is ten calendar days after the date the client receives such income.

(c) The due date for providing verifications of changes is the close of business on the date the agency sets as the due date in a written notice to the client.

(2) The agency may receive information from credible sources other than the client such as computer income matches, and from anonymous citizen reports. If the agency receives information from sources other than the client that may affect the client's eligibility, the agency will verify the information as needed depending on the source of information before using the information to change the client's eligibility for medical assistance. Information from citizen reports must always be verified by other reliable proofs.

(3) The date of report is the date the client reports the change to the agency by the close of business on a business day by phone, by mail, by fax transmission or in person, or the date the agency receives the information from another source.

(4) If the agency needs verification of the reported change from the client, the agency requests it in writing and provides at least ten calendar days for the client to respond.

(5) A client who provides change reports, forms or verifications by the close of business on the due date has provided the information on time.

(6)(a) If the reported information causes an increase in a client's benefits and the agency requests verification, the increase in benefits is effective the first day of the month following:

(i) the date of the report if the agency receives verifications within ten days of the request; or

(ii) the date the verifications are received if verifications are received more than ten days after the date of the request.

(b) The agency cannot increase benefits if the agency does not receive requested verifications.

(7) If the reported information causes a decrease in the client's benefits, the agency makes changes as follows:

(a) If the agency has sufficient information to adjust benefits, the change is effective the first day of the month after the month in which the agency sends proper notice of the decrease, regardless of whether verifications have been received.

(b) If the agency does not have sufficient information to adjust benefits, the agency requests verifications from the client. The due date is at least 10 days from the date of the request.

(i) Upon receiving the verifications, the agency adjusts benefits effective the first day of the month following the month in which the agency can send proper notice.

(ii) If the verifications are not returned on time, the agency discontinues benefits for the affected individuals effective the end of the month in which the agency can send proper notice.

(8) Any time the agency requests verifications to determine or redetermine eligibility for an individual or a household, the agency may discontinue benefits if all required factors of eligibility are not verified by the due date. If a change does not affect all household members and verifications are not provided, the agency discontinues benefits only for the individual or individuals affected by the change.

(9) If a client fails to timely report a change or return verifications or forms by the due date, the client must repay all services and benefits paid by the Department for which the client was ineligible.

(10) If a due date falls on a non-business day, the due date will be the close of business on the first business day immediately after the due date.

R414-308-8. Case Closure and Redetermination.

(1) The agency terminates medical assistance upon recipient request or if the agency determines the recipient is no longer eligible.

(2) To maintain ongoing eligibility, a recipient must complete the re-certification process as provided in R414-308-6. Failure to complete the re-certification process makes the recipient ineligible.

(3) Before terminating a recipient's medical assistance, the agency will decide if the client is eligible for any other available medical assistance provided under Medicaid, the Medicare Cost-Sharing programs, the Children's Health Insurance Program, the Primary Care Network and the UPP program.

(a) The agency does not require a recipient to complete a new application, but may request more information from the recipient to complete the redetermination for other medical assistance programs. If the recipient does not provide the necessary information by the close of business on the due date, the recipient's medical assistance ends.

(b) When redetermining eligibility for other programs, the agency cannot enroll an individual in a medical assistance program that is not in an open enrollment period, unless that program allows a person who becomes ineligible for Medicaid to enroll during a period when enrollments are stopped. An open enrollment period is a time when the agency accepts applications. Open enrollment applies only to the Primary Care Network, the UPP Program and the Children's Health Insurance Program.

R414-308-9. Improper Medical Coverage.

(1) As used in this section, services and benefits include all amounts the Department pays on behalf of the client during the period in question and includes premiums paid to any Medicaid health plans or managed care plans, Medicare, and private insurance plans; payments for prepaid mental health services; and payments made directly to service providers or to the client.

(2) A client must repay the cost of services and benefits the client receives for which the client is not eligible.

(a) If the agency determines a client was ineligible for the services or benefits received, the client must repay the Department the amount the Department paid for the services or benefits. The amount the client must repay will be reduced by the amount the client paid the agency for a Medicaid spenddown or a Medicaid Work Incentive premium for the month. If a woman who has paid an asset co-payment for coverage under Prenatal Medicaid is found to have been ineligible for the entire period of coverage under Prenatal Medicaid, the amount she must repay will be reduced by the amount she paid the agency in the form of the Prenatal asset co-payment, if applicable.

(b) If the client is eligible but the overpayment was

because the spenddown, the Medicaid Work Incentive premium, the asset co-payment for prenatal services, or the cost-of-care contribution was incorrect, the client must repay the difference between the correct amount the client should have paid and what the client actually paid.

(3) A client may request a refund from the Department for any month in which the client believes that

(a) the spenddown, asset co-payment for prenatal services, or cost-of-care contribution the client paid to receive medical assistance is less than what the Department paid for medical services and benefits for the client, or

(b) the amount the client paid in the form of a spenddown, a Medicaid Work Incentive premium, a cost-of-care contribution for long-term care services, or an asset co-payment for prenatal services was more than it should have been.

(4) Upon receiving the request for a refund, the Department will determine if the client is owed a refund.

(a) In the case of an incorrect calculation of a spenddown, Medicare Work Incentive premium, cost-of-care contribution or asset co-payment for prenatal services, the refundable amount is the difference between the incorrect amount the client paid the Department for medical assistance and the correct amount that the client should have paid, less the amount the client owes the Department for any other past due, unpaid claims.

(b) In the case when the spenddown, asset co-payment for prenatal services or a cost-of-care contribution for long-term care exceeds medical expenditures, the refundable amount is the difference between the correct spenddown, asset co-payment or cost-of-care contribution the client paid for medical assistance and the actual amount the Department paid on behalf of the client for services and benefits, less the amount the client owes the Department for any other past due, unpaid claims. The Department issues the refund only after the 12-month time-period that medical providers have to submit claims for payment.

(c) The agency does not issue a cash refund for any portion of a spenddown or cost-of-care contribution that was met with medical bills.

(5) A client who pays a premium for the Medicaid Work Incentive program cannot receive a refund even if the services paid by the Department are less than the premium the client pays.

(6) If the cost-of-care contribution a client pays a medical facility is more than the Medicaid daily rate for the number of days the client was in the medical facility, the client can request a refund from the medical facility. The Department will refund the amount owed the client only if the medical facility has sent the excess cost-of-care contribution to the Department.

(7) If the sponsor of an alien does not provide correct information, the alien and the alien's sponsor are jointly liable for any overpayment of benefits. The Department recovers the overpayment from both the alien and the sponsor.

KEY: public assistance programs, application, eligibility, Medicaid
January 26, 2009 26-18
Notice of Continuation January 31, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-310. Medicaid Primary Care Network Demonstration Waiver.
R414-310-1. Authority.

This rule is authorized by Utah Code Sections 26-1-5 and 26-18-3. The Primary Care Network Demonstration is authorized by a waiver of federal Medicaid requirements approved by the federal Center for Medicare and Medicaid Services and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment under the Medicaid Primary Care Network Demonstration.

R414-310-2. Definitions.

The following definitions apply throughout this rule:

(1) "Applicant" means an individual who applies for benefits under the Primary Care Network program, but who is not an enrollee.

(2) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(3) "Co-payment and co-insurance" means a portion of the cost for a medical service for which the enrollee is responsible to pay for services received under the Primary Care Network.

(4) "Deeming" or "deemed" means a process of counting income from a spouse or an alien's sponsor to decide what amount of income after certain allowable deductions, if any, must be considered income to an applicant or enrollee.

(5) "Department" means the Utah Department of Health.

(6) "Enrollee" means an individual who has applied for and been found eligible for the Primary Care Network program and has paid the enrollment fee.

(7) "Enrollment fee" means a payment that an applicant or an enrollee must pay to the Department to enroll in and receive coverage under the Primary Care Network program.

(8) "Employer-sponsored health plan" means health insurance that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e).

(9) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(10) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(11) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(12) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(13) "Open enrollment means a time period during which the Department accepts applications for the Primary Care Network program.

(14) "Primary Care Network" or "PCN" means the program for benefits under the Medicaid Primary Care Network Demonstration Waiver.

(15) "Recertification month" means the last month of the eligibility period for an enrollee.

(16) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(17) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

(18) "Student health insurance plan" means a health insurance plan that is offered to students directly through a university or other educational facility or through a private health insurance company that offers coverage plans specifically for students.

(19) "Utah's Premium Partnership for Health Insurance" or "UPP" means the program described in R414-320.

R414-310-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person may apply during an open enrollment period who meets the limitations set by the Department. The open enrollment period may be limited to:

(a) individuals with children under age 19 in the home;

(b) individuals without children under age 19 in the home;

(c) those enrolled in the PCN program;

(d) those enrolled in the UPP program;

(e) those enrolled in the General Assistance program;

(f) those that were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(g) such other group designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the Primary Care Network program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee in the Primary Care Network program begins to receive coverage under a group health plan or other health insurance coverage.

(b) An enrollee in the Primary Care Network program begins to have access to coverage under a group health plan or other health insurance coverage.

(c) An enrollee in the Primary Care Network program begins to receive coverage under, or begins to have access to student health insurance, Medicare Part A or B, or the Veteran's Administration Health Care System.

(d) An enrollee leaves the household or dies.

(e) An enrollee or the household moves out of state.

(f) Change of address of an enrollee or the household.

(g) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee in the Primary Care Network program is

responsible for paying any required co-payments or co-insurance amounts to providers for medical services the enrollee receives that are covered under the Primary Care Network program.

R414-310-4. General Eligibility Requirements.

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to applicants and enrollees of the Primary Care Network program.

(2) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 is not eligible for any services or benefits under the Primary Care Network program.

(3) Applicants and enrollees are not required to provide Duty of Support information to enroll in the Primary Care Network program. An individual who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the Primary Care Network program.

(4) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the Primary Care Network program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-310-16(2). If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the PCN program.

R414-310-5. Verification and Information Exchange.

(1) The provisions of R414-308-4 apply to applicants and enrollees of the Primary Care Network program.

(2) The Department safeguards information about applicants and enrollees according to the provisions found in R414-301-4.

R414-310-6. Residents of Institutions.

The provisions of R414-302-4(1), (3) and (4) apply to applicants and enrollees of the Primary Care Network program.

R414-310-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b) and 435.610, 2004 ed., and Section 1915(b) of the Compilation of the Social Security Laws, in effect January 1, 2004, which are incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), at the time of application is not eligible for enrollment in the Primary Care Network program. This includes coverage under Medicare Part A or B, student health insurance, and the Veteran's Administration Health Care System. However, an individual who is enrolled in the Utah Health Insurance Pool may enroll in the Primary Care Network program.

(3) Eligibility for the Primary Care Network program for an individual who has access to but has not yet enrolled in health insurance coverage through an employer or a spouse's employer will be determined as follows:

(a) If the cost of the least expensive health insurance plan offered by the employer does not exceed 15% of the household's gross income, the individual is not eligible for the Primary Care Network program.

(b) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, and the employer offers a health plan that meets the requirements of R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may choose to enroll in either the Primary Care Network program or the UPP program unless enrollment for one of these programs has been stopped under the provisions of R414-310-16(2).

(c) If the cost of the least expensive health insurance plan offered by the employer exceeds 15% of the household's gross income, but the employer does not offer a health plan that meets the requirements in R414-320-2 (8) (a) (b) (c) (d) and (e), the individual may only enroll in the PCN program.

(d) The individual is considered to have access to coverage even if the employer offers coverage only during an open enrollment period.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment in the Primary Care Network program, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment in the Primary Care Network program. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the Primary Care Network program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the Primary Care Network program ends once the individual becomes enrolled in the VA Health Care System.

(6) Individuals who are full-time students and who can enroll in student health insurance coverage are not eligible to enroll in the Primary Care Network program.

(7) The Department shall deny eligibility if the applicant or spouse has voluntarily terminated health insurance coverage within the six months immediately prior to the application date for enrollment under the Primary Care Network program. An applicant or an applicant's spouse can be eligible for the Primary Care Network if their prior insurance ended more than six months before the application date. An applicant or applicant's spouse who voluntarily discontinues health insurance coverage under a COBRA plan or under the state Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the Primary Care Network program without a six month waiting period.

(8) Notwithstanding the limitations in this section, an individual with creditable health coverage operated or financed by the Indian Health Services may enroll in the Primary Care Network program.

(9) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, a student health insurance plan, Medicare Part A or B, or the VA Health Care System.

(10) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify in the program.

R414-310-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the Primary Care Network Program:

(a) the individual;

(b) the individual's spouse living with the individual;

(c) any children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) an unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the

date of application is considered part of the household.

R414-310-9. Age Requirement.

(1) An individual must be at least 19 and not yet 65 years of age to enroll in the Primary Care Network program.

(2) The month in which an individual's 19th birthday occurs is the first month the person can be eligible for enrollment in the Primary Care Network program.

(a) If the individual could qualify for Medicaid in that month without paying a spenddown or premium, the individual cannot enroll in the Primary Care Network program until the following month.

(b) the individual could enroll in the Children's Health Insurance Program and it is an open enrollment period for CHIP for that month, the individual cannot enroll in the Primary Care Network program until the following month.

(3) The benefit effective date for the Primary Care Network program cannot be earlier than the date of the 19th birthday.

(4) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the Primary Care Network program.

R414-310-10. Income Provisions.

(1) To be eligible to enroll in the Primary Care Network program, a household's countable gross income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size. An individual with income above 150% of the federal poverty guideline is not allowed to spend down income to be eligible under the Primary Care Network program. All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(2) Any income in a trust that is available to, or is received by a household member, is countable income.

(3) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(4) Rental income is countable income. The following expenses can be deducted:

(a) taxes and attorney fees needed to make the income available;

(b) upkeep and repair costs necessary to maintain the current value of the property;

(c) utility costs only if they are paid by the owner; and

(d) interest only on a loan or mortgage secured by the rental property.

(5) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(6) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(7) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(8) Child support payments received for a dependent child living in the home are counted as that child's income.

(9) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(10) Supplemental Security Income and State Supplemental payments are countable income.

(11) Income, unearned and earned, shall be deemed from an alien's sponsor, and the sponsor's spouse, if any, when the sponsor has signed an Affidavit of Support pursuant to Section 213A of the Immigration and Nationality Act on or after December 19, 1997. Sponsor deeming will end when the alien becomes a naturalized U.S. citizen, or has worked 40 qualifying quarters as defined under Title II of the Social Security Act or can be credited with 40 qualifying work quarters. Beginning after December 31, 1996, a creditable qualifying work quarter is one during which the alien did not receive any federal means-tested public assistance.

(12) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(13) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(14) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(15) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(16) Child Care Assistance under Title XX is not countable income.

(17) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the State Department of Health are not countable income.

(18) Earned and unearned income of a child who is under age 19 is not counted if the child is not the head of a household.

(19) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(20) Reimbursements for employee work expenses incurred by an individual are not countable income.

(21) The value of food stamp assistance is not countable income.

(22) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

R414-310-11. Budgeting.

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department prorates income that is received less often than monthly over the certification period to determine an average

monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-310-12. Assets.

There is no asset test for eligibility in the Primary Care Network program.

R414-310-13. Application Procedure.

(1) The Department adopts 42 CFR 435.907 and 435.908, 2004 ed., which are incorporated by reference. The Department shall maintain case records as defined in R414-308-8.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the Primary Care Network program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the Primary Care Network program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The application date is the date the agency receives a signed application form at a local office by the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the close of business on a business day, the date of application is the next business day.

(4) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(5) The due date for verifications needed to complete an application and determine eligibility is the close of business on the last day of the application period.

(6) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

(7) The Department shall reinstate a medical case without requiring a new application if the case was closed in error.

(8) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) if the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) the individual continues to meet all eligibility requirements.

(9) An applicant may withdraw an application for the Primary Care Network program any time before the Department completes an eligibility decision on the application.

(10) The applicant shall pay an annual enrollment fee to enroll in the Primary Care Network Program once the local office has determined that the individual meets the eligibility criteria for enrollment.

(a) Coverage does not begin until the Department receives the enrollment fee.

(b) The enrollment fee covers both the individual and the individual's spouse if the spouse is also eligible for enrollment in the Primary Care Network Program.

(c) The enrollment fee is required at application and at each recertification.

(d) The enrollment fee must be paid to the local office in cash, or by check or money order made out to the Department of Health or to the Department of Workforce Services.

(e) The enrollment fee for an individual or married couple receiving General Assistance from the Department of Workforce Services is $15. The enrollment fee for an individual or couple who does not receive General Assistance but whose countable income is less that 50 percent of the federal poverty guideline applicable their household size is $25. The enrollment fee for any other individual or married couple is $50.

(f) The Department may refund the enrollment fee if it decides the person was ineligible for the program; however, the Department may retain the enrollment fee to the extent that the individual owes any overpayment of benefits that were paid in error on behalf of the individual by the Department.

(11) If an eligible household requests enrollment for a spouse, the application date for the spouse is the date of the request. A new application form is not required; however, the household shall provide the information necessary to determine eligibility for the spouse, including information about access to creditable health insurance, including Medicare Part A or B, student health insurance, and the VA Health Care System.

(a) Coverage or benefits for the spouse will be allowed from the date of request or the date an application is received

through the end of the current certification period.

(b) A new enrollment fee is not required to add a spouse during the current certification period.

(c) A new income test is not required to add the spouse for the months remaining in the current certification period.

(d) A spouse may be added only if the Department has not stopped enrollment under section R414-310-16.

(e) Income of the spouse will be considered and payment of the enrollment fee will be required at the next scheduled recertification.

R414-310-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2004 ed., which are incorporated by reference.

(2) When an individual applies for PCN, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the Primary Care Network program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the PCN program if it is an open enrollment period, and the individual meets all the applicable criteria for eligibility. If the PCN program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification for PCN, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the PCN program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet the eligibility criteria for enrollment in the Primary Care Network program, pay the enrollment fee, and it must be a time when the Department has not stopped enrollment under section R414-310-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) the applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) the applicant died; or

(c) the applicant cannot be located; or

(d) the applicant has not responded to requests for information within the 30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification, continues to meet all eligibility criteria and pays the enrollment fee, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible and pays the enrollment fee.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

R414-310-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment in the Primary Care Network program is the day that a completed and signed application is received by the local office as defined in R414-310-13(3) and R414-310-13(4)(a) and (b) and the applicant meets all eligibility criteria, including payment of the enrollment fee. The Department shall not provide any benefits or pay for any services received before the effective enrollment date.

(2) The effective date of re-enrollment for a recertification in the Primary Care Network program is the first day of the month after the recertification month, if the recertification is completed as described in R414-310-14(7).

(3) If the enrollee does not complete the recertification as described in R414-310-14(7), and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(4) An individual found eligible for the Primary Care Network program shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the recertification process in accordance with R414-310-14(7) and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) the individual turns age 65;

(b) the individual becomes entitled to receive student health insurance, Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) the individual dies;

(d) the individual moves out of state or cannot be located;

(e) the individual enters a public institution or an Institute for Mental Disease.

(5) An individual enrolled in the Primary Care Network program loses eligibility when the individual enrolls in any type of group health plan or other creditable health insurance coverage including an employer-sponsored health plan, except under the following circumstances:

(a) An individual who gains access to or enrolls in an employer-sponsored health plan may switch to the UPP program if the individual notifies the local office before the coverage in the employer-sponsored health plan begins, and if the requirements defined in R414-310-7(3)(b) are met.

(b) An individual who enrolls in the Utah Health Insurance Pool (H.I.P.) does not lose eligibility in the Primary Care Network.

(6) If a Primary Care Network case closes for any reason, other than to become covered by another Medicaid program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an enrollment period to reapply. The individual must meet all the requirements of a new applicant including paying

a new enrollment fee.

(7) If a Primary Care Network case closes because the enrollee is eligible for another Medicaid program, the individual may reenroll in the Primary Care Network program if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-310-16(2).

(a) If the individual's 12-month certification period has not ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination. The individual must continue to meet the criteria defined in R414-310-7. The individual is not required to pay a new enrollment fee for the months remaining in the current certification period.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll in the Primary Care Network program. However, the individual must complete a new application, meet eligibility and income guidelines, and pay a new enrollment fee for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period for the Primary Care Network program.

R414-310-16. Enrollment Limitation.

(1) The Department shall limit enrollment in the Primary Care Network program.

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

(4) If enrollment has not been stopped, individuals may apply for the Primary Care Network program.

(5) An individual who becomes ineligible for Medicaid, or who must pay a spenddown or premium for Medicaid, but who was not previously enrolled in the Primary Care Network program, may apply to enroll in the Primary Care Network program if the State has not stopped enrollment under R414-310-16(2). If enrollment has been stopped, the individual must wait for an open enrollment period to apply.

R414-310-17. Notice and Termination.

(1) The department adopts 42 CFR 431.206, 431.210, 431.211, 431.213, 431.214, 435.919, 2004 ed., which are incorporated by reference.

(2) The local office shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(3) The local office shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(4) The local office shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

R414-310-18. Improper Medical Coverage.

(1) An individual who receives benefits under the Primary Care Network program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An alien and the alien's sponsor are jointly liable for benefits received for which the individual was not eligible.

(3) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a time period that the enrollee was not actually eligible to receive such benefits.

KEY: Medicaid, primary care, covered-at-work, demonstration

January 22, 2009 26-18-1

Notice of Continuation June 13, 2007 26-1-5

26-18-3

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-320. Medicaid Health Insurance Flexibility and Accountability Demonstration Waiver.
R414-320-1. Authority.

This rule is authorized by Title 26, Chapter 18 and allowed under Section 1115 of the Social Security Act. This rule establishes the eligibility requirements for enrollment and the benefits enrollees receive under the Health Insurance Flexibility and Accountability Demonstration Waiver (HIFA), which is Utah's Premium Partnership for Health Insurance (UPP).

R414-320-2. Definitions.

The following definitions apply throughout this rule:

(1) "Adult" means an individual who is at least 19 and not yet 65 years of age.

(2) "Applicant" means an individual who applies for benefits under the UPP program, but who is not an enrollee.

(3) "Best estimate" means the Department's determination of a household's income for the upcoming certification period based on past and current circumstances and anticipated future changes.

(4) "Child" means an individual who is younger than 19 years of age.

(5) "Children's Health Insurance Program" or "CHIP" provides medical services for children under age 19 who do not otherwise qualify for Medicaid.

(6) "Department" means the Utah Department of Health.

(7) "Enrollee" means an individual who applies for and is found eligible for the UPP program.

(8) "Employer-sponsored health plan" means a health insurance plan offered through an employer where:

(a) the employer contributes at least 50 percent of the cost of the health insurance premium of the employee;

(b) coverage includes at least physician visits, hospital inpatient services, pharmacy, well child visits, and children's immunizations;

(c) lifetime maximum benefits are at least $1,000,000;

(d) the deductible is no more than $2,500 per individual; and

(e) the plan pays at least 70% of an inpatient stay after the deductible.

(9) "Utah's Premium Partnership for Health Insurance" (UPP) program provides cash reimbursement for all or part of the insurance premium paid by an employee for health insurance coverage through an employer-sponsored health insurance plan that covers either the eligible employee, the eligible spouse of the employee, dependent children, or the family.

(10) "Income averaging" means a process of using a history of past and current income and averaging it over a determined period of time that is representative of future income.

(11) "Income anticipating" means a process of using current facts regarding rate of pay, number of working hours, and expected changes to anticipate future income.

(12) "Income annualizing" means a process of determining the average annual income of a household, based on the past history of income and expected changes.

(13) "Local office" means any Department of Workforce Services office location, outreach location, or telephone location where an individual may apply for medical assistance.

(14) "Open enrollment means a time period during which the Department accepts applications for the UPP program.

(15) "Public Institution" means an institution that is the responsibility of a governmental unit or that is under the administrative control of a governmental unit.

(16) "Primary Care Network" or "PCN" program provides primary care medical services to uninsured adults who do not otherwise qualify for Medicaid.

(17) "Recertification month" means the last month of the eligibility period for an enrollee.

(18) "Spouse" means any individual who has been married to an applicant or enrollee and has not legally terminated the marriage.

(19) "Verifications" means the proofs needed to decide if an individual meets the eligibility criteria to be enrolled in the program. Verifications may include hard copy documents such as a birth certificate, computer match records such as Social Security benefits match records, and collateral contacts with third parties who have information needed to determine the eligibility of the individual.

R414-320-3. Applicant and Enrollee Rights and Responsibilities.

(1) Any person who meets the limitations set by the Department may apply during an open enrollment period. The open enrollment period may be limited to:

(a) Adults with children living in the home;

(b) Adults without children living in the home;

(c) Adults enrolled in the PCN program;

(d) Children enrolled in the CHIP program;

(e) Adults or children who were enrolled in the Medicaid program within the last thirty days prior to the beginning of the open enrollment period; or

(f) Other groups designated in advance by the Department consistent with efficient administration of the program.

(2) If a person needs help to apply, he may have a friend or family member help, or he may request help from the local office or outreach staff.

(3) Applicants and enrollees must provide requested information and verifications within the time limits given. The Department will allow the client at least 10 calendar days from the date of a request to provide information and may grant additional time to provide information and verifications upon request of the applicant or enrollee.

(4) Applicants and enrollees have a right to be notified about the decision made on an application, or other action taken that affects their eligibility for benefits.

(5) Applicants and enrollees may look at information in their case file that was used to make an eligibility determination.

(6) Anyone may look at the eligibility policy manuals located at any Department local office.

(7) An individual must repay any benefits received under the UPP program if the Department determines that the individual was not eligible to receive such benefits.

(8) Applicants and enrollees must report certain changes to the local office within ten calendar days of the day the change becomes known. The local office shall notify the applicant at the time of application of the changes that the enrollee must report. Some examples of reportable changes include:

(a) An enrollee stops paying for coverage under an employer-sponsored health plan.

(b) An enrollee changes health insurance plans.

(c) An enrollee has a change in the amount of the premium they are paying for an employer-sponsored health insurance plan.

(d) An enrollee begins to receive coverage under, or begins to have access to Medicare or the Veteran's Administration Health Care System.

(e) An enrollee leaves the household or dies.

(f) An enrollee or the household moves out of state.

(g) Change of address of an enrollee or the household.

(h) An enrollee enters a public institution or an institution for mental diseases.

(9) An applicant or enrollee has a right to request an agency conference or a fair hearing as described in R414-301-5 and R414-301-6.

(10) An enrollee must continue to pay premiums and

remain enrolled in an employer-sponsored health plan to be eligible for benefits.

(11) Eligible children may choose to enroll in their employer-sponsored health insurance plan and receive UPP benefits, or they may choose direct coverage through the Children's Health Insurance Program.

R414-320-4. General Eligibility Requirements.

(1) The provisions of R414-302-1, R414-302-2, R414-302-3, R414-302-5, and R414-302-6 apply to adult applicants and enrollees.

(2) The provisions of R382-10-6, R382-10-7, and R382-10-9 apply to child applicants and enrollees.

(3) An individual who is not a U.S. citizen and does not meet the alien status requirements of R414-302-1 or R382-10-6 is not eligible for any services or benefits under the UPP program.

(4) Applicants and enrollees for the UPP program are not required to provide Duty of Support information. An adult who would be eligible for Medicaid but fails to cooperate with Duty of Support requirements required by the Medicaid program cannot enroll in the UPP program.

(5) Individuals who must pay a spenddown or premium to receive Medicaid can enroll in the UPP program if they meet the program eligibility criteria in any month they do not receive Medicaid as long as the Department has not stopped enrollment under the provisions of R414-320-16. If the Department has stopped enrollment, the individual must wait for an applicable open enrollment period to enroll in the UPP program.

R414-320-5. Verification and Information Exchange.

(1) The applicant and enrollee must provide verification of eligibility factors as requested by the Department.

(2) The Department may release information concerning applicants and enrollees and their households to other state and federal agencies to determine eligibility for other public assistance programs.

(3) The Department safeguards information about applicants and enrollees.

(4) There are no provisions for taxpayers to see any information from client records.

(5) The director or designee shall decide if a situation is an emergency warranting release of information to someone other than the client. The information may be released only to an agency with comparable rules for safeguarding records. The information release cannot include information obtained through an income match system.

R414-320-6. Residents of Institutions.

(1) Residents of public institutions are not eligible for the UPP program.

(2) A child under the age of 18 is not a resident of an institution if the child is living temporarily in the institution while arrangements are being made for other placement.

(3) A child who resides in a temporary shelter for a limited period of time is not a resident of an institution.

R414-320-7. Creditable Health Coverage.

(1) The Department adopts 42 CFR 433.138(b), 2007 ed., which is incorporated by reference.

(2) An individual who is covered under a group health plan or other creditable health insurance coverage, as defined by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is not eligible for enrollment.

(3) Eligibility for an individual who has access to but has not yet enrolled in employer-sponsored health insurance coverage will be determined as follows:

(a) If the cost of the employer-sponsored coverage is less than 5% of the household's gross income, the individual is not eligible for the UPP program.

(b) For adults, if the cost of the employer-sponsored coverage exceeds 15% of the household's gross income the adult may choose to enroll in the UPP program or may choose direct coverage through the Primary Care Network program if enrollment has not been stopped under the provisions of R414-310-16.

(c) A child may choose enrollment in UPP or direct coverage under the CHIP program if the cost of the employer sponsored coverage is equal to or more than 5% of the household's gross income.

(4) An individual who is covered under Medicare Part A or Part B, or who could enroll in Medicare Part B coverage, is not eligible for enrollment, even if the individual must wait for a Medicare open enrollment period to apply for Medicare benefits.

(5) An individual who is enrolled in the Veteran's Administration (VA) Health Care System is not eligible for enrollment. An individual who is eligible to enroll in the VA Health Care System, but who has not yet enrolled, may be eligible for the UPP program while waiting for enrollment in the VA Health Care System to become effective. To be eligible during this waiting period, the individual must initiate the process to enroll in the VA Health Care System. Eligibility for the UPP program ends once the individual becomes enrolled in the VA Health Care System.

(6) The Department shall deny eligibility if the applicant, spouse, or dependent child has voluntarily terminated health insurance coverage within the 90 days immediately prior to the application date for enrollment under the UPP program.

(a) An applicant, applicant's spouse, or dependent child can be eligible for the UPP program if their prior insurance ended more than 90 days before the application date.

(b) An applicant, applicant's spouse, or dependent child who voluntarily discontinues health insurance coverage under a COBRA plan, or under the Utah Comprehensive Health Insurance Pool, or who is involuntarily terminated from an employer's plan may be eligible for the UPP program without a 90 day waiting period.

(7) An individual with creditable health coverage operated or financed by Indian Health Services may enroll in the UPP program.

(8) Individuals must report at application and recertification whether each individual for whom enrollment is being requested has access to or is covered by a group health plan or other creditable health insurance coverage. This includes coverage that may be available through an employer or a spouse's employer, Medicare Part A or B, or the VA Health Care System.

(9) The Department shall deny an application or recertification if the applicant or enrollee fails to respond to questions about health insurance coverage for any individual the household seeks to enroll or recertify.

R414-320-8. Household Composition.

(1) The following individuals are included in the household when determining household size for the purpose of computing financial eligibility for the UPP program:

(a) The individual;

(b) The individual's spouse living with the individual;

(c) All children of the individual or the individual's spouse who are under age 19 and living with the individual; and

(d) An unborn child if the individual is pregnant, or if the applicant's legal spouse who lives in the home is pregnant.

(2) A household member who is temporarily absent for schooling, training, employment, medical treatment or military service, or who will return home to live within 30 days from the date of application is considered part of the household.

R414-320-9. Age Requirement.

(1) An individual must be younger than 65 years of age to enroll in the UPP program.

(2) The individual's 65th birthday month is the last month the person can be eligible for enrollment in the UPP program.

R414-320-10. Income Provisions.

(1) For an adult to be eligible to enroll, gross countable household income must be equal to or less than 150% of the federal non-farm poverty guideline for a household of the same size.

(2) For children to be eligible to enroll, gross countable household income must be equal to or less than 200% of the federal non-farm poverty guideline for a household of the same size.

(3) All gross income, earned and unearned, received by the individual and the individual's spouse is counted toward household income, unless this section specifically describes a different treatment of the income.

(4) Any income in a trust that is available to, or is received by a household member, is countable income.

(5) Payments received from the Family Employment Program, Working Toward Employment program, refugee cash assistance or adoption support services as authorized under Title 35A, Chapter 3 are countable income.

(6) Rental income is countable income. The following expenses can be deducted:

(a) Taxes and attorney fees needed to make the income available;

(b) Upkeep and repair costs necessary to maintain the current value of the property;

(c) Utility costs only if they are paid by the owner; and

(d) Interest only on a loan or mortgage secured by the rental property.

(7) Cash contributions made by non-household members are counted as income unless the parties have a signed written agreement for repayment of the funds.

(8) The interest earned from payments made under a sales contract or a loan agreement is countable income to the extent that these payments will continue to be received during the certification period.

(9) Needs-based Veteran's pensions are counted as income. Only the portion of a Veteran's Administration check to which the individual is legally entitled is countable income.

(10) Child support payments received for a dependent child living in the home are counted as that child's income.

(11) In-kind income, which is goods or services provided to the individual from a non-household member and which is not in the form of cash, for which the individual performed a service or which is provided as part of the individual's wages is counted as income. In-kind income for which the individual did not perform a service, or did not work to receive, is not counted as income.

(12) Supplemental Security Income and State Supplemental payments are countable income.

(13) Income that is defined in 20 CFR 416 Subpart K, Appendix, 2004 edition, which is incorporated by reference, is not countable.

(14) Payments that are prohibited under other federal laws from being counted as income to determine eligibility for federally-funded medical assistance programs are not countable.

(15) Death benefits are not countable income to the extent that the funds are spent on the deceased person's burial or last illness.

(16) A bona fide loan that an individual must repay and that the individual has contracted in good faith without fraud or deceit, and genuinely endorsed in writing for repayment is not countable income.

(17) Child Care Assistance under Title XX is not countable income.

(18) Reimbursements of Medicare premiums received by an individual from Social Security Administration or the Department are not countable income.

(19) Earned and unearned income of a child is not countable income if the child is not the head of a household.

(20) Educational income, such as educational loans, grants, scholarships, and work-study programs are not countable income. The individual must verify enrollment in an educational program.

(21) Reimbursements for employee work expenses incurred by an individual are not countable income.

(22) The value of food stamp assistance is not countable income.

(23) Income paid by the U.S. Census Bureau to a temporary census taker to prepare for and conduct the census is not countable income.

R414-320-11. Budgeting.

This section describes methods that the Department uses to determine the household's countable monthly or annual income.

(1) The gross income of all household members is counted in determining the eligibility of the applicant or enrollee, unless the income is excluded under this rule. Only expenses that are required to make an income available to the individual are deducted from the gross income. No other deductions are allowed.

(2) The Department determines monthly income by taking into account the months of pay where an individual receives a fifth paycheck when paid weekly, or a third paycheck when paid every other week. The Department multiplies the weekly amount by 4.3 to obtain a monthly amount. The Department multiplies income paid biweekly by 2.15 to obtain a monthly amount.

(3) The Department shall determine an individual's eligibility prospectively for the upcoming certification period at the time of application and at each recertification for continuing eligibility. The Department determines prospective eligibility by using the best estimate of the household's average monthly income that is expected to be received or made available to the household during the upcoming certification period. The Department prorates income that is received less often than monthly over the certification period to determine an average monthly income. The Department may request prior years' tax returns as well as current income information to determine a household's income.

(4) Methods of determining the best estimate are income averaging, income anticipating, and income annualizing. The Department may use a combination of methods to obtain the most accurate best estimate. The best estimate may be a monthly amount that is expected to be received each month of the certification period, or an annual amount that is prorated over the certification period. The Department may use different methods for different types of income received in the same household.

(5) The Department determines farm and self-employment income by using the individual's most recent tax return forms. If tax returns are not available, or are not reflective of the individual's current farm or self-employment income, the Department may request income information from the most recent time period during which the individual had farm or self-employment income. The Department deducts 40% of the gross income as a deduction for business expenses to determine the countable income of the individual. For individuals who have business expenses greater than 40%, the Department may exclude more than 40% if the individual can demonstrate that the actual expenses were greater than 40%. The Department deducts the same expenses from gross income that the Internal Revenue Service allows as self-employment expenses.

(6) The Department may annualize income for any household and specifically for households that have self-employment income, receive income sporadically under contract or commission agreements, or receive income at irregular intervals throughout the year.

(7) The Department may request additional information and verification about how a household is meeting expenses if the average household income appears to be insufficient to meet the household's living expenses.

R414-320-12. Assets.

There is no asset test for eligibility in the UPP program.

R414-320-13. Application Procedure.

(1) The application is the initial request from an applicant for UPP enrollment. The application process includes gathering information and verifications to determine the individual's eligibility for enrollment.

(2) The applicant must complete and sign a written application or complete an application on-line via the Internet to enroll in the UPP program.

(a) The Department accepts any Department-approved application form for medical assistance programs offered by the state as an application for the UPP program. The local office eligibility worker may require the applicant to provide additional information that was not asked for on the form the applicant completed, and may require the applicant to sign a signature page from a hardcopy medical application form.

(b) If an applicant cannot write, he must make his mark on the application form and have at least one witness to the signature. A legal guardian or a person with power of attorney may sign the application form for the applicant.

(c) An authorized representative may apply for the applicant if unusual circumstances prevent the individual from completing the application process himself. The applicant must sign the application form if possible.

(3) The date of application will be decided as follows:

(a) The date the Department receives a completed, signed application is the application date when the application is delivered to a local office.

(b) The date postmarked on the envelope is the application date when a completed, signed application is mailed to the agency.

(c) The date the Department receives a completed, signed application via facsimile transfer is the application day. The agency accepts the signed application sent via facsimile as a valid application and does not require it to be signed again.

(d) The transaction date is the application date when the application is submitted online.

(4) If an applicant has a legal guardian, a person with a power of attorney, or an authorized representative, the local office shall send decision notices, requests for information, and forms that must be completed to both the individual and the individual's representative, or to just the representative if requested or if determined appropriate.

(5) The Department shall reinstate a UPP case without requiring a new application if the case was closed in error.

(6) The Department shall continue enrollment without requiring a new application if the case was closed for failure to complete a recertification or comply with a request for information or verification:

(a) If the enrollee complies before the effective date of the case closure or by the end of the month immediately following the month the case was closed; and

(b) The individual continues to meet all eligibility requirements.

(7) An applicant may withdraw an application any time before the Department completes an eligibility decision on the application.

(8) If an eligible household requests enrollment for a new household member, the application date for the new household member is the date of the request. A new application form is not required. However, the household shall provide the information necessary to determine eligibility for the new member, including information about access to creditable health insurance.

(a) Benefits for the new household member will be allowed from the date of request or the date an application is received through the end of the current certification period.

(b) A new income test is not required to add the new household member for the months remaining in the current certification period.

(c) A new household member may be added only if the Department has not stopped enrollment under Section R414-320-15.

(d) Income of the new member will be considered at the next scheduled recertification.

(9) A child who loses Medicaid coverage because he or she has reached the maximum age limit and does not qualify for any other Medicaid program without paying a spenddown, may enroll in UPP without waiting for the next open enrollment period.

(10) A child who loses Medicaid coverage because he or she is no longer deprived of parental support and does not qualify for any other Medicaid program without paying a spenddown, may enroll in UPP without waiting for the next open enrollment period.

(11) A new child born to or adopted by an enrollee may be enrolled in UPP without waiting for the next open enrollment period.

R414-320-14. Eligibility Decisions and Recertification.

(1) The Department adopts 42 CFR 435.911 and 435.912, 2007 ed., which are incorporated by reference.

(2) When an individual applies for UPP, the local office shall determine if the individual is eligible for Medicaid. An individual who qualifies for Medicaid without paying a spenddown or a premium cannot enroll in the UPP program. If the individual appears to qualify for Medicaid, but additional information is required to determine eligibility for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(a) If the individual must pay a spenddown or premium to qualify for Medicaid, the individual may choose to enroll in the UPP program if it is an open enrollment period and the individual meets all the applicable criteria for eligibility. If the UPP program is not in an enrollment period, the individual must wait for an open enrollment period.

(b) At recertification, the local office shall first review eligibility for Medicaid. If the individual qualifies for Medicaid without a spenddown or premium, the individual cannot be reenrolled in the UPP program. If the individual appears to qualify for Medicaid, the applicant must provide additional information requested by the eligibility worker. Failure to provide the requested information shall result in the application being denied.

(3) To enroll, the individual must meet enrollment eligibility criteria at a time when the Department has not already stopped enrollment under provisions of Section R414-320-16.

(4) The local office shall complete a determination of eligibility or ineligibility for each application unless:

(a) The applicant voluntarily withdraws the application and the local office sends a notice to the applicant to confirm the withdrawal;

(b) The applicant died; or

(c) The applicant cannot be located; or

(d) The applicant has not responded to requests for

information within the 30 day application period or by the date the eligibility worker asked the information or verifications to be returned, if that date is later.

(5) The enrollee must recertify eligibility at least every 12 months.

(6) The local office eligibility worker may require the applicant, the applicant's spouse, or the applicant's authorized representative to attend an interview as part of the application and recertification process. Interviews may be conducted in person or over the telephone, at the local office eligibility worker's discretion.

(7) The enrollee must complete the recertification process and provide the required verifications by the end of the recertification month.

(a) If the enrollee completes the recertification and continues to meet all eligibility criteria, coverage will be continued without interruption.

(b) The case will be closed at the end of the recertification month if the enrollee does not complete the recertification process and provide required verifications by the end of the recertification month.

(c) If an enrollee does not complete the recertification by the end of the recertification month, but completes the process and provides required verifications by the end of the month immediately following the recertification month, coverage will be reinstated as of the first of that month if the individual continues to be eligible.

(8) The eligibility worker may extend the recertification due date if the enrollee demonstrates that a medical emergency, death of an immediate family member, natural disaster or other similar cause prevented the enrollee from completing the recertification process on time.

R414-320-15. Effective Date of Enrollment and Enrollment Period.

(1) The effective date of enrollment is the day that a completed and signed application is received at a local office by the close of business on a business day. This applies to paper applications delivered in person or by mail, paper applications sent via facsimile transmission, and electronic applications sent via the internet. If a local office receives an application after the close of business on a business day, the effective date of UPP enrollment is the next business day.

(2) The application date for applications delivered to an outreach location is as follows:

(a) If the application is delivered at a time when the outreach staff is working at that location, the date of application is the date the outreach staff receives the application.

(b) If the application is delivered on a non-business day or at a time when the outreach office is closed, the date of application is the last business day that a staff person from the state agency was available to receive or pick up applications from the location.

(3) The due date for verifications needed to complete an application and determine eligibility is the close of business on the last day of the application period.

(4) The effective date of enrollment cannot be before the month in which the applicant pays a premium for the employer-sponsored health insurance and is determined as follows:

(a) The effective date of enrollment is the date an application is received and the person is found eligible, if the applicant enrolls in and pays the first premium for the employer-sponsored health insurance in the application month.

(b) If the applicant will not pay a premium for the employer-sponsored health insurance in the application month, the effective date of enrollment is the first day of the month in which the applicant pays a premium for the employer-sponsored health insurance. The applicant must enroll in the employer-sponsored health insurance no later than 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP.

(c) If the applicant does not enroll in the employer-sponsored health insurance within 30 days from the day on which the Department of Workforce Services sends the applicant written notice that he meets the qualifications for UPP, the application shall be denied and the individual will have to reapply during another open enrollment period.

(5) The effective date of enrollment for a newborn or newly adopted child is the date the newborn or newly adopted child is enrolled in the employer-sponsored health insurance if the family requests the coverage within 30 days of the birth or adoption. If the request is more than 30 days after the birth or adoption, enrollment is effective the date of report.

(6) The effective date of re-enrollment for a recertification is the first day of the month after the recertification month, if the recertification is completed as described in R414-320-13.

(7) If the enrollee does not complete the recertification as described in R414-320-13, and the enrollee does not have good cause for missing the deadline, the case will remain closed and the individual may reapply during another open enrollment period.

(8) An individual found eligible shall be eligible from the effective date through the end of the first month of eligibility and for the following 12 months. If the enrollee completes the redetermination process in accordance with R414-320-13 and continues to be eligible, the recertification period will be for an additional 12 months beginning the month following the recertification month. Eligibility could end before the end of a 12-month certification period for any of the following reasons:

(a) The individual turns age 65;

(b) The individual becomes entitled to receive Medicare, or becomes covered by Veterans Administration Health Insurance;

(c) The individual dies;

(d) The individual moves out of state or cannot be located;

(e) The individual enters a public institution or an Institute for Mental Disease.

(9) If an adult enrollee discontinues enrollment in employer-sponsored insurance coverage, eligibility ends. If the enrollment in employer-sponsored insurance is discontinued involuntarily and the individual notifies the local office within 10 calendar days of when the insurance ends, the individual may switch to the PCN program for the remainder of the certification period.

(10) A child enrollee may discontinue employer-sponsored health insurance and move to direct coverage under the Children's Health Insurance Program at any time during the certification period without any waiting period.

(11) An individual enrolled in the Primary Care Network or the Children's Health Insurance Program who enrolls in an employer-sponsored plan may switch to the UPP program if the individual reports to the local office within 10 calendar days of enrolling in an employer-sponsored plan and before coverage on the employer-sponsored plan begins.

(12) If a UPP case closes for any reason, other than to become covered by another Medicaid program or the Children's Health Insurance Program, and remains closed for one or more calendar months, the individual must submit a new application to the local office during an open enrollment period to reapply. The individual must meet all the requirements of a new applicant.

(13) If a UPP case closes because the enrollee is eligible for another Medicaid program or the Children's Health Insurance Program, the individual may reenroll if there is no break in coverage between the programs, even if the State has stopped enrollment under R414-320-15.

(a) If the individual's 12-month certification period has not

ended, the individual may reenroll for the remainder of that certification period. The individual is not required to complete a new application or have a new income eligibility determination.

(b) If the 12-month certification period from the prior enrollment has ended, the individual may still reenroll. However, the individual must complete a new application and meet eligibility and income guidelines for the new certification period.

(c) If there is a break in coverage of one or more calendar months between programs, the individual must reapply during an open enrollment period.

R414-320-16. Open Enrollment Period.

(1) The Department accepts applications for enrollment at times when sufficient funding is available to justify enrolling more individuals. The Department limits the number it enrolls according to the funds available for the program.

(2) The Department may stop enrollment of new individuals at any time based on availability of funds.

(3) The Department and local offices shall not accept applications nor maintain waiting lists during a time period that enrollment of new individuals is stopped.

R414-320-17. Notice and Termination.

(1) The Department shall notify an applicant or enrollee in writing of the eligibility decision made on the application or the recertification.

(2) The Department shall terminate an individual's enrollment upon enrollee request or upon discovery that the individual is no longer eligible.

(3) The Department shall terminate an individual's enrollment if the individual fails to complete the recertification process on time.

(4) The Department shall notify an enrollee in writing at least ten days before taking a proposed action adversely affecting the enrollee's eligibility. Notices shall provide the following information:

(a) The action to be taken;

(b) The reason for the action;

(c) The regulations or policy that support the action;

(d) The applicant's or enrollee's right to a hearing;

(e) How an applicant or enrollee may request a hearing;

(f) The applicant or enrollee's right to represent himself, or use legal counsel, a friend, relative, or other spokesperson.

(5) The Department need not give ten-day notice of termination if:

(a) The enrollee is deceased;

(b) The enrollee has moved out of state and is not expected to return;

(c) The enrollee has entered a public institution or institution for mental disease;

(d) The enrollee has enrolled in other health insurance coverage, in which case eligibility may cease immediately and without prior notice.

R414-320-18. Improper Medical Coverage.

(1) An individual who receives benefits under the UPP program for which he is not eligible is responsible to repay the Department for the cost of the benefits received.

(2) An overpayment of benefits includes all amounts paid by the Department for medical services or other benefits on behalf of an enrollee or for the benefit of the enrollee during a time period that the enrollee was not actually eligible to receive such benefits.

R414-320-19. Benefits.

(1) The UPP program provides cash reimbursement to enrollees as described in this section.

(2) The reimbursement shall not exceed the amount the employee pays toward the cost of the employer-sponsored coverage.

(3) The amount of reimbursement for an adult will be up to $150 per month per individual.

(4) The amount of reimbursement for children will be up to $100 per month per child for medical and an additional $20 if they choose to enroll in employer-sponsored dental coverage.

(a) When the employer-sponsored insurance does not include dental benefits, the children may receive cash reimbursement up to $100 for the medical insurance cost and enroll in direct dental coverage under the CHIP Program.

(b) When the employer-sponsored insurance includes dental, the applicant will be given the choice of enrolling the children in the employer-sponsored dental and receiving an additional reimbursement up to $20, or enrolling in direct dental coverage through the CHIP Program.

KEY: Medicaid, PCN, CHIP
January 22, 2009 **26-18-3**
26-1-5

R426. Health, Health Systems Improvement, Emergency Medical Services.
R426-8. Emergency Medical Services Per Capita Grants Program Rules.
R426-8-1. Authority and Purpose.

(1) This rule is established under Title 26 chapter 8a.

(2) The purpose of this rule provides guidelines for the equitable distribution of per capita grant funds specified under the Emergency Medical Services Grants Program.

R426-8-2. Eligibility.

(1) Per capita grants are available only to licensed EMS ambulance and paramedic services, and designated first response unit and dispatch providers that are:

(a) agencies or political subdivisions of local or state government or incorporated non-profit entities; or

(b) for-profit emergency medical service providers that are the primary emergency medical service provider for a service area.

(2)(a) A for-profit emergency medical service provider is a primary emergency medical service provider in a geographical service area if it is licensed for and provides service at a higher level than the public or non-profit provider;

(b) The levels of emergency medical service providers are in this rank order:

(A) Paramedic rescue;
(B) Paramedic ambulance;
(C) EMT-Intermediate;
(D) EMT-IV; and
(E) EMT-Basic.

(c) Paramedic interfacility transfer ambulance, EMT-Interfacility ambulance transport, or paramedic tactical rescue units are not eligible for per capita funding because they cannot be the primary emergency medical services provider for a geographical service area.

(3) Grantees must be in compliance with the EMS Systems Act and all EMS rules during the grant period. If a potential grantee owes the Department money, and the grantee's account is more than six months old, the Department may withhold payment of grant funds until such account is paid in full.

R426-8-3. Grant Implementation.

(1) Per Capita grants are available for use specifically related to the provision of emergency medical services.

(2) Grant awards are effective on July 1 and must be used by June 30 of the following year. No extensions will be given.

(3) Grant funding is on a reimbursable basis after presentation of documentation of expenditures which are in accordance with the approved grant awards budget.

(4) No matching funds are required for per capita grants.

(5) Per capita funds may be used as matching funds for competitive grants.

R426-8-4. Application and Award Formula.

(1) Grants are available to eligible providers that complete a grant application by the deadline established annually by the Department.

(2) Agency applicants shall certify agency personnel rosters as part of the grant application process.

(a) A certified individual who works for both a public and a for-profit agency may be credited only to the public or non-profit licensee or designee.

(b) Certified individuals may be credited for only one agency. However, if a dispatcher is also an EMT, EMT-I, EMT-IA, or paramedic, the dispatcher may be credited to one agency as a dispatcher and one agency as an EMT, EMT-I, EMT-IA, or paramedic.

(c) Certified individuals who work for providers that cover multiple counties may be credited only for the county where the certified person lives.

(d) The Department shall determine the amounts of the per capita grants by prorating available funds on a per capita basis by county.

(3) The Department shall allocate funds to licensed and designated ambulance and paramedic providers, designated dispatch agencies and designated first response units by using the following point totals for their personnel: certified Dispatchers = 1; certified Basic EMTs and EMT-IVs = 2; certified Intermediate EMTs = 3; and certified Paramedics = 4. The number of certified personnel is based upon the personnel rosters of each licensed EMS provider, designated dispatch agency and designated first response unit as of January 1 immediately prior to the grant year, which begins July 1.

KEY: emergency medical services
January 13, 2009 26-8a
Notice of Continuation January 24, 2006

R428. Health, Center for Health Data, Health Care Statistics.
R428-12. Health Data Authority Survey of Enrollees in Health Maintenance Organizations.
R428-12-1. Legal Authority.

This rule is promulgated under authority granted by Title 26, Chapter 33a (Utah Code Annotated) and in accordance with the Utah Health Plan Performance Measurement Plan.

R428-12-2. Purpose.

This rule establishes the process for the collection of Health Insurance Carrier enrollee satisfaction data from Utah licensed health insurance carriers. The data are needed to promote consumer choice in health plan selection and measure the quality of care provided by Utah licensed health maintenance organizations.

R428-12-3. Definitions.

These definitions apply to rule R428-12:

(1) "Office" as defined in R428-2-3A.

(2) "Carrier" means:

(a) "Health Maintenance Organization"(HMO) means any person licensed under Title 31A, Chapter 8.

(b) a governmental plan as defined in Section 414 (d), Internal Revenue Code.

(c) a non-electing church plan as described in Section 410 (d), Internal Revenue Code.

(d) "Preferred Provider Organization (PPO)" means all commercial insurance companies engaged in the business of health care insurance in the state of Utah (as defined in 31A-1-301(75)(a) and (b)), and offers a insurance product where an insured member has the choice of using either an in network provider at a discounted rate, also called preferred providers, or any out of network provider at a higher rate, also called non-preferred provider. Payments to preferred and non-preferred providers are paid according the preferred provider contract provisions as described in 31A-22-617(2)(a)(b).

(3) "Enrollee" means any individual who has entered into a contract with a health maintenance organization for health care or on whose behalf such an arrangement has been made.

(4) "Eligible Enrollee" means an enrollee who meets the following criteria:

(a) enrolled with the carrier as of May 1, 2008;

(b) continuously enrolled with the carrier for at least twelve months prior to May 1 of the current year, allowing one break in coverage for up to 45 days;

(c) not employed by the carrier;

(d) age 18 or older;

(e) not enrolled in Medicaid or Medicare; and

(f) has Utah zip code.

(7) "Sampling Frame" means the carrier enrollment file as described in Table 1 for all eligible enrollees of the carrier. The sampling frame includes only records that meet the eligibility criteria in R428-12-3(4).

(8) "Sample file" means the data file containing records of selected eligible enrollees drawn by the survey agency from the carrier's sampling frame.

(9) "Aggregate statistics" means the total number of enrollees with the particular carrier by age and sex.

(10) "Survey agency" means an independent contractor on contract with the Office of Health Data Analysis.

R428-12-4. Creating the Sampling Frame.

(1) The sources for enrollment data are health plan carriers licensed in Utah. Each carrier shall include in the sampling frame all eligible enrollees. The carrier may not exclude any record except those that do not meet eligibility criteria as specified in R428-12-3(4).

(2) Each carrier shall create the sampling frame according to the format in the Table 1 or 2.

(3) The layout described in Table 1 and 2 shall be followed exactly. Column starts or widths of fields shall not be changed. The sample file must be in ASCII format, one member record per line, all records the same length. Records shall not contain quotes, hyphens in phone numbers, dashes, or any other punctuation.

TABLE 1
SAMPLING FRAME LAYOUT (Adult Survey)

Required Data Element	Field Positions Length	Start	End	Value Labels
Health care organization name	60	1	60	
Product line	1	61	61	1 = Commercial 2 = Medicaid
Product	1	62	62	1 = HMO 2 = POS
Subscriber or familyID number				16 63 78
Member-unique ID	16	79	94	This ID differentiates between individuals when family members share the subscriber ID
Member first name	25	95	119	
Member middle initial	1	120	120	
Member last name	25	121	145	
Member gender	1	146	146	1 = Male 2 = Female
Member date of birth	8	147	154	MMDDYYYY
Member mailing address 1	50	155	204	Street address or post office box
Member mailing address 2	50	205	254	Mailing address 2nd line (if needed)
Member city	30	255	284	
Member state	2	285	286	2-character state abbreviation
Member Zip code	5	287	291	5-digit number
Member telephone number	10	292	301	3-digit area code plus 7-digit phone number; no separators or delimiters
Flu Shots for Adults Ages 50-64				
Eligibility Flag	1	302	302	1 = Eligible 2 = Ineligible 9 = Member is in a product or product line for which the measure is not being reported

TABLE 2
SAMPLING FRAME LAYOUT (Child Survey)

Required Data Elements	Field Positions Length	Start	End	Value Labels
Health care organization name	60	1	60	
Product line	1	61	61	1 = Commercial 2 = Medicaid
Product	1	62	62	1 = HMO 2 = POS
Subscriber or family ID number	16	63	78	
Member-unique ID	16	79	94	This ID differentiates between individuals when family members share the subscriber ID
Member first name	25	95	119	
Member middle initial	1	120	120	
Member last name	25	121	145	
Member gender	1	146	146	1 = Male 2 = Female
Member date of birth	8	147	154	MMDDYYYY
Mailing address 1	50	155	204	Street address or post office box
Mailing address 2	50	205	254	Mailing address 2nd line (if needed)
City	30	255	284	

State abbreviation	2	285	286	2-character state
Zip code	5	287	291	5-digit number
Telephone number	10	292	301	3-digit area code plus 7-digit phone number; no separators or delimiters
Parent/caretaker first name	25	302	326	Required only if mailing materials are to be addressed to the parent or caretaker
Parent/caretaker middleinitial	1	327	327	Required only if mailing materials are to be addressed to the parent or caretaker
Parent/caretaker last name	25	328	352	Required only if mailing materials are to be addressed to the parent or caretaker
Prescreen status code	1	353	353	1 = No claims or encounters that meet criteria 2 = Claims or encounters that meet criteria 9 = Member is in a product or product line for which the CCC measure is not being reported

(4) The sampling frame and procedures used by the reporting carrier are subject to audit by the Office of Health Data Analysis against aggregate statistics for the submitting carrier.

R428-12-5. Sampling Frame Submission.

(1) The carrier shall create the sampling frame according to the eligibility criteria in R428-12-3(4). The carrier shall copy the sampling frame (formatted as described in "Sampling Frame Layout" in Table 1) onto an IBM PC 3.5 inch high density diskette and send to the survey agency.

(2) The carrier shall fill out the "Sample Description" sheet to be provided by the survey agency and send it with the diskette. Each carrier shall submit to the survey agency the sampling frame for each of its carrier products no later than four weeks after the receipt of the sampling memo from the survey agency.

R428-12-6. Penalties.

Pursuant to Section 26-23-6, any person that violates any provision of this rule may be assessed an administrative civil money penalty not to exceed $3,000 upon an administrative finding of a first violation and up to $5,000 for a subsequent similar violation within two years. A person may also be subject to penalties imposed by a civil or criminal court, which may not exceed $5,000 or a class B misdemeanor for the first violation and a class A misdemeanor for any subsequent similar violation within two years.

R428-12-7. Administration of Survey.

Each year, the Utah Department of Health, in consultation with health plans, will determine the target survey population and the scope of the survey.

KEY: health maintenance organization, performance measurement, health care quality, preferred provider organization

January 8, 2009 **26-33a-104**
Notice of Continuation April 3, 2007 **26-33a-108**

R444. Health, Epidemiology and Laboratory Services, Laboratory Improvement.
R444-14. Rule for the Certification of Environmental Laboratories.
R444-14-1. Introduction.

(1) This rule is authorized by Utah Code Section 26-1-30(2)(m).

(2) This rule applies to laboratories that analyze samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, and the Federal Resource Conservation and Recovery Act.

(3) A laboratory that analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(4) A laboratory that, under subcontract with another laboratory, analyzes samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory, must become certified under this rule and comply with its provisions.

(5) A laboratory certified under this rule to analyze samples for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory must also obtain approval under this rule for each analyte analyzed by a specific method.

R444-14-2. Definitions.

(1) "Analyte" means the substance or thing for which a sample is analyzed to determine its presence or quantity.

(2) "Approved" means the determination by the department that a certified laboratory may analyze for an analyte under this rule.

(3) "Clean Water Act" means U.S. Public Law 92-500, as amended, governing water pollution control programs.

(4) "Department" means the Utah Department of Health.

(5) "Revoke" means to withdraw a certified laboratory's certification or the approval for a certified laboratory to perform one or more specified methods.

(6) "Resource Conservation and Recovery Act" means U.S. Public Law 94-580, as amended, governing solid and hazardous waste programs.

(7) "Safe Drinking Water Act" means U.S. Public Law 93-523 94-580, as amended, governing drinking water programs.

(8) "TNI" means The NELAC Institute.

R444-14-3. Laboratory Certification.

(1) A laboratory is the organization and facilities established for testing samples.

(2) A laboratory that conducts tests that are required by Department of Environmental Quality rules to be conducted by a certified laboratory must be certified under this rule.

(3) To become certified, to renew certification, or to become recertified under this rule, a laboratory must adhere to the requirements found in Chapter 4, "Accreditation Process", of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

R444-14-4. Analytical Methods.

(1) The department may only approve a certified laboratory to analyze an analyte by specific method. The department may approve a certified laboratory for an analyte using methods described in the July 1, 1992 through 2008, editions of 40 CFR Parts 141, 142, and 143 (Safe Drinking Water Act); 40 CFR Parts 136 and 503.8 (Clean Water Act); 40 CFR Parts 260 and 261 (Resource Conservation and Recovery Act).

(2) In analyzing a sample for compliance with the Safe Drinking Water Act, the Clean Water Act, or the Resource Conservation and Recovery Act, a certified laboratory must follow the method that it reports on its final report to have used.

R444-14-5. Proficiency Testing.

For a certified laboratory to become approved and to maintain approval for an analyte by a specific method, the certified laboratory must, at its own expense, meet the proficiency testing requirements of this rule. A certified laboratory must adhere to the requirements found in Chapter 2, "Proficiency Testing", of the National Environmental Laboratory Accreditation Conference Standards approved July 2003, which are incorporated by reference.

R444-14-6. Quality System.

(1) A certified laboratory must adhere to the requirements found in Chapter 5, Quality Systems, of the National Environmental Laboratory Accreditation Conference Standards approved June 2003, which are incorporated by reference.

R444-14-7. Recognition of TNI Accreditation.

The department may certify a laboratory that is TNI accredited. A laboratory seeking certification because of its TNI accreditation must provide evidence of its accreditation and apply for certification on that basis. A laboratory certified on the basis of TNI accreditation must obtain approval from the department for each analyte and meet the approval requirements of this rule.

R444-14-8. Penalties.

A laboratory violates this rule and is subject to the penalties provided in Title 26, Chapter 23, including administrative and civil penalties of up to $5,000.00 for each offense, criminal sanctions of a class B misdemeanor on the first offense and a class A misdemeanor on the second offense, and criminal penalties of up to $5,000.00 for each offense if it:

(1) without being certified under this rule, holds itself out as one capable of testing samples for compliance with Federal Safe Drinking Water Act, Federal Clean Water Act, Federal Resource Conservation and Recovery Act; or

(2) without being approved to analyze for the analyte , analyzes samples for the analyte for compliance with rules established by the Utah Department of Environmental Quality that require that the analysis be conducted by a certified laboratory.

KEY: laboratories
January 12, 2009 26-1-30(2)(m)
Notice of Continuation February 26, 2007

R460. Housing Corporation, Administration.
R460-7. Public Petitions For Declaratory Orders.
R460-7-1. Purpose.

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

(2) The procedures governing agency declaratory orders shall be applied in the following order:

(a) the applicable procedures of Section 63G-4-503;

(b) the procedures specified in this R460-7;

(c) the Utah Rules of Civil Procedure;

(d) the applicable procedures of other governing state and federal law.

R460-7-2. Definitions.

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

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

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

(3) "Order" is defined in Section 63G-3-102.

R460-7-3. Petition Form Content and Filing.

(1) The petition shall be addressed and delivered to the president of UHC, who shall mark the petition with the date of receipt.

(2) The petition shall:

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

(b) identify the specific statute, rule or order which is in question or to be reviewed;

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

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

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

(f) be signed by the petitioner.

(3) Any letter that expressly states the intent to request an agency declaratory ruling and substantially complies with the information required in this subsection shall be treated as fulfilling the requirements of this subsection even though a technical deficiency may exist in the letter.

R460-7-4. Reviewability.

(1) UHC shall review and consider the petition and may issue a declaratory order.

(2) UHC shall not review a petition for declaratory order that is:

(a) not within the jurisdiction of UHC;

(b) irrelevant or immaterial;

(c) subject to the restrictions of Section 63G-4-503.

R460-7-5. Petition Review and Disposition.

(1) In promptly reviewing and considering the petition UHC may:

(a) meet with the petitioner;

(b) consult with counsel;

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

(2) After consideration of a petition for a declaratory order, UHC may issue a written order:

(a) declaring the applicability of the statute, rule or order in question to the specified circumstances;

(b) which declines to issue a declaratory order and stating the reasons for its action;

(c) agreeing to issue a declaratory order within a specified time.

(3) A declaratory order shall contain:

(a) the names of all parties to the proceeding on which it is based;

(b) the particular facts on which it is based;

(c) the reasons for its conclusion.

(4) A copy of all orders issued in response to a request for a declaratory order shall be mailed promptly to the petitioner and any other parties.

(5) If UHC sets the matter for an adjudicative proceeding under Section 63G-4-503(6)(a)(ii), the proceeding shall be designated as informal, pursuant to R460-6, and shall follow the appropriate procedures of Section 63G-4.

R460-7-6. Administrative Review.

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

R460-7-7. Extension of Time.

Unless the petitioner and UHC agree in writing to an extension, if UHC has not issued a declaratory order within 60 days after receipt of the request for a declaratory order, the petition is denied.

KEY: housing finance
1990 63G-4-503
Notice of Continuation October 15, 2007

R495. Human Services, Administration.
R495-888. Department of Human Services Related Parties Conflict Investigation Procedure.
R495-888-1. Authority.

(1) This rule is authorized by Sections 62A-1-110, 62A-1-111, and 62A-4a-409.

R495-888-2. Definitions.

(1) The definitions contained in Title 62A apply. In addition, the following terms are defined for the purposes of this Rule:

(a) "Accepted referral" means a referral that has been screened by APS or DCFS intake and has met the agency's requirements for accepting a referral.

(b) "APS" means Adult Protective Services.

(c) "Case" means a referral that has been accepted for an investigation.

(d) "Child" means a person under eighteen years of age.

(e) "Client" means any person receiving services from DHS.

(f) "Conflict" means:

(i) There is a referral alleging child abuse, neglect or dependency and an employee, volunteer, board member, provider, or contractor of DHS has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation such that there is or might be a conflict of interest, the appearance of a conflict of interest, impropriety, or the appearance of impropriety if CPS or DCFS performed the investigation; or

(ii) There is a referral alleging abuse, neglect or exploitation of a vulnerable adult, and an employee, volunteer, board member, provider, or contractor of DHS has a relationship with the alleged victim, alleged perpetrator, or another person named in the investigation such that there is or might be a conflict of interest, the appearance of a conflict of interest, impropriety, or the appearance of impropriety if APS or DAAS performed the investigation;

(iii) There is a referral alleging abuse, neglect or dependency of a minor that is in the custody and/or guardianship of DCFS, DJJS, or DSPD and the alleged perpetrator is an employee, volunteer, board member, provider, or contractor of DHS.

(g) "CPS" means Child Protective Services.

(h) "DHS" means the Department of Human Services, and includes all of the agencies and offices within the Department.

(i) "DCFS" means the Division of Child and Family Services, including its regional offices.

(j) "DAAS" means the Utah Division of Aging and Adult Services.

(k) "DJJS" means the Division of Juvenile Justice Services.

(l) "DJJS Investigator" means an employee of DJJS who conducts internal affairs investigations for DJJS.

(m) "DSPD" means the Division of Services for People with Disabilities.

(n) "Executive Director" is as defined in 62A-1-104 and includes the designee of the Executive Director.

(o) "Minor" means a child, or a person at least eighteen years of age and younger than twenty-one years of age who is in the custody and guardianship of the Division of Child and Family Services or the Division of Juvenile Justice Services.

(p) "OPG" means the Office of the Public Guardian.

(q) "OSR" means the Office of Services Review.

(r) "Reasonable Restraint" means: Justifiable restraint to protect the client or to protect others from the client's acts. Supported physical abuse does not include the use of reasonable and necessary physical restraint by an educator in accordance with Section 53A-11-802(2) or 76-2-401. Nor does it include conduct that constitutes the use of reasonable and necessary physical restraint or force in self-defense or otherwise appropriate to the circumstances to obtain possession of a weapon or other dangerous object in the client's possession or control, or to protect the client or another person from physical injury.

(i) In determining whether "reasonable restraint" was used, the Related Party Conflict Investigator shall take into account the nature and purpose of the facility.

(s) "Referral" means information provided to DCFS intake alleging abuse, neglect, or dependency of a child, or to APS intake alleging abuse, neglect or exploitation of a vulnerable adult.

(t) "Related Party Conflict Case" means that a conflict has been identified, and the case has been referred to a Related Party Conflict Investigator for a related party conflict investigation.

(u) "Related Parties Conflict Investigation" means the investigation of a conflict case by a Related Parties Conflict Investigator.

(v) "Related Parties Conflict Investigator" means an employee of DHS assigned to OSR to conduct related parties conflict investigations.

(w) "Secondary worker" means a DCFS employee or an APS employee assigned to a related parties conflict investigation to conduct limited casework activities requested by the Related Parties Conflict Investigator, including but not limited to the following: making priority face to face contact when the Related Parties Conflict Investigator is unable to do so; assisting with the removal of a child; booking the child into a shelter facility; and filing a petition for ongoing In-Home or Out-of-Home services.

(x) "USDC" means the Utah State Developmental Center.

(y) "USH" means the Utah State Hospital.

(z) "Vulnerable Adult" is the same as defined in 62A-3-301(28).

R495-888-3. Purpose.

(1) The purpose of this rule is to establish the criteria used to determine:

(a) when a related party investigation is necessary;

(b) how related party investigations will be conducted; and

(c) how on-going services will be provided to clients.

(2) It is the Department of Human Services' goal to avoid any impropriety or appearances of impropriety that may arise when a conflict exists and to ensure that investigations involving an employee, volunteer, board member, provider, or contractor of DHS are conducted fairly. Related party conflict investigations shall be conducted in a manner consistent with CPS and APS procedures and policies.

R495-888-4. Criteria Used to Determine When a Related Party Investigation Is Necessary.

(1) In general: OSR shall be notified that a potential conflict exists whenever:

(a) a referral has been accepted and a person's relationship with DHS may influence an investigation of abuse, neglect or dependency of a child, or abuse, neglect or exploitation of a vulnerable adult, or

(b) a conflict exists that may prevent the assigned agency from making an objective determination based on the facts of the case.

(c) an accepted referral alleges child abuse, neglect, or dependency by a DHS employee.

(d) an accepted referral alleges child abuse, neglect or dependency by a professional partner of DCFS, including but not limited to: an Assistant Attorney General, a Guardian ad litem, or a law enforcement officer who works directly with DCFS.

(e) an accepted referral alleges that a child has been abused and/or neglected while in the custody and/or

guardianship of DCFS or DJJS, while placed in the USH or USDC or while placed with a contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer or board member with DHS, or a provider, or contractor of DCFS.

(f) an accepted referral alleges abuse, neglect, or exploitation of a vulnerable adult by a DHS employee.

(g) an accepted referral alleges that an adult has been abused, neglected or exploited while in the and guardianship of OPG, placed at the USH or the USDC, or placed with a DHS contracted provider of any of these agencies, and the alleged perpetrator is an employee, volunteer, or board member of DHS, or a provider, or contractor of DAAS.

(2) The Executive Director of DHS may, at any time, designate a case a "related party conflict investigation" and direct that the case be assigned to a Related Party Conflict Investigator.

(3) If the conflict is identified after DCFS or APS has initiated an investigation, OSR shall be notified on the next business day after the conflict is identified. If the DCFS or APS worker is responding to an emergency or priority one call, the worker shall complete whatever protective actions are necessary and then staff the conflict with a supervisor.

R495-888-5. Procedure Used When a Related Party Investigation Is Necessary for Children.

(1) When a CPS intake worker identifies a potential conflict, the intake worker shall staff the referral with the OSR Services Review Manager to determine if a conflict exists. The OSR Services Review Manager shall determine whether there is a conflict, and will notify the CPS Intake Worker of its decision.

(2) If a conflict is identified after the initial referral, the assigned CPS worker and/or the CPS worker's supervisor shall notify the OSR Services Review Manager no later than the next business day after the conflict is identified.

(3) Once the accepted case is assigned to OSR, the case shall be assigned by OSR to a Related Party Conflicts Investigator, and the investigation activities from that point forward shall be supervised by the OSR Services Review Manager.

(4) A Related Party Conflict Investigator shall have training that is substantially similar to the training received by CPS workers.

(5) Related Parties Conflict Investigators have the same rights, duties, and authority to investigate referrals as CPS workers.

(6) The following duties are to remain the duties of CPS Intake: receipt of the referral; research; disposition of the referral; establish priority of the referral; and, establish allegation categories.

(7) DCFS shall review unaccepted Related Parties referrals in accordance with DCFS Practice Guidelines.

(8) A DCFS investigator may act as a secondary worker and assist the Related Parties Conflict Investigator.

(9) The Related Party Conflict Investigator shall determine whether the allegations are supported, unsupported, without merit, or false. The Related Parties Conflict Investigator shall report its findings to the appropriate DCFS employee to ensure that the findings are entered into the Licensing or Management Information System and that the appropriate Notices of Agency Action are issued.

(10) If the OSR Services Review Manager determines that no conflict exists, the case shall be referred back to CPS intake for investigation by DCFS.

(11) If the Executive Director has designated a case as a related party conflict case, the OSR Services Review Manager shall assign the case to a Related Parties Conflict Investigator.

R495-888-6. Procedure Used When a Related Party Investigation Is Necessary for Adults.

(1) Allegations of abuse, neglect, or exploitation of a vulnerable adult shall be referred to APS Intake.

(2) If APS Intake accepts the referral and identifies a potential conflict, the Intake worker shall staff the referral with the OSR Services Review Manager to determine if a conflict exists.

(3) The OSR Services Review Manager shall determine whether there is a conflict and will notify APS intake of its decision.

(4) In cases where a conflict exists, the OSR Services Review Manager shall accept the case, and assign the case to a Related Parties Conflict Investigator.

(5) A Related Parties Conflict Investigator shall have training that is substantially similar to the training received by APS investigators.

(6) Related Parties Conflict Investigators have the same rights, duties, and authority to investigate referrals as APS investigators and shall perform its investigation using the same policies, procedures, rules and laws that apply to APS investigations.

(7) An APS investigator may act as a secondary worker and assist the Related Parties Conflict Investigator.

(8) The Related Party Conflict Investigator shall determine whether the referral is supported, inconclusive or without merit. OSR will work with DAAS to ensure that the investigative finding is entered into the Statewide Database created in Section 62A-3-311.1, and that the appropriate Notices of Agency Action are issued.

(9) If the OSR Services Review Manager determines that no conflict exists, the case shall be referred back to APS intake for investigation by APS.

(10) If the Executive Director has designated a case as a related party conflict case, the OSR Services Review Manager shall assign the case to a Related Parties Conflict Investigator.

R495-888-7. Special Procedures for Related Parties Conflict Investigations.

(1) Nothing in this rule is intended to limit an agency's ability to conduct its own internal investigation of any incident that occurs in a facility or by an employee during working hours.

(2) The related parties' conflict investigation is meant to determine whether abuse, neglect or dependency of a child, or abuse, neglect or exploitation of an adult occurred. If, during the course of the investigation, the Related Parties Conflict Investigator believes that a separate investigation into policy or personnel matters is warranted, the Related Parties Conflict Investigator may notify the agency of its concerns.

(3) A Related Parties Conflict Investigator may determine that a person was not abused or neglected if reasonable restraint was used in a DJJS facility, the USH, the USDC, or other contracted facility or program of DJJS or DSPD.

(4) The Related Parties Conflict Investigator may notify the agency of the initiation of an investigation and/or the conclusion of an investigation.

KEY: related parties, investigations, conflict
January 21, 2009

62A-1-110
62A-1-111
62A-1-115
62A-4A-101
62A-4a-202.5
62A-4a-202.6
62A-4a-409(5)

R497. Human Services, Administration, Administrative Hearings.
R497-100. Adjudicative Proceedings.
R497-100-1. Authority.

The Department of Human Services, Office of Administrative Hearings is given rulemaking authority pursuant to Utah Code Ann. Section 62A-1-111.

R497-100-2. Definitions.

The terms used in this rule are defined in Section 63G-4-102. In addition,

(1) For the purpose of this section, "agency" means the Department of Human Services or a division or office of the Department of Human Services including the Division of Child and Family Services (DCFS), the Division of Services to People with Disabilities (DSPD), the Division of Juvenile Justice Services (DJJS), the Division of Aging and Adult Services (DAAS), the Division of Mental Health (DMH), the Division of Substance Abuse (SA), the Office of Licensing (OL), the Utah State Developmental Center (USDC), the Utah State Hospital (USH), and any boards, commissions, officers, councils, committees, bureaus, or other administrative units, including the Executive Director and Director of the Department or other persons acting on behalf of or under the authority of the Executive Director or Director. For purposes of this section, the term "Department of Human Services" does not include the Office of Recovery Services (ORS). The rules regarding ORS are stated in R527-200.

(2) "Agency actions or proceedings" of the Department of Human Services include, but are not limited to the following:

(a) challenges to findings of abuse, neglect and dependency pursuant to Section 62A-4a-1009;

(b) due process hearings afforded to foster parents prior to removal of a foster child from their home pursuant to Section 62A-4a-206;

(c) the denial, revocation, modification, or suspension of any Department foster home license, or group care license;

(d) the denial, revocation, modification or suspension of a license issued by the Office of Licensing pursuant to Section 62A-2-101, et seq.;

(e) challenges to findings of abuse, neglect or exploitation of a disabled or elder adult pursuant to Section 62A-3-301, et seq.;

(f) the licensure of community alternative programs by the Office of Licensing;

(g) actions by the Division of Juvenile Justice Services and the Youth Parole Authority relating to granting or revocation of parole, discipline or, resolution of grievances of, supervision of, confinement of or treatment of residents of any Juvenile Justice Services facility or institution;

(h) resolution of client grievances with respect to delivery of services by private, nongovernmental, providers within the Department's service delivery system;

(i) actions by Department owned and operated institutions and facilities relating to discipline or treatment of residents confined to those facilities;

(j) placement and transfer decisions affecting involuntarily committed residents of the Utah State Developmental Center pursuant to Sections 62A-5-313;

(k) protective payee hearings;

(l) Department records amendment hearings held pursuant to Section 63G-3-603.

(3) "Aggrieved person" includes any applicant, recipient or person aggrieved by an agency action.

(4) "Declaratory Order" is an administrative interpretation or explanation of the applicability of a statute, rule, or order within the primary jurisdiction of the agency to specified circumstances.

(5) "Office" means the Office of Administrative Hearings in the Department of Human Services.

(6) "Presiding officer" means an agency head, or individual designated by the agency head, by these rules, by agency rule, or by statute to conduct an adjudicative proceeding and may include the following:

(a) hearing officers;
(b) administrative law judges;
(c) division and office directors;
(d) the superintendent of agency institutions;
(e) statutorily created boards or committees.

R497-100-3. Exceptions.

The provisions of this section do not govern the following:

(1) The procedures for promulgation of agency rules, or the judicial review of those procedures. See Section 63G-4-102(2)(a).

(2) Department actions relating to contracts for the purchase or sale of goods or services by and for the state or by and for the Department, including terminations of contracts by the Department.

(3) Initial applications for and initial determinations of eligibility for state-funded programs.

R497-100-4. Form of Proceeding.

(1) All adjudicative proceedings commenced by the Department of Human Services or commenced by other persons affected by the Department of Human Services' actions shall be informal adjudicative proceedings.

(2) However, any time before a final order is issued in any adjudicative proceeding, the presiding officer may convert an informal adjudicative proceeding to a formal adjudicative proceeding if:

(a) conversion of the proceeding is in the public interest; and

(b) conversion of the proceeding does not unfairly prejudice the rights of any party.

(3) If a proceeding is converted from informal to formal, the Procedure for Formal Adjudicative Proceedings in Section 63G-4-102, et seq. shall apply. In all other cases, the Procedures for Informal Proceedings in R497-100-6 shall apply.

R497-100-5. Commencement of Proceedings.

(1) All adjudicative proceedings shall be commenced by either:

(a) a notice of agency action, if proceedings are commenced by the agency; or

(b) a request for agency action, if proceedings are commenced by persons other than the agency.

(2) (a) When adjudicative proceedings are commenced by the agency, the notice of agency action shall conform to Section 63G-4-201(2)(a) and shall also include:

(i) a statement that the adjudicative proceeding is to be conducted informally;

(ii) if a hearing is to be held in an informal adjudicative proceeding, a statement of the time and place of any scheduled hearing, a statement of the purpose for which the hearing is to be held, and a statement that a party who fails to attend or participate in the hearing may be held in default; and

(iii) if the agency's rules do not provide for a hearing, a statement that the parties may request a hearing within ten working days of the notice of agency action.

(b) The notice of agency action shall be mailed or published in conformance with Section 63G-4-201(2)(b).

(c) When adjudicative proceedings are commenced by a person other than the agency, the request for agency action shall conform to Section 63G-4-201(3)(a) and (b) and include the name of the adjudicative proceeding, if known.

(d) In the case of adjudicative proceedings commenced under Subsection (2)(c) by a person other than the agency, the

presiding officer shall within ten working days give notice by mail to all parties. The written notice shall:

(i) give the agency's file number or other reference number;

(ii) give the name of the proceeding;

(iii) designate that the proceeding is to be conducted informally;

(iv) if a hearing is to be held in an informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default;

(v) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within ten working days of the agency's response; and

(vi) give the name, title, mailing address, and telephone number of the presiding officer.

R497-100-6. Availability of Hearing.

(1) Hearings may be held in any informal adjudicative proceedings conducted in connection with an agency action if the aggrieved party requests a hearing and if there is a disputed issue of fact. If there is no disputed issue of fact, the presiding officer may deny a request for a hearing and determine all issues in the adjudicative proceeding, if done in compliance with the policies and standards of the applicable agency. If the aggrieved person objects to the denial of a hearing, that person may raise that objection as grounds for relief in a request for reconsideration.

(2) There is no issue of fact if:

(a) the aggrieved person tenders facts which on their face establish the right of the agency to take the action or obtain the relief sought in the proceeding;

(b) the aggrieved person tenders facts upon the request of the presiding officer and the fact does not conflict with the facts relied upon by the agency in taking its action or seeking its relief.

R497-100-7. Procedures for Informal Proceedings.

In compliance with Section 63G-4-203, the procedure for the informal adjudicative proceedings is as follows:

(1) (a) The respondent to a notice of agency action or request for agency action may, but is not required to, file an answer or responsive pleading to the allegations contained in the notice of agency action or the request for agency action within 10 working days following receipt of the adverse party's pleading.

(b) A hearing shall be provided to any party entitled to request a hearing in accordance with Section 63G-4-203.

(c) In the hearing, the party named in the notice of agency action or in the request for agency action may be represented by counsel and shall be permitted to testify, present evidence and comment on the issues.

(d) Hearings will be held only after a timely notice has been mailed to all parties.

(e) Discovery is prohibited, but the office may issue subpoenas or other orders to compel production of necessary evidence. The office may require that parties exchange documents prior to the hearing in order to expedite the process. All parties to the proceedings will be responsible for the appearance of witnesses.

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

(g) Intervention is prohibited, except that intervention is allowed where a federal statute or rule requires that a state permit intervention.

(h) Within a reasonable time after the close of the hearing, or after the party's failure to request a hearing within the time prescribed by the agency's rules, the presiding officer shall issue a signed order in writing that conforms to Section 63G-4-203(1)(I).

(i) All hearings shall be open to all parties.

(j) The presiding officer's order shall be based on the facts appearing in the agency's files and on the facts presented in evidence at the hearings.

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

(2) All hearings shall be recorded at the office's expense. A transcript of the record may be prepared pursuant to Section 63G-4-203(2)(b). The recording will be maintained for one year after the order has been issued.

R497-100-8. Declaratory Orders.

(1) Who May File. Any person or governmental entity directly affected by a statute, rule or order administered, promulgated or issued by an agency, may file a petition for a declaratory order by addressing and delivering the written petition to the presiding officer of the appropriate agency.

(2) Content of Petition.

(a) The petition shall be clearly designated as a request for an agency declaratory order and shall include the following information;

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

(ii) a detailed description of the situation or circumstances at issue;

(iii) a description of the reason or need for a declaratory order, including a statement as to why the petition should not be considered frivolous;

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

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

(vi) the signature of the petitioner or an authorized representative.

(3) Exemptions from Declaratory Order Procedure. A declaratory order shall not be issued by any agency of the Department under the following circumstances:

(a) the subject matter of the petition is not within the jurisdiction and competency of the agency;

(b) the person requesting the declaratory ruling participated in an adjudicative proceeding concerning the same issue within 12 months of the date of the declaratory order request;

(c) the declaratory order procedure is likely to substantially prejudice the rights of a person who would be a necessary party, unless that person consents in writing to a determination of the matter by a declaratory proceeding;

(d) the declaratory order is trivial, irrelevant, or immaterial;

(e) a declaratory order proceeding is otherwise prohibited by state or federal law;

(f) a declaratory order is not in the best interest of the agency or the public;

(g) the subject matter is not ripe for consideration; or

(h) the issue is currently pending in a judicial proceeding.

(4) Intervention in Accordance with Sections 63G-4-203(1)(g) and 63G-4-503.

(a) Intervention is prohibited in informal adjudicative proceedings, except where a federal statute or rule requires that intervention be permitted.

(b) In the case of an adjudicative proceeding that has been converted to a formal adjudicative proceeding, a person may intervene in a declaratory order proceeding by filing a petition to intervene with the presiding officer of the agency within 30 days after the conversion of the proceeding.

(c) The agency presiding officer may grant a petition to

intervene if the petition meets the following requirements:

(i) the intervener's legal interests may be substantially affected by the declaratory order proceedings; and

(ii) the interests of justice and the orderly and prompt conduct of the declaratory order proceeding will not be materially impaired by allowing intervention.

(5) Review of Petition for Declaratory Order.

(a) After review and consideration of a petition for a declaratory order, the presiding officer of the agency may issue a written order that conforms to Section 63G-4-503(6)(a);

(b) If the matter is set for an adjudicative proceeding, written notice shall be mailed to all parties that shall:

(i) give the name, title, mailing address, and telephone number of the presiding officer;

(ii) give the agency's file number or other reference number;

(iii) give the name of the proceeding;

(iv) state whether the proceeding shall be conducted informally or formally;

(v) state the time and place of any scheduled hearing, the purpose for which the hearing is to be held, and that a party who fails to attend or participate in the hearing may be held in default; and

(vi) if the agency's rules do not provide for a hearing, state the parties' right to request a hearing within 10 working days of the agency's response.

(c) If the agency's presiding officer issues a declaratory order, it shall conform to Section 63G-4-503(6)(b) and shall also contain:

(i) a notice of any right of administrative or judicial review available to the parties; and

(ii) the time limits for filing an appeal or requesting review.

(d) A copy of all declaratory orders shall be mailed in accordance with Section 63G-4-503(6)(c).

(e) If the agency's presiding officer has not issued a declaratory order within 60 days after receipt of the petition, the petition is deemed denied.

R497-100-9. Agency Review.

Agency review shall not be allowed. Nothing contained in this rule prohibits a party from filing a petition for reconsideration pursuant to Section 63G-4-302. If the 20th day for filing a request for reconsideration falls on a weekend or holiday the deadline will be extended until the next working day.

R497-100-10. Scope and Applicability.

The provisions of this section supersede the provisions of any other Department rules which may conflict with the foregoing rules.

KEY: administrative procedures, social services
January 21, 2009 62A-1-110
Notice of Continuation November 2, 2005 62A-1-111

R501. Human Services, Administration, Administrative Services, Licensing.
R501-1. General Provisions.
R501-1-1. Authority and Purpose.

1. This Rule is authorized by Section 62A-2-101, et seq.

2. This Rule clarifies the standards for:

a. approving or denying a human services program application, or

b. approving, extending, conditioning, denying, suspending, or revoking a human services program license.

3. This Rule clarifies the standards for inspecting, monitoring, and investigating a human services program.

4. This Rule clarifies the standards for approving or denying a variance to the Human Services Administrative Rules, Title R501, regarding the licensing of human services programs.

R501-1-2. Definitions.

1. "Applicant" means a person who submits an application to the Office of Licensing to obtain a license to operate a human services program.

2. "Certified local inspector" is defined in Section 62A-2-101.

3. "Child" is defined in Section 62A-2-101.

4. "Client" is defined in Section 62A-2-101.

5. "Human services program" is defined in Section 62A-2-101.

6. "Initial License" means the license issued to operate a human services program during the program's first year of operation.

7. "Licensee" means a person with a current, valid license to operate a human services program, issued by the Office of Licensing.

8. "Local government" is defined in Section 62A-2-101.

9. "Person" includes an individual, agency, association, partnership, corporation, or governmental entity.

10. "Probationary License" means a temporary initial license issued to operate a new human services program during the period of time that the Office of Licensing designates for the program to transition from substantial compliance to full compliance with licensing requirements.

11. "Regular business hours" is defined in Section 62A-2-101.

12. "Residential Treatment" is defined in Section 62A-2-101.

13. "Renewal License" means the license issued to operate a human services program after the program's first year of operation.

14. "Substantial compliance" means a human services program presently conforms to all licensing requirements with the exception of minor requirements that do not create a risk of harm to a child or vulnerable adult. Examples of minor requirements that do not create a risk of harm to a child or vulnerable adult include, but are not limited to, individual staff or client files in a residential treatment program that has not yet provided services, individual staff or client files in a child placing agency that has not yet provided services, or completion of training in a kinship foster care placement.

15. "Variance" means a temporary deviation from an administrative rule.

16. "Vulnerable Adult" is defined in Section 62A-2-101.

R501-1-3. Licensing Procedure.

1. Application for Initial License.

A person seeking an initial license to operate a human services program shall submit:

a. an application on the forms provided by the Office of Licensing;

b. the licensing fee required of a new program for the category of human services program license sought;

c. a completed background screening application and consent form, and all required identifying information, in accordance with R501-14, for each adult associated with the proposed human services program;

d. the applicant's proposed policy and procedure manual;

e. documentation verifying compliance with all local government zoning, health, fire, and business requirements; and

f. for residential treatment programs, a copy of the notice of its intent to operate a residential treatment program and proof of service, in accordance with Section 62A-2-108.2.

2. Application for Renewal License.

A person seeking renewal of a license to operate a human services program shall submit:

a. an application on the form provided by the Office of Licensing;

b. the licensing fee required for the category of human services program;

c. verification of current background screening approval, in accordance with R501-14, for each adult associated with the human services program;

d. a copy of all modifications that have been made to the licensee's policy and procedure manual since the previous year's licensure;

e. documentation verifying current compliance with all local government zoning, health, fire, and business requirements; and

f. for residential treatment programs, a copy of the notice of its intent to operate a residential treatment program and proof of service, in accordance with Section 62A-2-108.2.

g. the application for renewal of a license shall be submitted no less than thirty days and no more than sixty days prior to the expiration date of the current license.

3. An application and required documentation that are not legible, complete, dated and signed shall be returned to the applicant without further action.

4. On-Site Licensing Review

a. An applicant for an initial license shall permit the Office of Licensing to conduct an unlimited on-site evaluation of the physical facility and grounds, and to interview persons associated with the proposed program to verify compliance with all licensing requirements.

i. The Office of Licensing shall approve an application for an initial human services program license only after verifying full compliance with all licensing requirements.

ii. The Office of Licensing may approve a probationary license only after verifying substantial compliance with licensing requirements.

A. The Office of Licensing shall include an expiration date on a probationary license, which shall not exceed 6 months from the date of issue.

B. A probationary licensee that fails to achieve full compliance with licensing requirements prior to the expiration of the probationary license shall not be granted an extension, and shall not accept any fees, entering any agreements to provide client services, or provide any client services.

C. A probationary licensee that is not granted an initial license may submit a new application for an initial license 3 months after the expiration of the probationary license.

iii. The Office of Licensing shall deny an application for an initial human services program license when substantial compliance with all licensing requirements cannot be verified.

iv. The Office of Licensing shall permit an applicant for an initial human services program license to withdraw the application at any time prior to denying the application when an applicant requests additional time to demonstrate compliance with all licensing requirements.

A. An application that has been voluntarily withdrawn by an applicant may be resubmitted, within six months of the date of withdrawal, for reconsideration without payment of

additional fees.

b. The Office of Licensing shall conduct a minimum of one annual on-site review of each human services program site.

i. The Office of Licensing shall approve an application for a human services program license renewal only after verifying full compliance with all licensing requirements.

ii. The Office of Licensing shall deny an application for a human services program license renewal when full compliance with all licensing requirements cannot be verified.

iii. The Office of Licensing may extend the current license of a human services program in accordance with this rule.

A. A renewal license may be extended for up to sixty days past the current license expiration date if the Office of Licensing determines that the human services program is in substantial compliance with licensing requirements.

B. A notice of extension shall identify the extension expiration date and the requirements that the human services program must comply with to achieve full compliance.

C. A human services program that fails to achieve full compliance with licensing requirements prior to the expiration of the extension shall not be granted additional extensions.

D. The Office of Licensing shall deny the renewal application of a human services program that fails to achieve full compliance with licensing requirements prior to the expiration of an extension.

c. The Office of Licensing shall complete a written monitoring report or a checklist identifying areas of compliance and non-compliance with licensing requirements after each on-site review.

5. The license shall state the name and site address of the human service program facility, category of service, maximum consumer capacity, and the start date and expiration date.

6.a. A license that has expired is void.

b. A license expires at midnight one year after the date it was issued, unless:

i. the license states an earlier expiration date;

ii. the license has been extended in accordance with this rule;

iii. the license has been revoked by the Office of Licensing; or

iv. the license has been relinquished to the Office of Licensing by the licensee.

7.a. A licensee shall not exceed the licensed maximum client capacity indicated on the license issued by the Office of Licensing.

b. A licensee seeking to increase the maximum client capacity of a license shall submit an application for a renewal license in accordance with this rule.

8.a. A licensee shall not provide client services at a new site or change the services it provides without first obtaining a new license issued by the Office of Licensing.

b. A licensee seeking to change a human services program's site address or services provided shall submit an application for a new license in accordance with this rule.

9. A person with an expired license wishing to operate a human services program shall submit an application for a new license in accordance with this rule.

10. A license is deemed void when the human services program has a change of ownership, management, administration, policies, or site address.

a. A human services program that has a change of ownership or management shall apply for a renewal license in accordance with this rule.

b. A human services program that has a change of administration, policies, or site address shall apply for an initial license in accordance with this rule.

R501-1-4. Fees.

1. The Office of Licensing shall assess and collect licensing fees in accordance with Sections 62A-2-106 and 63J-1-303.

a. An assessed fee shall not be transferred, prorated, reduced, waived, or refunded.

b. No licensing fee shall be assessed on a foster home or on a Division of the Department of Human Services.

2. The Office of Licensing shall not perform an on-site review until the applicant pays the assessed licensing fee in full.

3. Fees shall be calculated according to the maximum licensed client capacity of the human services program, and not according to the number of clients served in the program.

a. A human services program with a valid, current license that intends to increase its maximum licensed client capacity shall submit an application for a renewal license and shall be assessed a renewal application fee according to the increased maximum client capacity.

4. Fees shall be assessed for each program site of a human services program.

a. A human services program with more than one building at one site may choose to have its fees assessed:

i. so that one license will be issued for each on-site building; or

ii. so that one license will be issued for each site.

b. A human services program with a valid, current license that intends to provide services at an additional site shall submit an application for an initial license at the additional site.

i. A human services program with a valid, current license that proposes to provide identical services at additional site shall be assessed a renewal application fee.

ii. A human services program with a valid, current license that will not provide identical services at an additional site shall be assessed an initial application fee.

5. Fees shall be assessed for each category of human services program offered at a program site.

a. A human services program with a valid, current license that intends to provide additional services at the licensed site shall submit an application for a renewal license and shall be assessed a renewal application fee.

R501-1-5. Monitoring.

1. The Office of Licensing shall investigate reports of unlicensed human services programs.

a. An unlicensed human services program that fails to submit an application and become licensed shall be referred to the Offices of the Attorney General and the appropriate County Attorney for prosecution.

2. The Office of Licensing shall investigate complaints regarding a licensed human services program.

a. A certified local inspector may investigate complaints regarding a residential treatment program in accordance with Section 62A-2-108.3 and R501-4

3. Unannounced administrative inspections may be conducted during regular business hours.

4. The Office of Licensing shall document violations of administrative rules or statutes

5. The Office of Licensing shall provide written notification to the human services program of violations of administrative rules or statutes and any sanctions imposed.

R501-1-6. Corrective Action Plans.

1. The Office of Licensing may require a human services program to submit a written corrective action plan in response to a written notification of its violations of administrative rules or statutes.

2. A human services program shall submit a written corrective action plan to the Office of Licensing within ten calendar days of receiving written notification of its violations of administrative rules or statutes.

3. The written corrective action plan shall include the

following:

a. a statement of each violation as identified by the Office of Licensing,

b. a detailed description of how the human services program will correct each violation and prevent additional violations of administrative rules or statutes;

c. the date by which the human services program will achieve complete compliance with administrative rules or statutes; and

d. the signature of all owners and managers of the human services program.

4. The Office of Licensing shall issueIa Notice of Agency Action imposing sanctions for a human service program's violations of administrative rules or statutes if the program fails to submit a written corrective action plan in compliance with this rule.

5. The Office of Licensing shall review the submitted written corrective action plan and:

a. inform the human services program that the written corrective action plan is approved; or

b. inform the human services program that the written corrective action plan fails to satisfy the requirements of this rule.

i. The Office of Licensing may permit a human services program to amend its written corrective action plan within 5 additional calendar days to satisfy the requirements of this rule.

6. The Office of Licensing shall issue a Notice of Agency Action imposing sanctions for a human services program's violations of administrative rules or statutes if the program fails to comply with a written corrective action plan approved by the Office of Licensing.

7. A human services program shall post each approved corrective action plan and each Notice of Agency Action where it can be easily reviewed by clients, parents or guardians of clients, and visitors.

a. Each approved corrective action plan and each Notice of Agency Action shall remain posted until the Office of Licensing issues written confirmation that the program has achieved compliance with administrative rules and statutes.

R501-1-7. License Violation.

1. An applicant shall not accept any fees, enter any agreements to provide client services, or provide any client services until after receiving written confirmation that the Office of Licensing has approved and issued a license to provide those services.

2. The Office of Licensing may exercise its professional judgment and deny, condition, suspend, or revoke a license for any violation of the administrative Rules or local, state, or federal law.

3. The Office of Licensing shall issue a written notice of agency action when a license sanction is imposed. The notice of agency action shall identify each violation and describe the factual basis underlying each violation.

4. The Office of Licensing may place a license on conditional status. A conditional status allows a program that is in the process of correcting administrative rule violations to continue operation subject to conditions established by the Office of Licensing.

5.a. A human services program that has had its license suspended is prohibited from providing any services to clients until after the suspension period has expired.

b. A human services program that has had its license expire during the suspension period shall be required to submit an application for an initial license after the suspension period has expired and obtain a new license prior to providing any services to clients.

6. A human services program that has had its license revoked is prohibited from providing any services to clients until after a new license is issued in accordance with Section 62A-2-113.

R501-1-8. Due Process.

1. A notice of agency action shall inform the applicant or licensee of the right to appeal in accordance with Administrative Rule 497-100 and Section 63G-4-101, et seq.

2. A licensee shall not accept any new clients while an appeal is pending.

R501-1-9. Variances.

1. A licensee shall not deviate from any administrative rule without first receiving written approval of a specific variance request signed by the Director of the Office of Licensing or the Director's designee.

2. The Director of the Office of Licensing, or the Director's designee, may grant a variance to the administrative rules of the Office of Licensing, if the Director or the Director's designee determines that a variance:

a. is in the best interests of the client; and

b. may be granted without compromising any health and safety requirements.

3. The licensee must submit a written request for a variance to the licensing specialist. A request for a variance shall specifically describe:

a. the rule for which variance is requested;

b. how the licensee will ensure the best interests of the client will be maintained;

c. what procedures will be implemented to ensure the health and safety of all clients; and

d. the proposed variance expiration date.

4. The licensing specialist shall review the written request for a variance and forward it to the Director or the Director's designee together with the licensing specialist's recommendations to approve, approve with modifications, or deny the request.

5. The Office of Licensing shall notify the licensee of the approval, approval with modifications, or denial of the variance, in writing, within 30 days.

R501-1-10. Abuse or Neglect, or Exploitation.

1. The Office of Licensing shall immediately notify the appropriate investigative or law enforcement agency of any allegations or evidence of abuse, neglect, or exploitation of any child or vulnerable adult.

R501-1-11. Compliance.

Any licensee that is in operation of the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.

KEY: licensing, human services
October 18, 2005 62A-2-101 et seq.
Notice of Continuation November 21, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-4. Certified Local Inspectors.
R501-4-1. Authority and Purpose.

1. This rule is authorized by Section 62A-2-108.3.

2. This rule establishes procedures for complying with Section 62A-2-108.3 and for the performance of inspections by a certified local inspector.

R501-4-2. Definitions.

1. "Applicant" means a person who has submitted an application to the Department of Human Services Office of Licensing under Section 62A-2-108.3.

2. "Certified local inspector" is defined in Section 62A-2-101.

3. "Conduct" means behavior that may negatively impact an individual's ability to perform the functions of a certified local inspector, including but not limited to dishonesty, discourtesy, aggressiveness, or working while under the influence of drugs or alcohol.

4. "Emergency" means a situation where a reasonable person would conclude there is an on-site imminent risk to the health or safety of any individual.

5. "Local government" is defined in Section 62A-2-101.

6. "Personal communication" means a two-way conversation, and does not include an unanswered voice-mail or e-mail message.

7. "Regular business hours" is defined in Section 62A-2-101.

8. "Residential treatment program" is defined in Section 62A-2-101.

R501-4-3. Application for Designation.

1. The governing body of a local government and a local government employee may jointly submit an application to designate or renew the designation of the local government employee as a certified local inspector on a form provided by the Office of Licensing.

a. An application to renew the designation of a certified local inspector shall be submitted at least thirty days prior to the expiration date of current designation.

2. An initial or renewal certified local inspector application shall be submitted together with:

a. the applicant's background screening application and consent form, and all required identifying information, in accordance with R501-3;

b. the applicant's resume, which shall describe the applicant's duties and responsibilities in each position held;

c. the applicant's education and training history;

d. a copy of all complaints received regarding the applicant and the disposition of those complaints, or a letter from the local government confirming that the applicant has received no complaints;

e. three letters of reference describing the applicant's character, demeanor, and interactions with the public; and

f. an acknowledgment signed by the applicant and the governing body of the applicant's local government employer, and approved by the local government attorney, that the local government employer bears sole responsibility for the applicant's salary and expenses, and agrees to indemnify, defend, and hold harmless the Office of Licensing, the Department of Human Services, and the State of Utah for any act or omission of the applicant.

3. A certified local inspector application that is not legible, complete, dated and signed shall be returned to the governing body of the local government without further action.

R501-4-4. Training.

1. The Office of Licensing shall offer training for applicants twice annually. All classes shall be held in the Office of Licensing administrative offices in Salt Lake City.

2. An applicant shall submit all required application materials at least ten business days prior to the first day of the training class.

3. An applicant shall read all materials sent from the Office of Licensing prior to the first day of the training class.

4. An applicant shall complete training on the following subjects:

a. Section 62A Chapter 2, Licensure of Programs and Facilities;

b. R501-1, General Provisions;

c. R501-2, Core Rules;

d. R501-4, Certified Local Inspectors;

e. R501-16, Intermediate Secure Treatment Programs for Minors;

f. R501-19, Residential Treatment Programs;

g. the Fourth Amendment to the Constitution of the United States; and

h. inspection procedures.

R501-4-5. Local Certified Inspector Designation.

1. The Office of Licensing shall not designate an initial or renewal applicant as a certified local inspector unless:

a. the applicant submits all materials required by the Office of Licensing;

b. the applicant attends and participates in the entire course of training presented by the Office of Licensing;

c. the applicant successfully completes the training presented by the Office of Licensing, as evidenced by the applicant's multiple choice test scores;

d. the background screening of the applicant is approved in accordance with R501-3; and

e. the Office of Licensing determines that, based upon the conduct of the applicant, it is in the public's best interest to designate the applicant as a certified local inspector.

2. A certified local inspector shall comply with

a. Section 62A-2-108.3;

b. R501-4, Certified Local Inspectors;

c. the Fourth Amendment to the Constitution of the United States;

d. inspection procedures; and

e. other applicable local, state, and federal laws.

3. Designation as a certified local inspector shall be revoked if the Office of Licensing determines that, based upon the conduct of the certified local inspector, continued designation is not in the public's best interest.

a. The local government employer of a certified local inspector shall immediately notify the Office of Licensing of any conduct by a certified local inspector that may not be in the public's best interest

4. The local government employer of a certified local inspector shall notify the Office of Licensing of a certified local inspector's change in employment or termination of employment within two business days.

5. The governing body of a new local government employer of a certified local inspector who has changed jobs, that desires that the certified local inspector retains certified local inspector designation, shall submit:

a. an application to designate the local government employee as its certified local inspector on a form provided by the Office of Licensing;

b. the certified local inspector's updated resume; and

c. an acknowledgment signed by the applicant and the governing body of the certified local inspector's new local government employer that the new local government employer bears sole responsibility for the applicant's salary and expenses, and agrees to indemnify, defend, and hold harmless the Office of Licensing, the Department of Human Services, and the State

of Utah for any act or omission of the applicant.

d. An otherwise current certified local inspector designation shall be suspended until:

i. all information required by R501-4-5.5 is received by the Office of Licensing;

ii. the Office of Licensing determines whether continued designation of the certified local inspector is in the public's best interest; and

iii. an updated certified local inspector identification is issued.

iv. an updated certified local inspector identification shall expire on the same date as the underlying identification card.

R501-4-6. Inspections.

1. A certified local inspector shall visibly display the photo identification card issued by the Office of Licensing at all times while inspecting a licensed residential treatment facility.

2. Except in an emergency, a certified local inspector shall provide prior notice to the Office of Licensing of the certified local inspector's intent to inspect a licensed residential treatment facility, by personal communication with the certified local inspector's assigned licensing specialist contact or the licensing specialist's supervisor.

3. Except in an emergency, a certified local inspector shall obtain permission to inspect a licensed residential treatment facility prior to entering the facility, by personal communication with the certified local inspector's assigned licensing specialist contact or the licensing specialist's supervisor.

4. A certified local inspector shall provide the report required by Section 62A-2-108.3(4)(c) and a copy of all records obtained from a licensed residential treatment facility to the certified local inspector's assigned licensing specialist contact or the licensing specialist's supervisor.

R501-4-7. Administrative Hearing.

A notice of agency action that denies an applicant's initial or renewal request to be designated as a certified local inspector shall inform the applicant and the local government employer of their right to request an administrative hearing in accordance with Administrative Rule 497-100 and Section 63G-4-101, et seq.

KEY: human services, licensing, certified local inspector
October 18, 2005 62A-2-108 et seq.

R501. Human Services, Administration, Administrative Services, Licensing.
R501-12. Child Foster Care.
R501-12-1. Authority.

(1) Pursuant to 62A-2-101 et seq., the Office of Licensing, shall license child foster care services according to the following rules. Child foster care services are provided pursuant to 62A-4a-106 for the Division of Child and Family Services, hereinafter referred to as DCFS, and 62A-7-104 for the Division of Juvenile Justice Services, hereinafter referred to as DJJS.

R501-12-2. Purpose Statement.

(1) The purpose of these rules is to establish the minimum requirements for licensure of child foster homes and proctor homes for children in the custody of the Department of Human Services, herein after referred to as DHS. Rules applying to child foster care are also applicable to proctor care unless otherwise specified below.

R501-12-3. Definitions.

(1) "Child foster care" means the provision of care which is conductive to the physical, social, emotional and mental health of children or adjudicated youth who are temporarily unable to remain in their own homes.

(2) "Proctor care" means the provision of child foster care for only one youth at a time placed in a licensed or certified proctor home. The youth shall be adjudicated to the custody of DJJS.

(3) "Foster care agency" is any authorized licensed private agency certifying providers for foster or proctor care services, hereinafter referred to as Agency.

(4) "Child" means anyone under 18 years of age with the exception of DJJS where custody and guardianship may be maintained to 21 years of age.

R501-12-4. Licensing and Renewal.

(1) Application: An individual or legally married couple age 21 and over may apply to be foster or proctor parents. The applicant shall be provided with an application and a copy of the foster care licensing rules. The application shall require the applicant to list each member of the applicant's household.

(2) Medical Information:

(a) At the time of application, each potential foster and proctor parent shall obtain and submit to the Agency or the Office of Licensing, a medical reference letter, completed by a licensed health care professional, which assesses the physical ability of the individual to be a foster or proctor parent. On an annual basis thereafter, each foster and proctor parent shall submit a personal health status statement.

(b) A psychological examination of a potential or current foster and proctor parent may be required by the Office of Licensing or the Agency if there are questions regarding the individual's mental status which may impair functioning as a foster or proctor parent. The psychological examination shall be arranged and paid for by the foster or proctor parent.

(3) References:

The applicant shall submit the names of no more than four individuals, two not related and one related, who may be contacted by the Agency or the Office of Licensing for a reference. These individuals, shall be knowledgeable of the ability of the potential foster or proctor parents to nurture children. Three acceptable letters of reference must be received by the Agency or the Office of Licensing before a license will be issued.

(4) Background Screening:

(a) Pursuant to 62A-2-120 and R501-14, criminal background screening, referred to as CBS, requires that all child foster or proctor care applicants or persons 18 years of age or older living in the home must have the criminal background screening successfully completed. This shall be completed on initial home approval and yearly thereafter.

(b) Pursuant to 62A-2-121 and R501-18, child abuse and neglect licensing data base shall also be screened for each applicant or persons 18 years of age or older living in the home to see if a report of a severe type of abuse and neglect has been substantiated by the Juvenile Court. This shall be done on initial home approval and yearly thereafter.

(5) Home Study: There shall be a current home study report on record prepared, or reviewed and signed off, by a licensed Social Worker. A home study shall be completed for each potential foster or proctor home. The home study shall be updated annually with a home visit.

(6) Provider Code of Conduct: Each foster and proctor care applicant shall read, abide by, and sign a current copy of the DHS Provider Code of Conduct.

(7) Training: Each foster and proctor care applicant shall complete the required pre-service training as specified in R501-12-5 prior to receiving a license.

(8) Approval or Denial:

(a) Following pre-service training and submission of all required documentation, the home study and an assessment of an applicant shall be completed.

(b) A license shall be issued for applicants who meet Foster Care Licensing Rules.

(c) The decision to approve or deny the applicant shall be made on the basis of facts, health and safety factors, and the professional judgment of the Agency or the Office of Licensing.

(d) No person may be denied a foster or proctor care license on the basis of race, color, or national origin of the person, or a child, involved, pursuant to the Social Security Act, Section 471(a)(18)(A).

(e) The provider shall be evaluated annually for compliance with foster care rules when renewing a license.

(f) Kinship and Specific Home Approval: An applicant may be licensed for placement of one specific child or sibling group. The home study shall be completed and all licensing requirements met. This license is valid for the duration of the specific placement only and must be renewed annually.

(g) Licensure approval is not a guarantee that a child will be placed in the home. Additional requirements for adoptive parents and adoptive assessments for children in State custody are included in R512-41(3)(4).

(h) Providers shall not be licensed or certified to provide foster or proctor care for children in the same home in which they are providing child care, as defined in UCA 26-39-102, or a licensed human service program, as defined in UCA 62A-2-101.

(i) The Office Director or designee may grant a time limited variance to a rule if it is in the best interest of the specific child and addresses how basic health and safety requirements shall be maintained in accordance with R501-1-8.

(j) All providers shall report any major changes in their lives to the Office of Licensing or Agency within 48 hours. These changes shall be re-evaluated within one month of the change by the Office of Licensing or Agency. A major change in the lives of the foster or proctor parents shall include, but is not limited to the following;

(i) death or serious illness among the members of the foster or proctor family,

(ii) separation or divorce,

(iii) loss of employment,

(iv) change of residence, or

(v) suspected abuse or neglect of any child in the foster or proctor home.

R501-12-5. Training.

(1) Applicants shall attend training required and approved by the applicable DHS Division or other approved entity and

submit verification of completed training to the Office of Licensing or Agency annually.

(2) At least one spouse shall complete the entire training series in order for the home to be licensed. The other spouse shall attend at least one third of the training.

(3) Providers associated with an Agency that is contracted to provide foster care or proctor care services shall meet the training requirements specified by the contract.

R501-12-6. Foster and Proctor Parent Requirements.

(1) Personal characteristics of foster and proctor parents shall include the following:

(a) Foster and proctor parents shall be in good health, able to provide for the physical and emotional needs of the child.

(b) Foster and proctor parents shall be emotionally stable and responsible persons over 21 years of age. Legally married couples and single individuals, may be foster or proctor parents.

(c) Foster and proctor parents shall document and verify legal residential status when appropriate.

(d) Foster or proctor parents shall have the ability to help the child grow and change in behavior.

(e) Foster or proctor parents shall not be dependent on the foster care payment for their expenses beyond those associated with foster or proctor care, and shall allocate funds as directed by Division policy. Verification of income shall be submitted with the application to the Office of Licensing or Agency on an annual basis.

(f) Division employees shall not be approved as foster or proctor parents to care for children in the custody of their respective Divisions. An employee may provide care for children in the custody of a different Division with approval of the Regional Director in accordance with DHS conflict of interest policy.

(g) Owners, directors, and members of the governing body for foster and proctor care agencies shall not serve as foster or proctor parents.

(h) Foster and proctor parents shall follow Agency rules and work cooperatively with the Agency, Courts, and law enforcement officials.

(2) Family Composition shall meet the following:

(a) The number, ages, and gender of persons in the home shall be taken into consideration as they may be affected by or have an effect upon the child.

(b) No more than two children under the age of two, shall reside in a foster home, including natural children.

(c) No more than two non-ambulatory children shall be in a foster home including infants under the age of two.

(d) No more than four foster children shall be in any one home.

(e) No more than one foster child shall be in any one home designated for proctor care by agencies contracted with DJJS.

R501-12-7. Physical Aspects of Home.

(1) The foster and proctor home shall be located in a vicinity in which school, church, recreation, and other community facilities are reasonably available.

(2) The physical facilities of the foster and proctor home shall be clean, in good repair, and shall provide for normal comforts in accordance with accepted community standards.

(3) The foster and proctor home shall be free from health and fire hazards. Each foster and proctor home shall have a working smoke detector on each floor and at least one approved fire extinguisher. An approved fire extinguisher shall be inspected annually and be a minimum of 2A:10BC five point, rated multi-purpose, dry chemical fire extinguisher.

(4) There shall be sufficient bedroom space to provide for the following:

(a) rooms are not shared by children of the opposite sex, except infants under the age of two years,

(b) children do not sleep in the parents' room, except infants under the age of two years,

(c) each child has his or her own solidly constructed bed adequate to the child's size,

(d) a minimum of 80 square feet is provided in a single occupant bedroom and a minimum of 60 square feet per child is provided in a multiple occupant bedroom excluding storage space, and

(e) no more than four children are housed in a single bedroom.

(5) Sleeping areas shall have a source of natural light and shall be ventilated by mechanical means or equipped with a screened window that opens.

(6) Closet and dresser space shall be provided within the bedroom for the children's personal possessions and for a reasonable degree of privacy.

(7) There shall be adequate indoor and outdoor space for recreational activities.

(8) Foster and proctor homes shall offer sufficiently balanced meals to meet the child's needs.

(9) All indoor and outdoor areas shall be maintained to ensure a safe physical environment.

(10) Areas determined to be unsafe, including but not limited to, steep grades, cliffs, open pits, swimming pools, hot tubs, high voltage boosters, or high speed roads, shall be fenced off or have natural barriers.

(11) Equipment: All furniture and equipment shall be maintained in a clean and safe condition. Furniture and equipment shall be of sufficient quantity, variety, and quality to meet individual needs.

(12) Exits: There shall be at least two means of exit on each level of the foster and proctor home.

R501-12-8. Safety.

(1) Foster and Proctor families shall conduct fire drills at least quarterly and provide documentation to the Office of Licensing and Agency.

(2) Foster and proctor parents shall provide and document training to children regarding response to fire warnings and other instructions for life safety.

(3) The foster or proctor home shall have a telephone. Telephone numbers for emergency assistance shall be posted next to the telephone.

(4) The foster or proctor home shall have an adequately supplied first aid kit such as recommended by the American Red Cross.

(5) Foster and Proctor parents who have firearms, ammunition, or other weapons shall assure that they are inaccessible to children at all times. Firearms and ammunition that are stored together shall be kept securely locked in security vaults or locked cases, not in glass fronted display cases. Firearms that are stored in display cases shall be rendered inoperable with trigger locks, bolts removed or other disabling methods. Ammunition for those firearms shall be kept securely locked in a separate location. This does not restrict constitutional or statutory rights regarding concealed weapons permits, pursuant to UCA 53-5-701 et seq.

(6) Foster and Proctor parents shall not provide a weapon to a minor or permit a minor to possess a weapon in violation of Sections 76-10-509 through 76-10-509.7.

(a) The Office shall identify whether a foster or proctor parent possesses or uses a firearm or other weapon and shall provide this information to the Division of Juvenile Justice Services and the Division of Children and Family Services for use in accordance with R512-302-4 and Section 63G-4-104.

(7) Foster and Proctor parents who have alcoholic beverages in their home shall assure that the beverages are kept inaccessible to children at all times.

(8) There shall be locked storage for hazardous chemicals

and materials.

R501-12-9. Emergency Plans.

(1) Foster and Proctor parents shall have a written plan of action for emergencies and disaster to include the following:

(a) evacuation with a pre-arranged site for relocation,

(b) transportation and relocation of children when necessary,

(c) supervision of children after evacuation or relocation, and

(d) notification of appropriate authorities.

(2) Foster and Proctor parents shall have a written plan for medical emergencies, including arrangements for medical transportation, treatment and care.

(3) Foster or Proctor parents shall immediately report any serious illness, injury or death of a foster or proctor child to the appropriate Division or Agency and the Office of Licensing.

R501-12-10. Infectious Disease.

(1) Foster and Proctor parents shall contact their local health department for assistance in preventing or controlling infectious and communicable diseases in the home. In the event of an infectious or communicable disease outbreak, foster and proctor parents shall follow specific instructions given by the local health department.

R501-12-11. Medication.

(1) Foster and Proctor parents shall administer prescribed medication, according to the written directions of a licensed physician. Medicine shall only be given to the child for whom it was prescribed.

(2) Medication shall not be discontinued without the approval of the licensed physician, side effects shall be reported to the licensed physician.

(3) Non-prescriptive medications may be administered by foster or proctor parents according to manufacturer's instructions.

(4) Medications shall not be administered by the foster or proctor child.

(5) Medication shall not be used for behavior management or restraint unless prescribed by a licensed physician with notification to the Division or Agency worker.

(6) There shall be locked storage for medication.

R501-12-12. Transportation.

(1) Foster and Proctor parents shall provide transportation. In case of an emergency a means of transportation shall be arranged by the foster or proctor parents.

(2) Drivers of vehicles shall have a valid Utah Drivers License and follow safety requirements of the State.

(3) Transportation shall be provided in an enclosed vehicle which has been safety inspected and equipped with seatbelts and an appropriate restraint for infants and young children.

(4) An emergency telephone number shall be in the vehicle used to transport children.

(5) Each vehicle shall be equipped with an adequately supplied first aid kit such as recommended by the American Red Cross.

R501-12-13. Behavior Management.

(1) Foster and Proctor parents shall provide supervision at all times.

(2) Foster and Proctor parents shall not use, nor permit the use of corporal punishment, physical or chemical restraint, infliction of bodily harm or discomfort, deprivation of meals, rest or visits with family, humiliating or frightening methods to control the actions of children.

(3) The foster or proctor parents' methods of discipline shall be constructive. In exercising discipline, the child's age, emotional make-up, intelligence and past experiences shall be considered.

(4) Passive restraint shall be used only in behaviorally related situations as a temporary means of physical containment to protect the child, other persons, or property from harm. Passive restraint shall not be associated with punishment in any way.

(5) Foster and Proctor parents shall inform the Division or Agency worker of any extreme or repeated behavioral problems of a child placed in the foster or proctor home.

R501-12-14. Child's Rights in Foster and Proctor Care.

(1) The foster and proctor parent shall adhere to the following:

(a) allow the child to eat meals with the family, and to eat the same food as the family unless the child has a special prescribed diet,

(b) allow the child to participate in family activities,

(c) protect privacy of information,

(d) not make copies of the child's records,

(e) explain the child's responsibilities, including household tasks, privileges, and rules of conduct,

(f) not allow discrimination,

(g) treat the child with dignity,

(h) allow the child to communicate with family, attorney, physician, clergyman, and others, except where documented otherwise,

(i) follow visitation rights as provided by DHS or Agency worker,

(j) allow the child to send and receive mail providing that security and general health and safety requirements are met, foster or proctor parents may only censor or monitor a foster or proctor child's mail or phone calls by court order,

(k) provide for personal needs and clothing allowance, and

(l) respect the child's religious and cultural practices.

R501-12-15. Record Keeping.

(1) Foster and Proctor parents shall maintain the following:

(a) current license certificate,

(b) copy of each contract with DHS,

(c) record of money provided to each foster or proctor child,

(d) record of expenditures for each foster or proctor child, and

(e) documentation of special need payments on behalf of the foster or proctor child.

(2) The Office of Licensing and Agency staff shall maintain a separate record for each child foster or proctor care home or Agency.

KEY: licensing, human services, foster care
September 9, 2004 62A-2-101 et seq.
Notice of Continuation November 15, 2007

R501. Human Services, Administration, Administrative Services, Licensing.
R501-14. Background Screening.
R501-14-1. Authority and Purpose.

(1) This Rule is authorized by and implements Sections 62A-2-108.3, 62A-2-120, 62A-2-121, 62A-2-122, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113.

(2) This Rule establishes the circumstances under which an applicant may have direct access or provide services to a child or vulnerable adult when the person has a criminal history record, is listed in the Licensing Information System or the statewide database of the Division of Aging and Adult Services, or when juvenile court records show that a court made a substantiated finding under Section 78A-6-323 that the person committed a severe type of child abuse or neglect.

(3) This Rule clarifies the standards for approving, denying, or revoking an applicant's background screening.

R501-14-2. Definitions.

(1) "Abuse" may include "severe emotional abuse", "severe physical abuse", and "emotional or psychological abuse", as these terms are defined in Sections 62A-4a-101 and Section 62A-3-301.

(2) "Applicant" means a person whose identifying information is submitted to the Department of Human Services Office of Licensing under Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-128, and 78B-6-113.

(3) "BCI" means the Bureau of Criminal Identification, and is the designated state agency of the Division of Criminal Investigation and Technical Services Division, within the Department of Public Safety, responsible to maintain criminal records in the State of Utah.

(4) "Child" is defined in Section 62A-2-101.

(5) "Comprehensive Review Committee" means the Committee appointed to conduct comprehensive reviews in accordance with Section 62A-2-120.

(6) "Direct Access" is defined in Section 62A-2-101.

(7) "Direct Service Worker" is defined in Section 62A-5-101.

(8) "Directly supervised" is defined in 62A-2-120(5).

(9) "Fingerprints" means an individual's fingerprints as copied electronically through a live-scan fingerprinting device or on two ten-print fingerprint cards by a law enforcement agency, an agency approved by the BCI, or an agency approved by the Office of Licensing.

(10) "Human services program" is defined in Section 62A-2-101.

(11) "Identifying information" means an applicant's:

(a) current and former names, aliases, and addresses,

(b) date of birth,

(c) social security number, and

(d) a current, valid state driver's license or state identification card bearing the applicant's photo, current name, and address; and

(e) Identifying information includes an applicant's fingerprints when required by law or rule, certified copies of applicable court records, and other records specifically requested by the Office of Licensing.

(12) "Licensing Information System" is created by Section 62A-4a-1006, as a sub-part of the Division of Child and Family Services' Management Information System created by Section 62A-4a-1003.

(13) "Neglect" may include "severe neglect", as these terms are defined in Sections 62A-4a-101 and 62A-3-301.

(14) "Personal Care Attendant" is defined in Section 62A-3-101.

(15) "Statewide Database" of the Division of Aging and Adult Services is created by Section 62A-3-311.1 to maintain reports of vulnerable adult abuse, neglect, or exploitation.

(16) "Substantiated" is defined in Sections 62A-3-301 and 62A-4a-101.

(17) "Supported" is defined in Section 62A-4a-101.

(18) "Vulnerable Adult" is defined in Section 62A-2-101.

R501-14-3. Background Screening Procedure.

(1)(a) An applicant for initial background screening or annual background screening renewal shall legibly complete, date and sign a background screening application and consent on a form provided by the Office of Licensing, and attach all required identifying information.

(b) An applicant for annual background screening renewal shall submit a background screening application and identifying information no later than fourteen days preceding the expiration date of the current background screening approval.

(c) An applicant for initial background screening or annual background screening renewal shall disclose all criminal charges, including pending charges, and all supported or substantiated findings of abuse, neglect or exploitation on the background screening application.

(2)(a) An applicant for initial background screening or annual background screening renewal who has not continuously lived in Utah for the five years immediately preceding the day the application is submitted shall submit fingerprints, and a cashiers' check or money order for the cost of a FBI national criminal history record check, with the background screening application.

(b) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant has spent six or more consecutive weeks outside Utah, including but not limited to education, volunteer or employment activities, military duty, or vacations.

(c) An applicant has not continuously lived in Utah for the five years immediately preceding the date of the application if the applicant presents an out-of-state driver license or an out-of-state identification card.

(d) Notwithstanding any other provision of Rule R501-14, an applicant shall submit fingerprints if the background screening is being conducted for the purpose of licensing a prospective foster home or approving a prospective adoptive placement of a child in state custody.

(3)(a) Notwithstanding Subsection R501-14-3(2)(a), an applicant for background screening who has continuously lived in Utah for the five years immediately preceding the day the application is submitted, except for time spent outside of the United States and its territories, is not required to submit fingerprints.

(b) An applicant for annual background screening renewal who has continuously lived in Utah at all times since the date of the initial background screening approval is not required to submit fingerprints with the renewal application.

(4) An applicant who has lived outside of the United States during the five years immediately preceding the date of the application shall attach an original or certified copy of:

(a) a criminal history report from each country lived in;

(b) a letter of honorable release from U.S. military or full-time ecclesiastical service, from each country lived in; or

(c) other written verification of criminal history from each country lived in, as approved by the Office of Licensing Background Screening Unit supervisor.

(5)(a) An applicant shall submit the completed application and consent form, and all required identifying information, to the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only).

(b) The applicable licensing specialist, human services

program, local government employer (for certified local inspector applicants only), Area Agency on Aging (for Personal Care Attendant applicants only), or Division of Services for People With Disabilities (for Direct Service Worker applicants only), shall:

(i) inspect the applicant's state driver's license or state identification card and make a good faith effort to determine that it does not appear to have been forged or altered;

(ii) inspect the copy of applicant's state driver's license or state identification card and make a good faith effort to determine that it appears to be identical to the original; and

(iii) forward the inspected copy of applicant's state driver's license or state identification card, the completed application and consent form, and all other required identifying information, to the Office of Licensing background screening unit within five calendar days after the applicant completes and signs the application.

(6) An application that is illegible, incomplete, unsigned, undated, or lacks a signed consent or required identifying information, may be returned to the individual who submitted it without further action.

(7)(a) Identifying information submitted pursuant to Sections 62A-2-108.3, 62A-2-120, 62A-3-104.3, 62A-5-103.5, 78B-6-113, and 78B-6-128 shall be used to search criminal history records, the Licensing Information System, juvenile court records under Section 78A-6-323, and the statewide database.

(i) Identifying information submitted in accordance with Section 62A-2-120(1)(f) shall also be used to check the child abuse and neglect registry in each state where the applicant resided in accordance with Section 62A-2-120(1)(g).

(b) In accordance with Section 62A-5-103.5, a direct service worker who is a direct ancestor or descendant, or who is an aunt, uncle or sibling of the person to whom services are rendered, shall be exempt from a criminal history record search, but shall remain subject to a search of the Licensing Information System, juvenile court records under Section 78A-6-323, and the statewide database.

(8)(a) Except as permitted by Section 62A-2-120(5), an applicant for an initial background screening shall have no direct access to a child or vulnerable adult prior to receiving written confirmation of background screening approval from the Office of Licensing.

(b) Except as permitted by Section 62A-2-120(5), an applicant seeking annual background screening renewal shall have no direct access to a child or vulnerable adult after the background screening expiration date and prior to receiving written confirmation of background screening approval from the Office of Licensing.

(9) Upon receipt of a signed, legible, completed application and identifying information, the Office of Licensing shall:

(a) investigate and make a preliminary determination of whether the applicant has been charged with any crime and the disposition of any charges; and

(b) search the Licensing Information System, juvenile court records, and the statewide database, and make a preliminary determination of whether the applicant has any supported or substantiated findings of abuse, neglect or exploitation.

(10)(a) The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.

(b) The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.

(11) The Office of Licensing may notify an applicant of its preliminary determination that the applicant may have a criminal history outside of Utah, and require an applicant to:

(a) submit fingerprints, and a cashier's check or money order for the cost of a nationwide criminal history check, within 15 calendar days of a letter of notification;

(b) obtain and submit a certified copy of the applicant's criminal history or records from local, state, federal, or foreign officials within 15 calendar days of a letter of notification.

(12)(a) The Office of Licensing shall send all written communications to the applicant or to the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) by first-class mail.

(b) A human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only) shall provide the applicant with a copy of all written communication from the Office of Licensing within 5 calendar days after the date it is received.

(13) The applicant shall promptly notify the Office of Licensing of any change of address while the application remains pending.

R501-14-4. Results of Screening.

(1)(a) The Office of Licensing shall approve an application for background screening in accordance with Section 62A-2-120(2).

(b) The Office of Licensing shall notify the applicant, the applicable licensing specialist, human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), that the applicant's background screening application is approved.

(c) The approval granted by the Office of Licensing shall be valid for a period not to exceed one calendar year from the date of approval.

(i) Notwithstanding Subsection R501-14-4(1)(c), an applicant's background screening approval that is issued for the purpose of a preplacement adoptive evaluation in accordance with Section 78B-6-128 shall be valid for 18 calendar months from the date of approval.

(d) An approval granted by the Office of Licensing shall not be transferable, except as provided in Section R501-14-9.

(e) Except as provided in Section R501-14-9, a new application shall be submitted each time an applicant may have direct access or provide services to a child or vulnerable adult at any human services program other than the program identified on the initial application.

(2) The Office of Licensing shall deny an application for background screening in accordance with Subsections 62A-2-120(3) and 62A-2-120-(8).

(3) The Office of Licensing shall refer an application to the Comprehensive Review Committee for a comprehensive review in accordance with Section 62A-2-120(4).

R501-14-5. Comprehensive Review Committee.

(1) The Director of the following Department of Human Services divisions and offices shall appoint one member and one alternate to serve on the Comprehensive Review Committee:

(a) the Executive Director's Office;

(b) the Division of Aging and Adult Services;

(c) the Division of Child and Family Services;

(d) the Division of Juvenile Justice Services;

(e) the Division of Services for People with Disabilities;

(f) the Division of Substance Abuse and Mental Health;

(g) Public Guardian; and

(h) the Office of Licensing.

(2) Comprehensive Review Committee members and alternates shall be professional staff persons who are familiar with the programs they represent.

(3) The appointed Office of Licensing member shall chair the Comprehensive Review Committee as a non-voting member.

(4) Five voting members shall constitute a quorum.

(5) The Comprehensive Review Committee shall conduct a comprehensive review of an applicant's background screening application, criminal history records, abuse, neglect or exploitation records, and related circumstances, in accordance with Section 62A-2-120(4).

R501-14-6. Comprehensive Review Investigation.

(1) The Comprehensive Review Committee shall not deny a background screening application without the Office of Licensing first sending the applicant a written notice that:

(a) the Office is investigating the applicant's criminal history or findings of abuse, neglect or exploitation;

(b) the applicant is encouraged to submit any written statements or records that the applicant wants the Comprehensive Review Committee to consider;

(c) the Comprehensive Review Committee evaluates information using the criteria established by Section 62A-2-120(4)(b), and the applicant may specifically address these issues; and

(d) submissions must be received within 15 calendar days of the written notice.

(2)(a) The Office of Licensing shall gather information described in Section 62A-2-120(4)(b) and provide available information to the Comprehensive Review Committee.

(b) The Office of Licensing may request additional information from any available source, including the applicant, victims, witnesses, investigators, the criminal justice system, law enforcement agencies, the courts and any others it deems necessary for the comprehensive evaluation of an application.

(i) The Office of Licensing may defer action on an application until the applicant submits all additional information required by the Office of Licensing.

(ii) The Office of Licensing may deny an application in the event that an applicant fails to provide all additional information required by the Office of Licensing.

R501-14-7. Comprehensive Review Determination.

(1) The Comprehensive Review Committee shall only consider applications presented by the Office of Licensing. The Comprehensive Review Committee shall evaluate the information provided by the Office of Licensing and any information provided by the applicant.

(2) The Comprehensive Review Committee shall recommend approval of the background screening of an applicant only after a simple majority of the voting members of the Comprehensive Review Committee determines that approval will not likely create a risk of harm to a child or vulnerable adult.

(3) The Comprehensive Review Committee shall recommend denial of the background screening of an applicant when it finds that approval will likely create a risk of harm to a child or vulnerable adult.

(4) The Office of Licensing shall approve or deny the applicant's background screening application in accordance with the recommendation of the Comprehensive Review Committee, and send written notification to the applicant, the applicant's licensing specialist, the licensed human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), or a direct service worker's employer (if any).

R501-14-8. Post-Approval Responsibilities.

(1) An applicant, a human services program the applicant is associated with (if any), a certified local inspector applicant's local government employer (if any), a person described in Subsections 62A-3-101(9)(a)(i) through (iv) (if any), and a direct service worker's employer (if any), shall immediately notify the Office of Licensing if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78A-6-323, or the statewide database after a background screening application is approved.

(a) An applicant who is associated with a human services program shall immediately notify the human services program if the applicant is charged with any felony, misdemeanor, or infraction, or listed in the Licensing Information System, juvenile court records under Section 78A-6-323, or the statewide database.

(2) An applicant who has received an approved background screening shall resubmit an application and identifying information to the Office of Licensing within ten calendar days after being charged with any felony, misdemeanor, or infraction, or being listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78A-6-323.

(3) An applicant who has been charged with any felony, misdemeanor, or infraction or listed in the Licensing Information System or the statewide database, or juvenile court records under Section 78A-6-323, after a background screening application is approved shall have no unsupervised direct access to a child or vulnerable adult until after an application and identifying information have been resubmitted to the Office of Licensing and a current background screening approval is received from the Office of Licensing.

(4)(a) An applicant charged with an offense for which there is no final disposition shall inform the Office of Licensing of the current status of each case.

(b) The Office of Licensing shall determine whether the charge could require a denial or committee review, and if so, notify the applicant to submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.

(c) An applicant shall submit a certified copy of judicial documentation that indicates the current status of the case at least once every 3 months until final disposition.

(5) The Office of Licensing may revoke the background screening approval of an applicant who:

(a) has been charged with any felony, misdemeanor, or infraction or is listed in the Licensing Information System, the statewide database, or juvenile court records under Section 78A-6-323; or

(b) fails to provide required current status information; and

(c) will likely create a risk of harm to a child or vulnerable adult, as determined by the Office of Licensing.

(6) The Office of Licensing shall process identifying information received pursuant to Subsection R501-14-8(2) in accordance with Rule R501-14.

R501-14-9. Confidentiality.

(1) The Office of Licensing may disclose criminal background screening information, including information acknowledging the existence or non-existence of a criminal history, only to the Applicant, the applicable human services program, local government employer (for certified local inspector applicants only), the Area Agency on Aging (for Personal Care Attendant applicants only), or the Division of Services for People With Disabilities (for Direct Service Worker applicants only), and in accordance with the Government Records Access and Management Act, Section 63G-2-101, et seq.

(2) Except as described below, background screening approvals may not be transferred or shared between human service programs.

(a) A licensed child-placing agency may provide the approval granted by the Office of Licensing to the person who is the subject of the approval, another licensed child-placing agency, or the attorney for the adoptive parents, in accordance with Section 53-10-108(4).

(b) A licensed human services program may provide a copy of the approval granted by the Office of Licensing to another licensed human services program with the prior written consent of the person who is the subject of the approval.

(c) A licensed human services program may permit an individual to have direct access to a child or vulnerable adult if:

(i) the program receives a copy of the approval granted by the Office of Licensing for the person from another licensed human services program;

(ii) both the sending and receiving human services programs are licensed to provide the same categories of services to the same client populations; and

(iii) the program receives written confirmation from the Office of Licensing that the background screening approval has not expired or been revoked.

R501-14-10. Retention of Background Screening Information.

A human services program shall retain the background screening information of all individuals associated with the program for a minimum of eight years after the termination of the individual's association with the program.

R501-14-11. Expungement.

An applicant whose background screening application has been denied due to the applicant's criminal record may submit a new application with a certified copy of an Order of Expungement.

R501-14-12. Administrative Hearing.

A notice of agency action that denies or revokes the applicant's background screening application shall inform the applicant of the right to appeal in accordance with Administrative Rule 497-100 and Section 63G-4-101, et seq.

R501-14-13. Compliance.

Any licensee that is in operation on the effective date of this rule shall be given 30 days after the effective date to achieve compliance with this rule.

KEY: licensing, background screening, fingerprinting
September 15, 2007 62A-2-108 et seq.

R512. Human Services, Child and Family Services.
R512-309. Out-of-Home Services, Foster Parent Reimbursement of Motor Vehicle Insurance Coverage for Youth in Foster Care.
R512-309-1. Purpose and Authority.

(1) The purpose of this rule is to establish parameters and a process in which Child and Family Services may, within amounts appropriated for this specific purpose, reimburse a foster parent for providing owner's or operator's security covering a youth in foster care's operation of a vehicle if the youth is in the legal custody of Child and Family Services.

(2) Section 62A-4a-121 provides Child and Family Services the authority to provide reimbursement to a foster parent who is willing to provide motor vehicle insurance for a youth in their care to operate a motor vehicle.

(3) This rule is authorized by Section 62A-4a-102.

R512-309-2. Definitions.

(1) The following terms are defined for the purposes of this rule:

(a) "Child and Family Services" means the Division of Child and Family Services.

(b) "Foster parent" means a licensed resource family, also known as a licensed foster family, and may also include a licensed kinship provider. Foster parent does not include a group home or residential facility that provides Out-of-Home Services under contract with Child and Family Services.

(c) "Guardianship" has the same meaning as defined in Section 78A-6-105.

(d) "Minor" has the same meaning as defined in Section 53-3-211.

(e) "Owner's or operator's security" is described in Section 41-12a-301.

R512-309-3. Eligibility Requirements.

(1) The child has been placed in the home of a foster parent who is receiving a foster care maintenance payment from Child and Family Services.

(2) Obtaining a driver's license is an objective of the Child and Family Plan that has been developed for the youth with Transition to Adult Living Services.

(3) The foster parent is willing to assume the responsibility for signing as the responsible adult for a youth in foster care to receive a driver's license under Section 53-3-211.

(a) The foster parent is willing to provide the minimum insurance coverage for the youth as described in Section 31A-22-304.

(b) The foster parent will sign a liability waiver in case they do not sustain the automobile insurance.

(c) The foster parent will ensure that the vehicle in which they have insured the youth is in good operating condition.

(4) The foster parent has full knowledge that by signing to be that responsible adult, the foster parent is jointly and severally liable with the minor for civil compensatory damages caused by the minor when operating a motor vehicle upon the highway as provided under Subsections 53-3-211(2) and (4).

(a) The foster parent's liability may not exceed the greater of the minimum liability insurance policy limits established under 31A-22-304 or the policy limits of the foster parent's liability insurance policy issued in accordance with Section 31A-22-302 that were in effect at the time damages were caused by the minor's operation of a motor vehicle.

(5) The foster parent who signs the application of a minor for a provisional license must certify that the minor applicant, under the authority of a permit issued, has completed at least 40 hours driving in a motor vehicle, of which at least 10 hours shall be during night hours after sunset.

R512-309-4. Method for Determining Amount of Reimbursement for a Foster Parent.

(1) In accordance with 62A-4a-121, Child and Family Services may reimburse a foster parent for providing owner's or operator's security covering a youth's operation of a motor vehicle in amounts required under Section 31A-22-304 if the youth is in the legal custody of Child and Family Services. Reimbursement will be limited to the minimum liability insurance policy limits established under 31A-22-304.

(a) As allowed within the amounts appropriated to Child and Family Services for this purpose, Child and Family Services will reimburse the additional cost of the insurance premium for a youth when the foster parent has met the eligibility requirements.

(i) The foster parent will submit to Child and Family Services a current and valid statement from the insurance company that will identify the actual cost of providing insurance coverage for the youth in foster care.

R512-309-5. Child and Family Services Responsibility to Foster Parent.

(1) Child and Family Services will notify the Driver License Division of a request that the permit or license of the youth be cancelled when a person who has signed the application makes a written request to Child and Family Services that the permit or license of a youth in foster care be cancelled.

(2) Child and Family Services will verify to the foster parent upon cancellation of the permit or license for the youth that they are relieved from liability for that youth operating a motor vehicle subsequent to the cancellation.

KEY: child welfare, foster care
January 21, 2009

31A-22-302
31A-22-304
41-12a-301
62A-4a-121
62A-4a-102
53-3-211
78A-6-105

R523. Human Services, Substance Abuse and Mental Health.
R523-1. Procedures.
R523-1-1. Board of Substance Abuse and Mental Health-Responsibilities.

(1) The State Board of Substance Abuse and Mental Health is the program policy making body for the Division of Substance Abuse and Mental Health and for programs funded with state and federal monies. The Board has the authority and the responsibility to establish by rule procedures for developing its policies which seek input from local mental health authorities, consumers, providers, advocates, division staff and other interested parties (Section 62A-15-105). In order to ensure public input into the policy making procedure the Board will:

(a) Convene an annual meeting, inviting local mental health authorities, consumers, providers, advocates and division staff to provide them an opportunity to comment and provide input on new policy or proposed changes in existing policy.

(b) The Board shall include, as necessary, a time on the agenda at each regularly scheduled board meeting to entertain public comment on new policy or proposed changes in existing policy.

(c) Public requests to revise existing policy or consider new policy shall be made in writing to the Board in care of the Division of Substance Abuse and Mental Health.

(d) The Division shall prepare, for the Board's review, any comments they are in receipt of relative to public policy, which will be addressed at a regularly scheduled board meeting.

(e) The Board may direct the Division to follow-up on any unresolved issues raised as a result of policy review and report their findings at the next scheduled board meeting.

R523-1-2. State and Local Relationships.

(1) Local Mental Health Authorities (LMHA) are the "service designees" of the State Division of Substance Abuse and Mental Health (Division) to provide comprehensive mental health services as defined by state law pursuant to Section 17-43-302.

(2) When the Division requires other services outside the comprehensive range specified by law, it shall provide LMHAs the first opportunity to accept or reject the service contract. If the LMHA rejects the contract in writing or fails to meet the terms of the contract as determined by the Division, the Division may contract with any qualified provider, through a Request For Proposal (RFP) process. If an agency other than the LMHA receives a contract to provide a mandated service, the contracted service provider shall inform the LMHA that they have been awarded the contract and offer to coordinate the service with existing services provided by the LMHA.

(3) The Division has the responsibility and authority to monitor LMHA contracts. Each mental health catchment area shall be visited at least once annually to monitor compliance. The mental health center will be provided preliminary findings from the site review and an opportunity to comment. A written report will be sent to each LMHA describing the findings from the site visit.

(4) The Division shall oversee the continuity of care for services provided to consumers and resolve conflicts between the Utah State Hospital (USH) and LMHA, and also those between LMHA's.

(a) if negotiations between LMHA's and the USH regarding admissions, discharges or provisions of consumer services fail to be resolved at the local level, the following steps shall be taken:

(i) the director of the Division or designee shall appoint a committee to review the facts of the conflict and make recommendations;

(ii) if the recommendations of the committee do not adequately resolve the conflict, the clinical or medical director of the local mental health center and USH clinical director shall meet and attempt to resolve the conflict;

(iii) if a resolution cannot be reached, the community mental health center director and the superintendent of the USH shall meet and attempt to resolve the conflict;

(iv) if a resolution cannot be reached, the director of the Division or designee shall make the final decision.

(b) If conflicts arise between LMHA's regarding admissions, discharges, or provisions of consumer services, the final authority for resolution shall rest with the director of the Division or designee.

R523-1-3. Program Standards.

(1) The State Board of Substance Abuse and Mental Health, in compliance with law, adopts the policy that available state funds will be distributed on a 80% State, 20% local match basis to local mental health authorities which provide the continuum of care and meet the public policy priority adopted by the Board (17-43-102, 62A-1-107(6)). The Division of Substance Abuse and Mental Health will carry out this policy. A comprehensive mental health program includes:

(a) Inpatient care and services (hospitalization)
(b) Residential care and services
(c) Day treatment and psycho-social rehabilitation
(d) Outpatient care and services
(e) Twenty-four hour crisis care and services
(f) Outreach care and services
(g) Follow-up care and services
(h) Screening for referral services
(i) Consultation, education and preventive services (case consultation, public education and information, etc.)
(j) Case management.

(2) Each local mental health authority shall be responsible for providing these services directly or contracting for these services.

(3) The primary responsibility of the Division of Substance Abuse and Mental Health will be to insure the provision of services for those citizens who enter the mental health system directly as consumers and to work cooperatively with other agencies. Other public agencies such as Education, Corrections, Health and Social Services will have primary responsibility for arranging for or providing and paying for the mental health needs of citizens served by their agency when the required service directly benefits or is tied to their agency responsibility. The Division of Substance Abuse and Mental Health will clearly define items 1-9 above so that evaluation and implementation is feasible. These definitions will be approved by the State Board of Substance Abuse and Mental Health.

R523-1-4. Private Practice.

(1) Private practice policies shall be determined by local community mental health authorities. These policies will be available in written form for State review.

R523-1-5. Fee for Service.

(1) Each local authority:

(a) Shall require all programs that receive federal and state funds from the Division of Substance Abuse and Mental Health (Division) and provide services to clients to establish a policy to set and collect fees.

(i) Each fee policy shall include:

(A) a fee reduction plan based on the client's ability to pay for services; and

(B) a provision that clients who have received an assessment and require mental health treatment or substance abuse services will not be denied services based on the lack of ability to pay.

(ii) Any adjustments to the assessed fee shall follow the

procedures approved by the local authority.

(b) Shall approve the fee policy; and

(c) Shall set a usual and customary rate for services rendered.

(2) All programs shall provide a written explanation of the fee policy to all clients at the time of intake except in the case of emergency services.

(3) All clients shall be assessed fees based on:

(a) the usual and customary rate established by the local authorities, or

(b) a negotiated contracted cost of services rendered to clients.

(4) Fees assessed to clients shall not exceed the average cost of delivering the service.

(5) All fees assessed to clients, including upfront administrative fees, shall be reasonable as determined by the local authority.

(6) All programs shall make reasonable effort to collect outstanding fee charges and may use an outside collection agency.

(7) All programs may reduce the assessed fee for services if the fee is determined to be a financial hardship for the client.

(8) The Division shall annually review each program's policy and fee schedule to ensure that the elements set in this rule are incorporated.

R523-1-6. Priorities for Treatment.

(1) Mental health services provided through public funds (federal, state, and local match) will address current mental health priorities listed below. The State Division of Substance Abuse and Mental Health, in collaboration with the Utah Council of Mental Health Program, Inc.'s evaluation committee (SCHEDULE), will develop or approve procedures and forms for periodic needs assessments.

(2) Immediacy of need and severity of the mental illness are the two primary variables considered in developing the following priorities of treatment. It is to be understood that emphasis upon certain under-served age groups may be given as appropriately demonstrated through needs studies.

(a) Effective and responsive crisis intervention assessment, direct care, and referral program available to all citizens.

(b) Provision of the least restrictive and most appropriate treatment and settings for:

a. severely mentally ill children, youth, and adults;

b. acutely mentally ill children, youth, and adults.

(c) Provisions of services to emotionally disabled children, youth and aged citizens who are neither acutely nor severely mentally ill, but whose adjustment is critical for their future as well as for society in general.

(d) Provision of services to emotionally disabled adults who are neither acutely nor severely mentally ill, but whose adjustment is critical to their personal quality of life as well as for society in general.

(e) Provision of consultation, education and preventive mental health services targeted at high risk groups in particular.

R523-1-7. Collections Carryover.

(1) Local center programs may carry collections forward from one fiscal year to another.

(2) Centers receive two general types of revenues - appropriations and collections. These terms are defined as follows:

(a) Appropriations:

(i) State appropriated monies

(ii) Federal Block Grant dollars

(iii) County Match of at least 20%

(b) Collections:

(i) First and third party reimbursements

(ii) Any other source of income generated by the center.

R523-1-8. Consumers Rights.

(1) Each local mental health center shall have a written statement reflecting consumers rights. General areas for consideration should be:

(a) consumer involvement in treatment planning.

(b) consumer involvement in selection of their primary therapist.

(c) consumer access to their individual treatment records.

(d) informed consent regarding medication

(e) grievance procedures

(2) This statement should also indicate the Center's commitment to always treat mental health consumers with dignity and individuality in a positive, supportive and empowering manner. This document is to be shared with the consumer at the time of intake and a signed copy made part of their individual file. The State Division of Substance Abuse and Mental Health shall periodically review this process to assure appropriate content within the rights statement and proper application of the intent of this policy.

R523-1-9. Statewide Program Evaluation, Research, and Statistics.

(1) Responsibility for Statewide program evaluation, research, and statistics belongs to the Division of Substance Abuse and Mental Health. This responsibility includes data system leadership, coordination, implementation, and monitoring.

(2) The Division of Substance Abuse and Mental Health shall develop and maintain, in collaboration with local mental health providers, a set of data system principles that address at least the following topics: standardization of data variables and definitions; variable integration across data sets; procedures for requesting data from MHOs; procedures for data review and dissemination; MHC participation in planning new statistical reports and requests; cost-effective and practical data collection procedures; confidentiality and data security; accuracy and data quality control; updating regular reports; and procedures for reviewing and updating the principles.

(3) The Division of Substance Abuse and Mental Health, in collaboration with the local Mental Health Authorities and their providers, shall assess service effectiveness (outcomes) and efficiency (productivity) and report the results to the State Board of Substance Abuse and Mental Health in an annual report. This report or reports shall contain data results on effectiveness and efficiency for the previous year, and a plan for assessing these variables for the following year. Changes in procedures for data collection and analysis for the previous year, and changes in data system principles shall also be reported to the Board.

R523-1-10. Allocation of Utah State Hospital Bed Days to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-611(2)(a), the Board herein establishes, by rule, a formula to allocate to local mental health authorities adult beds for persons who meet the requirements of UCA 62A-15-610(2)(a).

2. The formula established provides for allocation based on (1) the percentage of the state's adult population located within a mental health catchment area: and (2) a differential to compensate for the additional demand for hospital beds in mental health catchment areas that are located within urban areas.

3. The Board hereby establishes a formula to determine adult bed allocation:

a. The most recent available population estimates are obtained from the Utah Population Estimates Committee.

b. The total adult population figures for the State are identified which includes general adults and geriatric populations. Adult means age 18 through age 64. Geriatric

means age 65 and older.

c. Adult and Geriatric population numbers are identified for each county.

d. The urban counties are identified (county classifications are determined by the lieutenant governor's office pursuant to UCA 17-50-501 and 17-50-502 and the most recent classifications are used to determine which counties are defined as urban) and given a differential as follows:

i. The total number of adult beds available at the Utah State Hospital are determined, from which the total number of geriatric beds and adult beds are identified.

ii. 4.8% is subtracted from the total number of beds available for adults to be allocated as a differential.

iii. 4.8% is subtracted from the total number of beds available for geriatrics to be allocated as a differential.

e. The total number of available adult beds minus the differential is multiplied by the county's percentage of the state's total adult and geriatric populations to determine the number of allocated beds for each county.

f. Each catchments area's individual county numbers are added to determine the total number of beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

g. The differential beds are then distributed to urban counties based on their respective percentage of urban counties as a whole.

h. At least one adult (18 - 64) bed is allocated to each community mental health center.

4. In accordance with UCA 62A-15-611(6), the Board shall periodically review and make changes in the formula as necessary to accurately reflect changes in population.

5. Applying the formula.

a. Adjustments of adult beds, as the formula is applied, shall become effective at the beginning of the next fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate adult bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in adult bed allocation.

6. The number of allocated adult beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

7. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-12. Program Standards.

(1) The State Board of Substance Abuse and Mental Health has the power and the duty to establish by rule, minimum standards for community mental health programs (Section 62A-15-105).

(a) Each Community Mental Health Center shall have a current license issued by the Office of Licensing, Department of Human Services.

(b) Each Center shall have a comprehensive plan of service which shall be reviewed and updated at least annually to reflect changing needs. The plan shall:

(i) Be consistent with the "Comprehensive Mental Health Plan For Services To The Seriously Mentally Ill",

(ii) Designate the projected use of state and federal contracted dollars,

(iii) Define the Center's priorities for service and the population to be served.

(c) Each Center shall provide or arrange for the provision of services within the following continuum of care.

(i) Inpatient care and services (hospitalization),

(ii) Residential care and services,

(iii) Day treatment and Psycho-social rehabilitation,

(iv) Outpatient care and services,

(v) Twenty-four hour crisis care and services,

(vi) Outreach care and services,

(vii) Follow-up care and services,

(viii) Screening for referral services,

(ix) Consultation, education and preventive services,

(x) Case management.

(d) Each Center shall participate in a yearly on-site evaluation conducted by the Division.

(e) The local mental health authority shall be responsible for monitoring and evaluating all subcontracts to ensure:

(i) Services delivered to consumers commensurate with funds provided,

(ii) Progress is made toward accomplishing contract goals and objectives.

(f) The local mental health authority shall conduct a minimum of one site visit per year with each subcontractor. There shall be a written report to document the review activities and findings, a copy of which will be made available to the Division.

R523-1-14. Designated Examiners Certification.

(1) A "Designated Examiner" is a licensed physician or other licensed mental health professional designated by the Division as specially qualified by training or experience in the diagnosis of mental or related illness (62A-15-602(3) and 62A-15-606).

(a) The Division shall certify that a designated examiner is qualified by training and experience in the diagnosis of mental or related illness. Certification will require at least five years continual experience in the treatment of mental or related illness in addition to successful completion of training provided by the Division.

(b) Application for certification will be achieved by the applicant making a written request to the Division for their consideration. Upon receipt of a written application the Director will cause to occur a review and examination of the applicants qualifications.

(c) The applicant must meet the following minimum standards in order to be certified.

(i) The applicant must be a licensed mental health professional.

(ii) The applicant must be a resident of the State of Utah.

(iii) The applicant must demonstrate a complete and thorough understanding of abnormal psychology and abnormal behavior, to be determined by training, experience and written examination.

(iv) The applicant must demonstrate a fundamental and working knowledge of the mental health law. In particular, the applicant must demonstrate a thorough understanding of the conditions which must be met to warrant involuntary commitment, to be determined by training, experience and written examination.

(v) The applicant must be able to discriminate between abnormal behavior due to mental illness which poses a substantial likelihood of serious harm to self or others from those forms of abnormal behavior which do not represent such a threat. Such knowledge will be determined by experience, training and written examination.

(vi) The applicant must be able to demonstrate a general knowledge of the court process and the conduct of commitment hearings. The applicant must demonstrate an ability to provide the court with a thorough and complete oral and written evaluation that addresses the standards and questions set forth in the law, to be determined by experience, training and written and oral examination.

(d) The Division Director will determine if experience and qualifications are satisfactory to meet the required standards. The Director will also determine if there are any training requirements that may be waived due to prior experience and training.

(e) Upon satisfactory completion of the required experience and training, the Director will certify the qualifications of the applicant, make record of such certification and issue a certificate to the applicant reflecting his status as a designated examiner and authorize the use of privileges and responsibilities as prescribed by law.

R523-1-15. Funding Formula.

(1) The Board shall establish by rule a formula for the annual allocation of funds to local mental health authorities through contracts (Section 62A-12-105).

(2) The funding formula shall be applied annually to state and federal funds appropriated by the legislature to the Division and is intended for the annual equitable distribution of these funds to the state's local mental health authorities.

(a) Appropriated funds will be distributed annually on a per capita basis, according to the most current population data available from the Office of Planning and Budget. New funding and/or decreases in funding shall be processed and distributed through the funding formula.

(b) The funding formula shall utilize a rural differential to compensate for additional costs of providing services in a rural area which may consider: the total population of each county, the total population base served by the local mental health center and/or population density.

(c) In accordance with UCA Section 62A-12-105 the funding formula may utilize a determination of need other than population if the board establishes by valid and acceptable data, that other defined factors are relevant and reliable indicators of need.

(d) Each Local Mental Health Authorities shall provide funding equal to at least 20% of the state funds that it receives to fund services described in that local mental health authority's annual plan in accordance with, UCA Section 17A-3-602.

(e) Application of the formula for allocation of state and federal funds may be subject to a phase-in plan for FY 03 through FY 06. At the latest, appropriations for FY 06 shall be allocated in accordance with the funding formula without any phase-in provisions.

(f) The formula does not apply to:

(i) Funds that local mental health authorities receive from sources other than the Division.

(ii) Funds that local mental health authorities receive from the Division to operate a specific program within its jurisdiction that is available to all residents of the state.

(iii) Funds that local mental health authorities receive from the Division to meet a need that exists only within the jurisdiction of that local mental health authority.

(iv) Funds that local mental health authorities receive from the Division for research projects.

R523-1-16. Allocation of Utah State Hospital Pediatric Beds to Local Mental Health Authorities.

1. Pursuant to UCA 62A-15-612(2), the Board herein establishes, by rule, a formula to allocate to local mental health authorities pediatric beds for persons who meet the requirements of UCA 62A-15-610(2)(b).

2. The formula established provides for allocation based on the percentage of the state's population of persons under the age of 18 located within a mental health catchment area.

3. Each community mental health center shall be allocated at least one pediatric bed. (UCA 62A-15-612(3))

4. The board hereby establishes a formula to determined pediatric bed allocation:

a. The most recent available population estimates are obtained from the Governor's Office of Planning and Budget.

b. The total pediatric population figures for the State are identified. Pediatric means under the age of 18.

c. Pediatric population figures are identified for each county.

d. The total number of pediatric beds available is multiplied by the county's percentage of the state's total pediatric population. This will determine the number of allocated pediatric beds for each county.

e. Each catchment area's individual county numbers are added to determine the total number of pediatric beds allocated to a catchment area. This fractional number is rounded to the nearest whole bed.

5. In accordance with UCA 62A-15-612(6), the Board shall periodically review and make changes in the formula as necessary.

6. Applying the formula.

a. Adjustments of pediatric beds, as the formula is applied, shall become effective at the beginning of the new fiscal year.

b. The Division of Substance Abuse and Mental Health, as staff to the Board, is responsible to calculate pediatric bed allocation as directed by the Board or as required by statute.

c. Each local mental health authority will be notified of changes in pediatric bed allocation.

7. The number of allocated pediatric beds shall be reviewed and adjusted as necessary or at least every three years as required by statute.

8. A local mental health authority may sell or loan its allocation of adult beds to another local mental health authority.

R523-1-17. Medication Procedures for Children, Legal Authority.

(1) The Division of Substance Abuse and Mental Health hereby establishes due process procedures for children prior to the administration of antipsychotic medication, pursuant to Section 62A-15-704(3)(a)(i).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health.

(b) Antipsychotic medication means any antipsychotic agent usually and customarily prescribed and administered in the chemical treatment of psychosis.

(c) A legal custodian is one who has been appointed by the Juvenile Court and may include the Division of Child and Family Services, the Division of Juvenile Justice Services, and the Division of Substance Abuse and Mental Health.

(d) A legal guardian is one who is appointed by a testamentary appointment or by a court of law.

(e) A person under the age of 18 may be treated with antipsychotic medication when, as provided in this section, any one or more of the following exist:

(i) The child and parent/legal guardian/legal custodian give consent.

(ii) The child or the parent/legal guardian/legal custodian does not give consent, but a Neutral and Detached Fact Finder determines that antipsychotic medication is an appropriate treatment.

(iii) The medication is necessary in order to control the child's dangerous behavior and it is administered for an exigent circumstance according to this rule.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with antipsychotic medications:

(i) The nature of the child's mental illness.

(ii) The recommended medication treatment, its purpose, the method of administration, and dosage recommendations.

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment.

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered.

(v) The possible side effects, if any of the recommended

treatment.

(vi) The ability of the staff to recognize any side effects which may actually occur and the possibility of ameliorating or abating those side effects.

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable.

(viii) The right to give or withhold consent for the proposed medication treatment.

(ix) When informing a child and his/her parent/legal guardian/legal custodian that they have the right to withhold consent the staff must inform them that the mental health authority has the right to initiate a medication hearing and have a designated examiner determine whether the proposed treatment is necessary.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information under subsection F of this section, and that they consent to the proposed medication treatment.

(h) If either the child or parent/legal guardian/legal custodian refuses to give consent, the mental health authority may initiate a medication hearing in accordance with subsection J of this rule.

(i) Antipsychotic medication may be administered under the following exigent circumstances:

(i) A qualified physician has determined and certifies that he/she believes the child is likely to cause injury to him/herself or to others if not immediately treated. That certification shall be recorded in the Physician's Orders of the child's medical record and shall contain at least the following information:

(A) A statement by the physician that he/she believes the child is likely to cause injury to himself/herself or others if not immediately restrained and provided medication treatment.

(B) The basis for that belief (including a statement of the child's behaviors).

(C) The medication administered.

(D) The date and time the medication was begun.

(j) Involuntary treatment in exigent circumstances may be continued for 48 hours, excluding Saturdays, Sundays, and legal holidays. At the expiration of that time period, the child shall not be involuntarily treated unless a Notice to Convene a Medication Hearing has been prepared and provided to the child pursuant to the provision of subsection K of this section.

(k) If the child and/or parent/legal guardian/legal custodian refuse to give consent the treating staff may request a medication hearing be held to determine if medication treatment is appropriate.

(i) The treating physician shall document in the child's medical record, the child's diagnosis, the recommended treatment, the possible side effects of such treatment, the desired benefit of such treatment, and the prognosis.

(ii) The treating staff shall complete a Request to Convene a Medication Hearing form and submit it to the Director/Designee of the local mental health authority who will contact a Neutral and Detached Fact Finder and set a date and time for the hearing. The child and parent/legal guardian/legal custodian shall be provided notice of the medication hearing and the hearing shall be set as soon as reasonably possible after a request has been made, but no sooner than 24 hours of notification being provided to the child and parent/legal guardian/legal custodian.

(iii) Prior to the hearing, the Neutral and Detached Fact Finder is provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information.

(l) Medication hearings shall be conducted by a Neutral and Detached Fact Finder, shall be heard where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions. Other persons may attend the hearing if appropriate.

(ii) The Neutral and Detached Fact Finder shall begin each medication hearing by explaining the purpose and procedure of the hearing to the child, parent/legal guardian/legal custodian, and any other persons present.

(iii) The Neutral and Detached Fact Finder will review the child's current condition and recommended course of treatment.

(iv) The child, parent/legal guardian/legal custodian, and others present shall then be afforded an opportunity to comment on the issue of medication treatment.

(v) Following the review of the case and hearing of comments, the Neutral and Detached Fact Finder shall render a decision.

(vi) If needed the Neutral and Detached Fact Finder may ask everyone to leave the room to allow him/her time to deliberate.

(m) The Neutral and Detached Fact Finder may order medication treatment of a child if, after consideration of the record and deliberation, the Neutral and Detached Fact Finder finds that the following conditions exist:

(i) The child has a mental illness; and

(ii) The child is gravely disabled and in need of medication treatment for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without medication treatment, the child poses a likelihood of serious harm to him/herself, others, or their property. Likelihood of serious harm means either (a) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which placed another person or persons in reasonable fear of sustaining such harm, or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(n) The basis for the decision is supported by adequate documentation. The Neutral and Detached Fact Finder shall complete and sign a Medication Hearing form at the end of the hearing. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(o) A child and/or parent/legal guardian/legal custodian may appeal the decision of a Neutral and Detached Fact Finder according to the following process, by submitting a written appeal to the Director/Designee of the Local Mental Health Authority providing treatment to the child, within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(i) Upon receipt of the appeal, a panel consisting of two physicians and a non-physician licensed professional (RN, LCSW, PhD, etc.) shall be assigned to hear the appeal.

(ii) The panel shall review the available documentation and make a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of the date of the appeal.

(iii) A written decision from the panel shall be provided to the child, the child's parent/legal guardian/legal custodian, the local mental health authority providing treatment to the child, and any other appropriate party.

(p) In the event that a significant medication change is proposed, the child and/or parent/legal guardian/legal custodian shall be provided an opportunity to give consent in accordance to subsection F of this section. If the child and parent/legal guardian/legal custodian refuse to give consent, a medication hearing may be initiated in according with subsection K of this section.

(q) Medication treatment ordered pursuant to subsection P of this section may continue after the initial hearing according to the following process:

(i) A Neutral and Detached Fact Finder shall review the case within 180 days of the initial hearing.

(ii) The Neutral and Detached Fact Finder shall review the medical record before rendering a decision to continue medication treatment.

(iii) The Neutral and Detached Fact Finder may order continued medication treatment if he/she finds the following conditions are met:

(A) The child is still mentally ill; and

(B) Absent continued medication treatment, the child will suffer severe and abnormal mental and emotional distress as indicated by recent past history, and will experience deterioration in his/her ability to function in the least restrictive environment, thereby making him/her a substantial danger to him/herself or others, and

(C) The medication treatment is in the medical best interest of the patient, taking into account the possible side effects as well as the potential benefits of the treatment; and

(D) The medication treatment is in accordance with prevailing standards of accepted medical practice.

(iv) If the neutral and Detached Fact Finder approves continued medication treatment, he/she shall complete a Review of Continued Medication form, which shall be placed in the child's medical record. A copy shall be provided to the child and/or parent/legal guardian/legal custodian.

(v) At the end of 12 months, the case shall again be reviewed as outlined in this subsection (Q), and shall be reviewed every 6 months while the course of treatment is being administered.

R523-1-18. Psychosurgery and Electroshock Therapy Procedures for Children, Legal Authority.

(1) By this rule, the Division of Substance Abuse and Mental Health establishes the following due process procedure for children prior to their being administered psychosurgery or electroshock therapy as provided by Section 62A-15-704(3)(a)(ii).

(a) This policy applies to persons under the age of 18 who are committed to the physical custody of a local mental health authority and/or committed to the legal custody of the Division of Substance Abuse and Mental Health. The following terms are herein defined:

(b) ECT means electroconvulsive therapy.

(c) A Legal Custodian means a person who is appointed by the juvenile court. Such a person may have been selected from the Division of Child and Family Services, the Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health.

(d) A Legal Guardian means a person who holds a testamentary appointment or is appointed by a court of law.

(e) Psychosurgery means a neurosurgical intervention to modify the brain to reduce the symptoms of a severely ill psychiatric patient.

(f) A local mental health authority has the obligation to provide a child and parent/legal guardian/legal custodian with the following information when recommending that the child be treated with ECT or Psychosurgery:

(i) The nature of the child's mental illness;

(ii) The recommended ECT/Psychosurgery treatment, its purpose, the method of administration, and recommended length of time for treatment;

(iii) The desired beneficial effects on the child's mental illness as a result of the recommended treatment

(iv) The possible or probable mental health consequences to the child if recommended treatment is not administered

(v) The possible side effects, if any, of the recommended treatment

(vi) The ability of the staff to recognize any side effects, should any actually occur, and the possibility of ameliorating or abating those side effects

(vii) The possible, if any, alternative treatments available and whether those treatments are advisable

(viii) The right to give or withhold consent for the proposed ECT/psychosurgery.

(ix) When informing a child and his/her parent/legal guardian/legal custodian they have the right to withhold consent, the local mental health authority must inform them that regardless of whether they give or withhold consent, a due process procedure will be conducted before two designated examiners to determine the appropriateness of such treatment.

(g) The child and parent/legal guardian/legal custodian shall then be afforded an opportunity to sign a consent form stating that they have received the information listed in subsection E of this section, and that they consent or do not consent to the proposed treatment.

(h) If the parent/legal guardian/legal custodian refuses to consent to ECT/psychosurgery, the local mental health authority shall consider a treatment team dispositional review to determine whether the child is appropriate for treatment through their services.

(i) Regardless of whether the child or parent/legal guardian/legal custodian agrees or disagrees with the proposed ECT/psychosurgery, a due process procedure shall be conducted before the treatment can be administered.

(j) A physician shall request ECT or psychosurgery for a child by completing a Request to Treat With ECT or Psychosurgery form and submitting to the Director/Designee of the Local Mental Health Authority providing treatment.

(k) Upon receipt of the request, the Director/Designee shall contact two Designated Examiners, one of which must be a physician, and set a date and time for an ECT/Psychosurgery Hearing.

(l) The child and parent/legal guardian/legal custodian shall be provided notice of the hearing.

(m) Prior to the hearing, the two designated examiners shall be provided documentation regarding the child's mental condition, including the child's medical records, physician's orders, diagnosis, nursing notes, and any other pertinent information. The attending physician shall document his/her proposed course of treatment and reason(s) justifying the proposal in the medical record.

(n) ECT/psychosurgery hearings shall be conducted by two Designated Examiners, one of whom is a physician, Hearings shall be held where the child is currently being treated, and shall be conducted in an informal, non-adversarial manner as to not have a harmful effect upon the child.

(i) The child has the right to attend the hearing, have an adult informant (parent/legal guardian/legal custodian/foster parent, etc.) present, and to ask pertinent questions.

(ii) If the child or others become disruptive during the hearing, the Designated Examiners may request that those

persons be removed. The hearing shall continue in that person's absence.

(iii) The hearing shall begin with the child, parent/legal guardian/legal custodian, and any others being informed of the purpose and procedure of the hearing.

(iv) The record shall be reviewed by the Designated Examiners and the proposed treatment shall be discussed.

(v) The child, parent/legal guardian/legal custodian, and others present shall be afforded an opportunity to comment on the issue of ECT or psychosurgery.

(vi) Following the review of the case and the hearing of comments, the Designated Examiners shall render a decision

(vii) If needed the Designated Examiners may ask everyone to leave the room to allow them time to deliberate.

(o) The Designated Examiners may order ECT or psychosurgery if, after consideration of the record and deliberation, they both find that the following conditions exist:

(i) The child has a mental illness as defined in the current edition of the Diagnostic and Statistical Manual of the American Psychiatric Association (DSM); and

(ii) The child is gravely disabled and in need of ECT or Psychosurgery for the reason that he/she suffers from a mental illness such that he/she (a) is in danger of serious physical harm resulting from a failure to provide for his essential human needs of health or safety, or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his/her actions and is not receiving such care as is essential for his/her health safety; and/or

(iii) Without ECT or psychosurgery, the child poses a likelihood of serious harm to self, others, or property. Likelihood of serious harm means either

(A) substantial risk that physical harm will be inflicted by an individual upon his/her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's own self, or

(B) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which has placed another person or persons in reasonable fear of sustaining such harm, or

(C) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; and

(iv) The proposed treatment is an appropriate and accepted method of treatment for the patient's mental condition; and

(v) The proposed medication treatment is in accordance with prevailing standards of accepted medical practice.

(p) The basis for the decision shall be supported by adequate documentation. The Designated Examiners shall complete and sign an ECT or Psychosurgery form at the end of the hearing. A copy of the decision shall be provided to the child and/or parent/legal guardian/legal custodian.

(q) The child and/or parent/legal guardian/legal custodian may request a second opinion of a decision to treat with ECT or psychosurgery by filing a Request for a Second Opinion form with the Clinical Director/designee of the Division of Substance Abuse and Mental Health within 24 hours (excluding Saturdays, Sundays, and legal holidays) of the initial hearing.

(r) ECT or psychosurgery may be commenced within 48 hours of the decision by the Designated Examiners, if no request for a second opinion is made. If a request is made, treatment may be commenced as soon as the Clinical Director/designee physician renders his/her decision if he/she agrees with the decision.

(s) Upon receipt of a Request, the Clinical Director/designee will review the record, consult with whomever he/she believes is necessary, and render a decision within 48 hours (excluding Saturdays, Sundays, and legal holidays) of receipt of the Request. The Clinical Director/designee shall sign a Second Opinion for Decision to Treat with ECT/Psychosurgery form which is placed in the child's record. A copy shall be provided to the child and the parent/legal guardian/legal custodian prior to the commencement of treatment.

(t) If a child has been receiving ECT treatment and requires further treatment than that outlined in the original ECT plan, the procedures set forth in subsections F through S of this section shall be followed before initiating further treatment.

R523-1-19. Prohibited Items and Devices on the Grounds of Public Mental Health Facilities.

(1) Pursuant to the requirements of Subsection 62A-12-202 (9), and Sections 76-10-523.5, 76-8-311.1, and 76-8-311.3, all facilities owned or operated by community mental health centers that have any contracts with local mental health authority and/or the Utah State Division of Substance Abuse and Mental Health are designated as secure areas. Accordingly all weapons, contraband, controlled substances, implements of escape, ammunition, explosives, spirituous or fermented liquors, firearms, or any other devices that are normally considered to be weapons are prohibited from entry into community mental health centers. There shall be a prominent visual notice of secure area designation. Law enforcement personnel are authorized to carry firearms while completing official duties on the grounds of those facilities.

R523-1-20. Family Involvement.

(1) Each mental heath authority shall annually prepare and submit to the Division of Substance Abuse and Mental Health a plan for mental health funding and service delivery (17A-3-602(4)(b), (62A-15-109). Included in the plan shall be a method to educate families concerning mental illness and to promote family involvement when appropriate, and with patient consent, in the treatment program of a family member.

(2) The State Division of Substance Abuse and Mental Health will monitor for compliance as part of the annual quality of care site visits (62A-15-1003).

R523-1-21. Declaration for Mental Health Treatment.

(1) The State Division of Substance Abuse and Mental Health will make available information concerning the declaration for mental health treatment (62A-15-1003). Included will be information concerning available assistance in completing the document.

(2) Each local mental health center shall have information concerning declarations for mental health treatment. Information will be distributed with consumer rights information at the time of intake. (R523-1-8)

(3) Utah State Hospital will provide information concerning the declaration for mental health treatment at the time of admittance to the hospital.

(4) Consumers who choose to complete a declaration for mental health treatment may deliver a copy to their mental health therapist, to be included as part of their medical record.

R523-1-22. Rural Mental Health Scholarship and Grants.

The State Division of Substance Abuse and Mental Health hereby establish by rule an eligibility criteria and application process for the recipients of rural mental health scholarship funds, pursuant to the requirements of Section 62A-15-103.

(1) Eligibility criteria. The following criteria must be met by an applicant to qualify for this program.

(a) An applicant must be a current employee at an eligible Employment Site or have a firm commitment from an Eligible Employment Site for full time employment. Any sites that provide questionable or controversial mental health and /or substance abuse treatment methodologies will not be approved

as eligible employment sites. Eligible Employment sites must be one of the following:

(i) Primary Employment Sites are community mental health centers and/or substance abuse providers that receive federal funds through a contract with the Division to provide mental health or substance treatment services.

(ii) Secondary Employment Sites are mental health or substance abuse providers that are licensed to provide mental health/substance treatment services by the Utah Division of Occupational and Professional Licensing, and serve more than 75% of Utah residents in their programs.

(b) An applicant must also agree to work in a designated eligible underserved rural area. Underserved rural areas must be classified as a Health Professional Shortage Areas (HPSA). The State Division of Substance Abuse and Mental Health can be contacted for a current list of HPSA sites.

(c) For Scholarship Grants; show registration in a course leading to a degree from a educational institution in the United States or Canada that will qualify them to receive licensure in Utah as a Mental Health Therapist s defined in Section 62A-13-102(4).

(d) For Loan Repayment Grants; show the amount of loans needing repayment, verify that the loans are all current, licensure as a Mental Health Therapist as defined in Section 62A-13-102(4).

(2) Grants. Two types of grants are available to eligible applicants.

(a) A loan Repayment Grant is to repay bona fide loans for educational expenses at an institution that provided training toward an applicant's degree, or to pay for the completion of specified additional course work that meets the educational requirements necessary for licensure as a Mental Health Therapist.

(b) A Scholarship is to pay for current educational expenses from an Educational Program that meets the educational requirements necessary for licensure as a Mental Health Therapist, at a school within the United States.

(3) Funding. Grants for applicants will be based upon the availability of funding the matching of community needs (i.e., how critical the shortage of Mental Health Therapists), the applicant's field of practice, and requested employment site. Primary employment sites are given priority over secondary employment sites.

(a) The award for each applicant may not exceed $5,000 per person. The Division will notify the grantee of the award amount. Exceptions in the amount of the award may be made due to unique circumstances as determined by the Division.

(b) An applicant may receive multiple awards, as long as the total awards do not exceed the recommended amount of $5,000, unless the Division approves an exception.

(4) Grantee obligation.

(a) The service obligation for applicants consists of 24 continuous months of full time (40) hours per week) employment as a Mental Health Therapist at an approved eligible employment site. The Division may change this service obligation if the Division Director determines that due to unforeseen circumstances, the completion of the obligation would be unfair to the recipient.

(b) Failure to finish the education program or complete the service obligation results in a repayment of grant funds according to Section-62A13-108.

(5) Application forms and instructions for grants or scholarships can be obtained from the Division of Substance Abuse and Mental Health, 120 North 200 West, Room 209, Salt Lake City, Utah. Only complete applications supported by all necessary documents will be considered. All applicants will be notified in writing of application disposition with in 60 days. A written appeal may be made to the Division Director within 30 days from the date of notification.

R523-1-23. Case Manager Certification.

(1) Definitions.

(a) "Mental Health and Substance Abuse Case Manager" means an individual under the supervision of a qualified provider employed by the local mental health authority or contracted by a local substance abuse authority, who is responsible for coordinating, advocating, linking and monitoring activities that assist individuals with serious and often persistent mental illness and serious emotional disorder in children and individuals with substance abuse disorders to access prescribed medical and related therapeutic services. Also, to promote the individual's general health and their ability to function independently and successfully in the community.

(b) "Qualified providers" include any individual who is a licensed physician, a licensed psychologist, a licensed clinical social worker, a licensed certified social worker, a licensed social service worker, a licensed advanced practice registered nurse, a licensed registered nurse, a licensed practical nurse, a licensed professional counselor, licensed marriage and family counselor, or a licensed. substance abuse counselor, and employed by a local mental health authority or contracted by a local mental health authority.

(2) A certified case manager must meet the following minimum standards:

(a) be an individual who is not a licensed mental health professional, who is supervised by one of the qualified providers listed in Subsection R523-1-23(1)(b);

(b) be at least 18 years of age;

(c) have at least a high school degree or a GED;

(d) have at least two years experience in the support of individuals with mental illness or substance abuse;

(e) be employed by the local mental health authority or contracted by a local substance abuse authority;

(f) pass a Division exam which tests basic knowledge, ethics, attitudes and case management skills with a score of 70 percent or above; and

(g) completes an approved case management practicum.

(3) An individual applying to become a certified case manager may request a waiver of the minimum standards in Subsection R523-1-23(2) based on their prior experience and training. The individual shall submit the request in writing to the Division. The Division shall review the documentation and issues a written decision regarding the request for waiver.

(4) Applications and instructions to apply for certification to become a case manager can be obtained from the Division of Substance Abuse and Mental Health. Only complete applications supported by all necessary documents shall be considered.

(a) Individuals will be notified in writing of disposition and determination to grant or deny the application within 60 days of completion of case management requirements. The Division shall issue a certificate for three years.

(b) If the application is denied the individual may file a written appeal within 30 days to the Division Director.

(5) Each certified case manager is required to complete and document eight hours of continuing education (CEU) credits each calendar year related to mental health or substance abuse topics.

(a) A certified case manager shall submit CEU documentation to the Division when they apply for recertification.

(b) Documents to verify CEU credits include:

(i) a certificate of completion documenting continuing education validation furnished by the presenter:

(ii) a letter of certificate from the sponsoring agency verifying the name of the program, presenter, and number of hours attended and participants; or

(iii) an official grade transcript verifying completion of an undergraduate or graduate course(s) of study.

(6) Certified case managers shall submit the Request for Re-certification and documentation of 24 hours of CEU's 30 days prior to the date of expiration on the initial certificate or re-certification. Failure to submit the Request for Re-certification will result in automatic revocation of the certificate.

(7) Certified case managers shall abide by the Rules of Professional Code of Conduct pursuant to Subsection R495-876(a), the Department of Human Services Provider Code of Conduct Policy.

(a) Each employer shall notify the Division within 30 days, if a certified case manager engages in unprofessional or unlawful conduct.

(b) The Division shall revoke, refuse to certify or renew a certification to an individual who is substantiated to have engaged in unprofessional or unlawful conduct.

(c) An individual who has been served a Notice of Agency Action that the certification has been revoked or will not be renewed may request a Request for Review to the Division Director or designee within 30 days of receipt of notice.

(d) The Division Director or designee will review the findings of the Notice of Agency Action and shall determine to uphold, amend or revise the action of denial or revocation of the certification.

(8) If a certified case manager fails to complete the requirements for CEU's, their certificate will be revoked or allowed to expire and will not be renewed.

(9) If an individual fails the Division examination they must wait 30 days before taking the examination again. The individual may only attempt to pass the examination two times with a twelve-month period.

(10) The case managers certification must be posted and available upon request.

KEY: bed allocations, due process, prohibited items and devices, fees

January 22, 2009 **17-43-302**

Notice of Continuation March 31, 2008 **62A-12-102**
62A-12-104
62A-12-209.6(2)
62A-12-283.1(3)(a)(i)
62A-12-283.1(3)(a)(ii)
62A-15-103
62A-15-105(5)
62A-15-603
62A-15-612(2)
62A-15-713(7)
17-43-204
17-43-306

R527. Human Services, Recovery Services.
R527-5. Release of Information.
R527-5-1. Statutory Authority and Purpose.

(1) The Office of Recovery Services (ORS) is authorized to adopt, amend, and enforce rules by Title 62A, Chapter 11, Section 107(8).

(2) This rule establishes how ORS records may be accessed under Title 63G, Chapter 2, the Government Records Access and Management Act (GRAMA).

R527-5-2. Definitions.

(1) Terms used in this rule are defined either explicitly in section 63G-2-103 or implicitly in the text of subsection 63G-2-201.

(2) "Restricted", as used in subsection 63G-2-201(3)(b), refers to records to which access is restricted pursuant to court rule, another state statute, federal statute, or federal regulation. These records are not subject to the procedures for access and disclosure outlined in GRAMA.

R527-5-3. Request for Release of Information.

(1) Written requests for information governed by GRAMA may be submitted in accordance with section 63G-2-204 to:

(a) Office of Recovery Services
ATTN: ORS Records
515 East 100 South
P.O. Box 45033
Salt Lake City, UT 84145-0033.

(2) Written requests for expedited release of information in accordance with section 63G-2-204 may be submitted to:

(a) Office of Recovery Services
ATTN: ORS Records
515 East 100 South
P.O. Box 45033
Salt Lake City, UT 84145-0033.

(3) Written requests for information sent by e-mail in accordance with section 63G-2-204 may be sent to:

(a) orsrecords@utah.gov.

R527-5-4. Appeal of Denial of Request for Release of Information.

A request to appeal the denial to access a record governed by GRAMA shall be submitted in accordance with Section 63G-2-401 to:

(1) the Director of the Office of Recovery Services for records maintained by ORS.

R527-5-5. Public Information.

(1) In accordance with Utah Code Sections 63G-2-103 (21) and 63G-2-201 a record is public unless classified as private, controlled, protected, or exempt.

(2) In accordance with Utah Code Section 63G-2-307, a record may be classified or reclassified at any time, including after the record has been requested.

R527-5-6. Private Information.

(1) Private records include the following:

(a) the address, date of birth, and Social Security number (SSN)of ORS case participants;

(b) information about state employees, former employees and applicants, except as provided for in 63G-2-302.

(2) Private records may be disclosed when:

(a) disclosure is required by other statutes;

(b) disclosure is for purposes directly connected with any investigation, prosecution, or criminal or civil proceeding conducted in connection with Utah's child support enforcement plan and all other programs administered by the Office of Recovery Services;

(c) a parent who has physical custody of the child, a parent without physical custody of the child, a relative to whom physical custody of the child has voluntarily been given, or a parent's attorney, demonstrates that the other party's address is required in order to serve legal process as the result of a judicial action to establish or modify an order or judgment for bona fide child support, spousal support, medical support, or child care. This information may not be disclosed if the person whose address is being sought has requested that case information be safeguarded;

(d) a parent who has physical custody of the child, a parent without physical custody of the child, a relative to whom physical custody of the child has been voluntarily given, or a parent's attorney, requests the other party's address related to parent-time based on Title 62A, Section 11, Subsection 304.4;

(e) income information is needed to establish a support order or review a support order for possible modification. This information may only be released to the court or administrative Presiding Officer, the other party or the other party's authorized representative;

(f) a case participant's Social Security number, address or employment information is needed by authorized governmental entities, including law enforcement agencies and;

(i) the requesting entity enforces, litigates or investigates civil, criminal or administrative law and the record is necessary to a proceeding or investigation; or

(ii) the requesting entity is one that collects information for pre-sentence, probationary or parole purposes.

(g) a governmental agency provides written assurance that the record is necessary to the governmental entity's duties and functions and will be used for a purpose similar to the purposes for which ORS collected or obtained the information and that the record use produces a public benefit outweighing the individual privacy right protecting the record;

(3) A private record shall be disclosed in accordance with the requirements of Utah Code Section 63G-2-202.

(4) Private records may not be released when a protective order has been issued in violation of 42 USC 654(26), or if there is reason to believe the release of information may result in physical or emotional harm to the person.

R527-5-7. Controlled Information.

(1) A record is controlled if it meets the requirements of Utah Code Section 63G-2-304.

(2) Controlled records can only be released under the provisions of Utah Code Section 63G-2-202(2).

R527-5-8. Protected Information.

(1) A record is protected if it meets the requirements of Utah Code Section 63G-2-305.

(2) Protected records can only be released under the provisions of Utah Code Section 63G-2-202(4).

R527-5-9. Restricted Records Exempt from Release Under GRAMA.

(1) A record is restricted from release by ORS if it meets the requirements of Utah Code Section 63G-2-201(3)(b).

R527-5-10. Fees.

(1) ORS may provide requested records without a charge unless:

(a) The request is for records which require programmer assistance.

(b) The request is a repeat request by the same requester for information already provided within the last three months.

(2) Contact ORS Records for specific fee amounts.

KEY: accessing records, record requests, GRAMA compliance, records fees
January 21, 2009 62A-11-107

Notice of Continuation: January 16, 2007 62A-11-304.4(4)
63G-2

R592. Insurance, Title and Escrow Commission.
R592-13. Minimum Charges for Escrow Services.
R592-13-1. Authority.

This rule is promulgated by the Title and Escrow Commission pursuant to the authority provided in Section 31A-2-404, authorizing the Title and Escrow Commission to write rules, and Section 31A-19a-209, authorizing rules to establish minimum charges for escrow services.

R592-13-2. Purpose and Scope.

(1) The purpose of this rule is to establish minimum charges for escrow services.

(2) This rule applies to all title insurers, agencies and producers providing escrow services in Utah.

R592-13-3. Definitions.

In addition to the definitions of Sections 31A-1-301, 31A-2-402,and 31A-19a-102, the following definitions shall apply for the purpose of this rule:

(1) "Charge" means a dollar amount charged for a service rendered by a title insurer, title agency, or title producer.

(2) "Minimum escrow fee" means the lowest amount that can be charged for escrow settlement services that are rendered which incorporates both the escrow closing charge and the basic document preparation charge.

(3) "Pass through charges" means the actual and reasonable charge or expense for services rendered that are not included in the minimum escrow fee.

R592-13-4. Minimum Charge for Escrow Services.

(1) A title insurer, agency and producer providing escrow services in Utah must not charge less than the minimum escrow fee for each side of the transaction. The minimum escrow fee shall be as follows:

TABLE

Purchase Price/Loan Amount	Minimum Escrow Fee
$0 to $180,000.00	$150.00 per side
$180,000.01 to $250,0000.00	$250.00 per side
$250,000.01 and above	$350.00 per side

(a) As an example:

(i) On a real estate purchase of $100,000 the minimum escrow fees would be as follows:

(A) $150 charged to the buyer;

(B) $150 charged to the seller.

(ii) On a refinance loan amount of $300,000 the minimum escrow fee would be $350 charged to the borrower.

(2) All other charges or expenses must be actual and reasonable passed through to the consumer.

R592-13-5. 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.

R592-13-6. Enforcement Date.

The commissioner will begin enforcing this rule 90 days from the rule's effective date.

R592-13-7. Severability.

If any provision of this rule or the application thereof to any person or circumstance is for any reason held to be invalid, the remainder of the rule and the application of the provision to other persons or circumstances shall not be affected thereby.

KEY: title, escrow insurance
January 22, 2009 **31A-2-404**
31A-19a-209

R614. Labor Commission, Occupational Safety and Health.
R614-1. General Provisions.
R614-1-1. Authority.

A. These rules and all subsequent revisions as approved and promulgated by the Labor Commission, Division of Occupational Safety and Health, are authorized pursuant to Title 34A, Chapter 6, Utah Occupational Safety and Health Act.

B. The intent and purpose of this chapter is stated in Section 34A-6-202 of the Act.

C. In accordance with legislative intent these rules provide for the safety and health of workers and for the administration of this chapter by the Division of Occupational Safety and Health of the Labor Commission.

R614-1-2. Scope.

These rules consist of the administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1910 and 29 CFR 1926, and the Utah initiated occupational safety and health standards found in R614-1 through R614-7. Notice has been given and rules filed as required by Subsection 34A-6-104(1)(c) and 34A-6-202(2) of the Utah Occupational Safety and Health Act and by Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

R614-1-3. Definitions.

A. "Access" means the right and opportunity to examine and copy.

B. "Act" means the Utah Occupational Safety and Health Act of 1973.

C. "Administration" means the Division of Occupational Safety and Health of the Labor Commission, also known as UOSH (Utah Occupational Safety and Health).

D. "Administrator" means the director of the Division of Occupational Safety and Health.

E. "Amendment" means such modification or change in a code, standard, rule, or order intended for universal or general application.

F. "Analysis using exposure or medical records" means any compilation of data, or any research, statistical or other study based at least in part on information collected from individual employee exposure or medical records or information collected from health insurance claims records, provided that either the analysis has been reported to the employer or no further work is currently being done by the person responsible for preparing the analysis.

G. "Commission" means the Labor Commission.

H. "Council" means the Utah Occupational Safety and Health Advisory Council.

I. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of the 30 days shall be included.

J. "Designated representative" means any individual or organization to whom an employee gives written authorization to exercise a right of access. For the purpose of access to employee exposure records and analyses using exposure or medical records, a recognized or certified collective bargaining agent shall be treated automatically as a designated representative without regard to written employee authorization.

K. "Division" means the Division of Occupational Safety and Health, known by the acronyum of UOSH (Utah Occupational Safety and Health).

L. "Employee" includes any person suffered or permitted to work by an employer.

1. For Medical Records: "Employee" means a current employee, a former employee, or an employee being assigned or transferred to work where there will be exposure to toxic substances or harmful physical agents. In the case of deceased or legally incapacitated employee, the employee's legal representative may directly exercise all the employee's rights under this section.

M. "Employee exposure record" means a record containing any of the following kinds of information concerning employee exposure to toxic substances or harmful physical agents:

1. Environmental (workplace) monitoring or measuring, including personal, area, grab, wipe, or other form of sampling, as well as related collection and analytical methodologies, calculations, and other background data relevant to interpretations of the results obtained;

2. Biological monitoring results which directly assess the absorption of a substance or agent by body systems (e.g., the level of a chemical in the blood, urine, breath, hair, fingernails, etc.) but not including results which assess the biological effect of a substance or agent;

3. Material safety data sheets; or

4. In the absence of the above, any other record which reveals the identity (e.g., chemical, common, or trade name) of a toxic substance or harmful physical agent.

N. Employee medical record

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories (including job description and occupational exposures);

b. The results of medical examinations (pre-employment, pre-assignment, periodic, or episodic) and laboratory tests (including X-ray examinations and all biological monitoring);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens (e.g., blood or urine samples) which are routinely discarded as a part of normal medical practice, and not required to be maintained by other legal requirements;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier (e.g., social security number, payroll number, etc.); or

c. Records concerning voluntary employee assistance programs (alcohol, drug abuse, or personal counseling programs) if maintained separately from the employer's medical program and its records.

O. "Employer" means:

1. The state;

2. Each county, city, town, and school district in the state; and

3. Every person, firm, and private corporation, including public utilities, having one or more workers or operatives regularly employed in the same business, or in or about the same establishment, under any contract of hire.

4. For medical records: "Employer" means a current employer, a former employer, or a successor employer.

P. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. (For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office.) Where distinctly separate activities are performed at a single physical location (such as contract construction activities from the same physical location as a lumber yard), each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by the Administrator.

1. Establishments whose primary activity constitutes retail trade; finance, insurance, real estate and services are classified in SIC's 52-89.

2. Retail trades are classified as SIC's 52-59 and for the most part include establishments engaged in selling merchandise to the general public for personal or household consumption. Some of the retail trades are: automotive dealers, apparel and accessory stores, furniture and home furnishing stores, and eating and drinking places.

3. Finance, insurance and real estate are classified as SIC's 60-67 and include establishments which are engaged in banking, credit other than banking, security dealings, insurance and real estate.

4. Services are classified as SIC's 70-89 and include establishments which provide a variety of services for individuals, businesses, government agencies, and other organizations. Some of the service industries are: personal and business services, in addition to legal, educational, social, and cultural; and membership organizations.

5. The primary activity of an establishment is determined as follows: For finance, insurance, real estate, and services establishments, the value of receipts or revenue for services rendered by an establishment determines its primary activity. In establishments with diversified activities, the activities determined to account for the largest share of production, sales or revenue will identify the primary activity. In some instances these criteria will not adequately represent the relative economic importance of each of the varied activities. In such cases, employment or payroll should be used in place of normal basis for determining the primary activity.

Q. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry (inhalation, ingestion, skin contact or absorption, etc.) and includes past exposure and potential (e.g., accidental or possible) exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

R. "Hearing" means a proceeding conducted by the commission.

S. "Imminent danger" means a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures under this chapter.

T. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under R614-1-6.K.1. and 3., any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Section 34A-6-301 of the Act.

U. "National consensus standard" means any occupational safety and health standard or modification:

1. Adopted by a nationally recognized standards-producing organization under procedures where it can be determined by the administrator and division that persons interested and affected by the standard have reached substantial agreement on its adoption;

2. Formulated in a manner which affords an opportunity for diverse views to be considered; and

3. Designated as such a standard by the Secretary of the United States Department of Labor.

V. "Person" means the general public, one or more individuals, partnerships, associations, corporations, legal representatives, trustees, receivers, and the state and its political subdivisions.

W. "Publish" means publication in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

X. "Record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained (e.g., paper document, microfiche, microfilm, X-ray film, or automated data processing.)

Y. "Safety and Health Officer" means a person authorized by the Utah Occupational Safety and Health Administration to conduct inspections.

Z. "Secretary" means the Secretary of the United States Department of Labor.

AA. "Specific written consent" means written authorization containing the following:

1. The name and signature of the employee authorizing the release of medical information;

2. The date of the written authorization;

3. The name of the individual or organization that is authorized to release the medical information;

4. The name of the designated representative (individual or organization) that is authorized to receive the released information;

5. A general description of the medical information that is authorized to be released;

6. A general description of the purpose for the release of medical information; and

7. A date or condition upon which the written authorization will expire (if less than one year).

8. A written authorization does not operate to authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

9. A written authorization may be revoked in writing prospectively at any time.

BB. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

CC. "Toxic substance" or "harmful physical agent" means any chemical substance, biological agent (bacteria, virus, fungus, etc.) or physical stress (noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo and hyperbaric pressure, etc) which:

1. Is regulated by any Federal law or rule due to a hazard to health;

2. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) (See R614-103-20B Appendix B);

3. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

4. Has a material safety data sheet available to the employer indicating that the material may pose a hazard to human health.

DD. "Variance" means a special, limited modification or change in the code or standard applicable to the particular establishment of the employer or person petitioning for the modification or change.

EE. "Workplace" means any place of employment.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

1. Sections 29 CFR 1910.21 to 1910.999 and 1910.1000 through the end of part 1910 of the July 1, 2008, edition are incorporated by reference.

2. 29 CFR 1908, July 1, 2008, is incorporated by

reference.

3. 29 CFR 1904, July 1, 2008, is incorporated by reference.

B. Construction Standards.

1. Section 29 CFR 1926.20 through the end of part 1926, of the July 1, 2008, edition is incorporated by reference.

R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.

A. Scope and Purpose.

1. The provisions of this rule adopt and extend the applicability of: (1) established Federal Safety Standards, (2) R614, and (3) Workers' Compensation Coverage, as in effect July 1, 1973 and subsequent revisions, with respect to every employer, employee and employment within the boundaries of the State of Utah, covered by the Utah Occupational Safety and Health Act of 1973.

2. All standards and rules including emergency and/or temporary, promulgated under the Federal Occupational Safety and Health Act of 1970 shall be accepted as part of the Standards, Rules and Regulations under the Utah Occupational Safety and Health Act of 1973, unless specifically revoked or deleted.

3. All employers will provide workers' compensation benefits as required in Section 34A-2-201.

4. Any person, firm, company, corporation or association employing minors must comply fully with all orders and standards of the Labor Division of the Commission. UOSH standards shall prevail in cases of conflict.

B. Construction Work.

Federal Standards, 29 CFR 1926 and selected applicable sections of R614 are accepted covering every employer and place of employment of every employee engaged in construction work of:

1. New construction and building;

2. Remodeling, alteration and repair;

3. Decorating and painting;

4. Demolition; and

5. Transmission and distribution lines and equipment erection, alteration, conversion or improvement.

C. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify the Division of Utah Occupational Safety and Health of the Commission of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by the Labor commission or one of its Compliance Officers.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

4. Each employer shall file a report with the Commission within seven days after the occurrence of an injury or occupational disease, after the employers' first knowledge of the occurrence, or after the employee's notification of the same, on forms prescribed by the Commission, of any work-related fatality or any work-related injury or occupational disease resulting in medical treatment, loss of consciousness or loss of work, restriction of work, or transfer to another job. Each employer shall file a subsequent report with the Commission of any previously reported injury or occupational disease that later resulted in death. The subsequent report shall be filed with the Commission within seven days following the death or the employer's first knowledge or notification of the death. No report is required for minor injuries, such as cuts or scratches that require first-aid treatment only, unless the treating physician files, or is required to file the physician's initial report of work injury or occupational disease with the Commission. Also, no report is required for occupational disease which manifest after the employee is no longer employed by the employer with which the exposure occurred, or where the employer is not aware of an exposure occasioned by the employment which results in an occupational disease as defined by Section 34A-3-103.

5. Each employer shall provide the employee with a copy of the report submitted to the Commission. The employer shall also provide the employee with a statement, as prepared by the Commission, of his rights and responsibilities related to the industrial injury or occupational disease.

6. Each employer shall maintain a record in a manner prescribed by the Commission of all work-related injuries and all occupational disease resulting in medical treatment, loss of consciousness, loss of work, restriction or work, or transfer to another job.

7. No person shall remove, displace, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees. No employee shall refuse or neglect to follow and obey reasonable orders that are issued for the protection of health, life, safety, and welfare of employees.

D. Employer, Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering his or her place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes his or her duty to immediately report the unsafe place, tools, equipment, or conditions to the foreman or supervisor.

2. Employees must comply with all safety rules of their employer and with all the Rules and Regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person or persons to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found to take appropriate action to correct such conditions immediately.

4. Supervisory personnel shall enforce safety regulations and issue such rules as may be necessary to safeguard the health and lives of employees. They shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for the purpose of making it safe.

E. General Safety Requirements.

1. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

2. Body protection: Clothing which is appropriate for the work being done should be worn. Loose sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

3. General. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

4. Safety Committees. It is recommended that a safety committee comprised of management and employee representatives be established. The committee or the individual member of the committee shall not assume the responsibility of management to maintain and conduct a safe operation. The duties of the committee should be outlined by management, and

may include such items as reviewing the use of safety apparel, recommending action to correct unsafe conditions, etc.

5. No intoxicated person shall be allowed to go into or loiter around any operation where workers are employed.

6. No employee shall carry intoxicating liquor into a place of employment, except that the place of employment shall be engaged in liquor business and this is a part of his assigned duties.

7. Employees who do not understand or speak the English language shall not be assigned to any duty or place where the lack or partial lack of understanding or speaking English might adversely affect their safety or that of other employees.

8. Good housekeeping is the first law of accident prevention and shall be a primary concern of all supervisors and workers. An excessively littered or dirty work area will not be tolerated as it constitutes an unsafe, hazardous condition of employment.

9. Emergency Posting Required.

a. Good communications are necessary if a fire or disaster situation is to be adequately coped with. A system for alerting and directing employees to safety is an essential step in a safety program.

b. A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

(1) Responsible supervision (superintendent or equivalent)
(2) Doctor
(3) Hospital
(4) Ambulance
(5) Fire Department
(6) Sheriff or Police

10. Lockouts and Tagging.

a. Where there is any possibility of machinery being started or electrical circuits being energized while repairs or maintenance work is being done, the electrical circuits shall be locked open and/or tagged and the employee in charge (the one who places the lock) shall keep the key until the job is completed or he is relieved from the job, such as by shift change or other assignment. If it is expected that the job may be assigned to other workers, he may remove his lock provided the supervisor or other workers apply their lock and tag immediately. Where there is danger of machinery being started or of steam or air creating a hazard to workers while repairs on maintenance work is being done, the employee in charge shall disconnect the lines or lock and tag the main valve closed or blank the line on all steam driven machinery, pressurized lines or lines connected to such equipment if they could create a hazard to workers.

b. After tagging and lockout procedures have been applied, machinery, lines, and equipment shall be checked to insure that they cannot be operated.

c. If locks and tags cannot be applied, conspicuous tags made of nonconducting material and plainly lettered, "EMPLOYEES WORKING" followed by the other appropriate wording, such as "Do not close this switch" shall be used.

d. When in doubt as to procedure, the worker shall consult his supervisor concerning safe procedure.

11. Safety-Type hooks shall be used wherever possible.

12. Emergency Showers, Bubblers, and Eye Washers.

a. Readily accessible, well marked, rapid action safety showers and eye wash facilities must be available in areas where strong acid, caustic or highly oxidizing or irritating chemicals are being handled. (This is not applicable where first aid practices specifically preclude flushing with running water.)

b. Showers should have deluge type heads, easily accessible, plainly marked and controlled by quick opening valves of the type that stay open. The valve handle should be equipped with a pull chain, rope, etc., so the blinded employee will be able to more easily locate the valve control. In addition, it is recommended that the floor platform be so constructed to actuate the quick opening valve. The shower should be capable of supplying large quantities of water under moderately high pressure. Blankets should be located so as to be reasonably accessible to the shower area.

c. All safety equipment should be inspected and tested at regular intervals, preferably daily and especially during freezing weather, to make sure it is in good working condition at all times.

13. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be furnished with and be required to use approved type safety harnesses and shall be tied off securely so as to suspend him above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

F. All requirements of PSM Standard 29 CFR 1910.119 are hereby extended to include the blister agents, HT, HD, H, Lewisite, and the nerve agents, GA, VX.

R614-1-6. Personal Protective Equipment.

A. When no other method or combination of methods can be provided to prevent employees from becoming exposed to toxic dusts, fumes, gases, flying particles or other objects, dangerous rays or burns from heat, acid, caustic, or any other hazard of a similar nature, the employer must provide each worker with the necessary personal protection equipment, such as respirators, goggles, gas masks, certain types of protective clothing, etc. Provision must also be made to keep all such equipment in good, sanitary working condition at all times.

B. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

C. Except when, in the opinion of the Administrator, their use creates a greater hazard, life lines and safety harnesses shall be provided for and used by workers engaged in window washing, in securing or shifting thrustouts, inspecting or working on overhead machines supporting scaffolds or other high rigging, and on steeply pitched roofs. Similarly, they shall be provided for and used by all exposed to the hazard of falling, and by workmen on poles workers or steel frame construction more than ten (10) feet above solid ground or above a temporary or permanent floor or platform.

D. Every life line and safety harness shall be inspected by the superintendent or his authorized representative and the worker before it is used and at least once a week while continued in use.

E. Wristwatches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

R614-1-7. Inspections, Citations, and Proposed Penalties.

A. The Utah Occupational Safety and Health Act (Title 34A, Chapter 6) requires, that every employer covered under the Act furnish to his employees employment and a place of employment which are free from recognized hazards that are likely to cause death or serious physical harm to his employees. The Act also requires that employers comply with occupational

safety and health standards promulgated under the Act, and that employees comply with standards, rules, regulations and orders issued under the Act applicable to employees actions and conduct. The Act authorizes the Utah Occupational Safety and Health Division to conduct inspections, and to issue citations and proposed penalties for alleged violations. The Act, under Section 34A-6-301, also authorizes the Administrator to conduct inspections and to question employers and employees in connection with research and other related activities. The Act contains provisions for adjudication of violations, periods prescribed for the abatement of violations, and proposed penalties by the Labor Commission, if contested by an employer or by an employee or authorized representative of employees, and for a judicial review. The purpose of R614-1-7 is to prescribe rules and general policies for enforcement of the inspection, citations, and proposed penalty provisions of the Act. Where R614-1-7 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the Administrator or his designee determines that an alternative course of action would better serve the objectives of the Act.

B. Posting of notices; availability of Act, regulations and applicable standards.

1. Each employer shall post and keep posted notices, to be furnished by the Administrator, informing employees of the protections and obligations provided for in the Act, and that for assistance and information, including copies of the Act and of specific safety and health standards, employees should contact their employer or the office of the Administrator. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to insure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesman, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of R614-1-7.Q.

3. Copies of the Act, all regulations published under authority of Section 34A-6-202 and all applicable standards will be available at the office of the Administrator. If an employer has obtained copies of these materials, he shall make them available upon request to any employee or his authorized representative.

4. Any employer failing to comply with the provisions of this Part shall be subject to citation and penalty in accordance with the provisions of Sections 34A-6-302 and 34A-6-307 of the Act.

C. Authority for Inspection.

1. Safety and Health Officers of the Division are authorized to enter without delay and at reasonable times any factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer; to inspect and investigate during regular working hours and at other reasonable times, and within reasonable limits and in a reasonable manner, any such place of employment, and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein; to question privately any employer, owner, operator, agent or employee; and to review records required by the Act and regulations published in R614-1-7 and 8, and other records which are directly related to the purpose of the inspection.

2. Prior to inspecting areas containing information which has been classified as restricted by an agency of the United States Government in the interest of national security, Safety and Health Officers shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the Safety and Health Officer, in exercise of his official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with R614-1-7.B. and C. or to permit a representative of employees to accompany the Safety and Health Officer during the physical inspection of any workplace in accordance with R614-1-7.G. the Safety and Health Officer shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interview concerning which no objection is raised.

2. The Safety and Health Officer shall endeavor to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the Administrator. The Administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the Administrator circumstances exist which make such preinspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include (but are not limited to):

a. When the employers past practice either implicitly or explicitly puts the Administrator on notice that a warrantless inspection will not be allowed:

b. When an inspection is scheduled far from the local office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Act. Safety and Health Officers are not authorized to grant such waivers.

F. Advance notice of Inspections.

1. Advance notice of inspections may not be given, except in the following instances:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

c. Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the Administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the instances described in R614-1-7.F.1., advance notice of inspections may be given only if authorized by the

Administrator, except that in cases of imminent danger, advance notice may be given by the Safety and Health Officer without such authorization if the Administrator is not immediately available. Where advance notice is given, it shall be the employer's responsibility to notify the authorized representative of the employees of the inspection, if the identity of such representatives is known to the employer. (See R614-1-7.H.2. as to instances where there is no authorized representative of employees.) Upon the request of the employer, the Safety and Health Officer will inform the authorized representative of employees of the inspection, provided that the employer furnishes the Safety and Health Officer with the identity of such representatives and with such other information as is necessary to enable him promptly to inform such representatives of the inspection. A person who fails to comply with his responsibilities under this paragraph, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Act. Advance notice in any of the instances described in R614-1-7.F. shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger and other unusual circumstances.

3. The Act provides in Subsection 34A-6-307(5)(b) conditions for which advanced notice can be given and the penalties for not complying.

G. Conduct of Inspections.

1. Subject to the provisions of R614-1-7.C., inspections shall take place at such times and in such places of employment as the Administrator or the Safety and Health Officer may direct. At the beginning of an inspection, Safety and Health Officers shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records specified in R614-1-7.C. which they wish to review. However, such designations of records shall not preclude access to additional records specified in R614-1-7.C.

2. Safety and Health Officers shall have authority to take environmental samples and to take photographs or video recordings related to the purpose of the inspection, employ other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. (See R614-1-7.I. on trade secrets.) As used herein, the term "employ other reasonable investigative techniques" includes, but is not limited to, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees in order to monitor their exposures.

3. In taking photographs and samples, Safety and Health Officers shall take reasonable precautions to insure that such actions with flash, spark-producing, or other equipment would not be hazardous. Safety and Health Officers shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment.

4. The conduct of inspections shall preclude unreasonable disruption of the operations of the employer's establishment.

5. At the conclusion of an inspection, the Safety and Health Officer shall confer with the employer or his representative and informally advise him of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be afforded an opportunity to bring to the attention of the Safety and Health Officer any pertinent information regarding conditions in the workplace.

H. Representative of employers and employees.

1. Safety and Health Officer shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by his employees shall be given an opportunity to accompany the Safety and Health Officer during the physical inspection of any workplace for the purpose of aiding such inspection. A Safety and Health Officer may permit additional employer representative and additional representatives authorized by employees to accompany him where he determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the Safety and Health Officer during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. Safety and Health Officers shall have authority to resolve all disputes as to who is the representative authorized by the employer and the employees for purpose of this Part. If there is no authorized representative of employees, or if the Safety and Health Officer is unable to determine with reasonable certainty who is such representative, he shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representative(s) authorized by employees shall be an employee(s) of the employer. However, if in the judgment of the Safety and Health Officer, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the Safety and Health Officer during the inspection.

4. Safety and Health Officers are authorized to deny the right of accompaniment under this Part to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to the provisions of R614-1-7.I.3. With regard to information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a Safety and Health Officer in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Act provides provisions for trade secrets.

2. At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the Safety and Health Officer has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section 34A-6-306 of the Act.

3. Upon the request of an employer, any authorized representative of employees under R614-1-7.H. in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is not such representative or employee, the Safety and Health Officer shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with employees.

Safety and Health Officers may consult with employees concerning matters of occupational safety and health to the extent they deem necessary for the conduct of an effective and thorough inspection. During the course of an inspection, any employee shall be afforded an opportunity to bring any violation of the Act which he has reason to believe exists in the workplace to the attention of the Safety and Health Officer.

K. Complaints by employees.

1. Any employee or representative of employees who believe that a violation of the Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the Administrator or to a Safety and Health Officer. Any such notice shall be reduced to writing, shall set forth with reasonable

particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided the employer or his agent by the Administrator or Safety and Health Officer no later than at the time of inspection, except that, upon the request of the person giving such notice, his name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the Administrator.

2. If upon receipt of such notification the Administrator determines that the complaint meets the requirements set forth in R614-1-7.K.1., and that there are reasonable grounds to believe that the alleged violation exists, he shall cause an inspection to be made as soon as practicable. Inspections under this Part shall not be limited to matters referred to in the complaint.

3. Prior to or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the Safety and Health Officer, in writing, of any violation of the Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of R614-1-7.K.1.

4. Section 34A-6-203 of the Act provides protection for employees while engaged in protected activities.

L. Inspection not warranted; informal review.

1. If the Administrator determines that an inspection is not warranted because there are no reasonable grounds to believe that a violation or danger exists with respect to a complaint under K, he shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the Administrator. The Administrator, at his discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the Administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of his decision and the reasons therefor.

2. If the Administrator determines that an inspection is not warranted because the requirements of R614-1-7.K.1. have not been met, he shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of R614-1-7.K.1.

M. Imminent danger.

Whenever a Safety and Health Officer concludes, on the basis of an inspection, that conditions or practices exist in any place of employment which could reasonably be expected to cause death or serious physical harm before the imminence of such danger can be eliminated through the enforcement procedures of the Act, he shall inform the affected employees and employers of the danger, that he is recommending a civil action to restrain such conditions or practices and for other appropriate citations of proposed penalties which may be issued with respect to an imminent danger even though, after being informed of such danger by the Compliance Officer, the employer immediately eliminates the imminence of the danger and initiates steps to abate such danger.

N. Citations.

1. The Administrator shall review the inspection report of the Safety and Health Officer. If, on the basis of the report the Administrator believes that the employer has violated a requirement of Section 34A-6-201 of the Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Act, or of any substantive rule published in this chapter, shall issue to the employer a citation. A citation shall be issued even though, after being informed of an alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violations. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provision of the Act, standard, rule, regulations, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for an alleged violation in a request for inspection under R614-1-7.K.1. or a notification of violation under R614-1-7.K.3., a copy of the citation shall also be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the Administrator determines that a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under R614-1-7.K.1.or a notification of violation under R614-1-7.K.3., the informal review procedures prescribed in R614-1-7.L.1. shall be applicable. After considering all views presented, the Administrator shall either affirm, order a re-inspection, or issue a citation if he believes that the inspection disclosed a violation. The Administrator shall furnish the complaining party and the employer with written notification of his determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Act has occurred unless there is a failure to contest as provided for in the Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an

objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

P. Proposed penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of the proposed penalty under Section 34A-6-307 of the Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division in writing that he intends to contest the citation or the notification of proposed penalty before the Commission.

2. The Administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business, of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with the provisions of Section 34A-6-307 of the Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the Safety and Health Officer, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of citations.

1. Upon receipt of any citation under the Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place of alleged violation referred to in the citation occurred, except as hereinafter provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see R614-1-7.B.), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location (see R614-1-7.B.2.), the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation or a copy thereof, shall remain posted until the violation has been abated, or for 3 working days which ever is later. The filing by the employer of a notice of intention to contest under R614-1-7.R. shall not affect his posting responsibility unless and until the Commission issues a final order vacating the citation.

3. An employer, to whom a citation has been issued, may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with the provisions of R614-1-7.Q.1. and 2. shall be subject to citation and penalty in accordance with the provisions of Section 34A-6-307 of the Act.

R. Employer and employee hearings before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Act, notify the Adjudication Division in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Section 34A-6-303(3) of the Act, file a written notice with the Adjudication Division alleging that the period of time fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by the Adjudication Division within 30 days of the receipt by the employer of the notice of proposed penalty or notice that no penalty is being proposed. The Adjudication Division shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to correct a violation for which a citation has been issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the Administrator shall notify the employer by certified mail or by personal service by the Safety and Health Officer of such failure and of the additional penalty proposed under Section 34A-6-307 of the Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Section 34A-6-303(3) of the Act, notify the Adjudication Division in writing that he intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be postmarked within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. The Adjudication Division shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be deemed to be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies the Adjudication Division in writing that he intends to contest the notification or the proposed additional penalty before the

Commission.

T. Informal conferences.

At the request of an affected employer, employee, or representative of employees, the Administrator may hold an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The Administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or his representative shall be afforded an opportunity to participate, at the discretion of the Administrator. If the conference is requested by an employee or representative of employees, the employer shall be afforded an opportunity to participate, at the discretion of the Administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30 day period for filing a notice of intention to contest as prescribed in R614-1-7.R.

R614-1-8. Recording and Reporting Occupational Injuries and Illnesses.

A. The rules in this section implement Sections 34A-6-108 and 34A-6-301(3) of the Act. These sections provide for record-keeping and reporting by employers covered under the Act, for developing information regarding the causes and prevention of occupational accidents and illnesses, and for maintaining a program of collection, compilation, and analysis of occupational safety and health statistics. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of R614-1-5.C.

NOTE: Utah has adopted and will enforce the Federal Recordkeeping Standard 29CFR1904.

R614-1-4. Incorporation of Federal Standards.

A. General Industry Standards.

4. FR Vol. 66, No. 13, Friday, January 19, 2001, Pages 5916 to and including 6135. "Occupational Injury and reporting Requirements; Final Rule" is incorporated by reference.

Utah Specific Recordkeeping requirements follow:

B. Supplementary record.

Each employer shall have available for inspection at each establishment within 6 working days after receiving information that a recordable case has occurred, a supplementary record for that establishment. The record shall be completed in the detail prescribed in the instructions accompanying federal OSHA Form No. 301, Utah Industrial Accidents Form 122. Workers' compensation, insurance, or other reports are acceptable alternative records if they contain the information required by the federal OSHA Form No. 301, Utah Industrial Accidents Form 122. If no acceptable alternative record is maintained for other purposes, Federal OSHA Form No. 301, Utah Industrial Accidents Form 122 shall be used or the necessary information shall be otherwise maintained.

C. Retention of records.

Preservation of records.

a. This section applies to each employer who makes, maintains or has access to employee exposure records or employee medical records.

b. "Employee exposure record" means a record of monitoring or measuring which contains qualitative or quantitative information indicative of employee exposures to toxic materials or harmful physical agents. This includes both individual exposure records and general research or statistical studies based on information collected from exposure records.

c. "Employee medical record" means a record which contains information concerning the health status of an employee or employees exposed or potentially exposed to toxic materials or harmful physical agents. These records may include, but are not limited to:

(1) The results of medical examinations and tests;

(2) Any opinions or recommendations of a physician or other health professional concerning the health of an employee or employees; and

(3) Any employee medical complaints relating to workplace exposure. Employee medical records include both individual medical records and general research or statistical studies based on information collected from medical records.

d. Preservation of records. Each employer who makes, maintains, or has access to employee exposure records or employee medical records shall preserve these records.

e. Availability of records. The employer shall make available, upon request to the Administrator, or a designee, and to the Director of the Division of Health, or a designee, all employee exposure records and employee medical records for examination and copying.

D. Access to records.

1. Records provided for in R614-1-8.A.,E., and F. shall be available for inspection and copying by Compliance Officers during any occupational safety and health inspection provided for under R614-1-7 and Section 34A-6-301 of the Act.

2. The log and summary of all recordable occupational injuries and illnesses (OSHA No. 200) (the log) provided for in R614-1-8.A. shall, upon request, be made available by the employer to any employee, former employee, and to their representatives for examination and copying in a reasonable manner and at reasonable times. The employee, former employee, and their representatives shall have access to the log for any establishment in which the employee is or has been employed.

3. Nothing in this section shall be deemed to preclude employees and employee representatives from collectively bargaining to obtain access to information relating to occupational injuries and illnesses in addition to the information made available under this section.

4. Access to the log provided under this section shall pertain to all logs retained under requirements of R614-1-8.G.

E. Reporting of fatality or accidents. (Refer to Utah Occupational Safety and Health Rule, R614-1-5.C.)

F. Falsification or failure to keep records or reports.

1. Section 34A-6-307 of the Act provides penalties for false information and recordkeeping.

2. Failure to maintain records or file reports required by this part, or in the details required by forms and instructions issued under this part, may result in the issuance of citations and assessment of penalties as provided for in Sections 34A-6-302 and 34A-6-307 of the Act.

G. Description of statistical program.

1. Section 34A-6-108 of the Act directs the Administrator to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within Stratification. Stratification and sampling will be carried out in order to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates for most four-digit Standard Industrial Classification (SIC) industries in manufacturing and for three-digit classification (SIC) in non-manufacturing. Full cooperation with the U. S. Department of Labor in statistical programs is intended.

R614-1-9. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards. (Also Adopted and Published as Chapter XXIII of the Utah Occupational Safety and Health Field

Operations Manual.)

A. Scope.

1. This rule contains Rules of Practice for Administrative procedures to grant variances and other relief under Section 34A-6-202 of the Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or petition against Variances and other relief.

1. The applicable parts of Section 34A-6-202 of the Act shall govern application and petition procedure.

2. Any employer or class of employers desiring a variance from a standard must make a formal written request including the following information:

a. The name and address of applicant;

b. The address of the place or places of employment involved;

c. A specification of the standard or portion thereof from which the applicant seeks a variance;

d. A statement by the applicant, supported by opinions from qualified persons having first-hand knowledge of the facts of the case, that he is unable to comply with the standard or portion thereof and a detailed statement of the reasons therefore;

e. A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the existing standard;

f. A statement of when the applicant expects to be able to comply with the standard and of what steps he has taken and will take, with specific dates where appropriate, to come into compliance with the standards (applies to temporary variances);

g. A statement of the facts the applicant would show to establish that (applies to newly promulgated standards);

(1) The applicant is unable to comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

(2) He is taking all available steps to safeguard his employees against the hazards covered by the standards; and

(3) He has an effective program for coming into compliance with the standard as quickly as practicable;

h. Any request for a hearing, as provided in this rule;

i. A statement that the applicant has informed his affected employees of the application for variance by giving a copy thereof to their authorized representative, posting a summary statement of the application at the place or places where notices to employees are normally posted specifying where a copy may be examined; and

j. A description of how affected employees have been informed of their rights to petition the Administrator for a hearing.

3. The applicant shall designate the method he will use to safeguard his employees until a variance is granted or denied.

4. Whenever a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an Administrative Law Judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the Administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The Administrator may conduct hearings upon application or petition in accordance with Section 34A-6-202(4) of the Act if:

a. Employee(s), the public, or other interested groups petition for a hearing; or

b. The Administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the Administrator shall set the date, time, and place for such hearing. He shall provide timely notification to the applicant for variance and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify his employees of the hearing.

3. Notice of hearings shall be published in the Administrative Rulemaking Bulletin. This shall include a statement that the application request may be inspected at the UOSH Division Office.

4. A copy of the Notification of Hearing along with other pertinent information shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

D. Inspection for Variance Application.

1. A variance inspection will be required by the Administrator or his designee prior to final determination of either acceptance or denial.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interview where necessary.

E. Interim order.

1. The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

2. Following a variance inspection, and after determination and assurance that employees are to be adequately protected, the Administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the work-site by the Administrator. The interim order will remain in force pending completion of the administrative promulgation action and the formal granting or denying of a temporary/permanent variance as requested.

F. Decision of the Administrator.

1. The Administrator may deny the application if:

a. It does not meet the requirements of paragraph R614-1-8.B.;

b. It does not provide adequate safety in the workplace for affected employees; or

c. Testimony or information provided by the hearing or inspection does not support the applicant's request for variance as submitted.

2. Letters of notification denying variance applications shall be sent to the applicant, and will include posting requirements to inform employees, affected associations, and employer groups.

a. A copy of correspondence related to the denial request shall be sent to the U.S. Department of Labor, Regional Administrator for OSHA.

b. The letter of denial shall be explicit in detail as to the reason(s) for such action.

3. The Administrator may grant the request for variances provided that:

a. Data supplied by the applicant, the UOSHA inspection and information and testimony affords adequate protection for the affected employee(s);

b. Notification of approval shall follow the pattern described in R614-1-9.C.2. and 3.;

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

4. The Administrator's decision shall be deemed final subject to Section 34A-6-202(6).

G. Recommended Time Table for Variance Action.

1. Publication of agency intent to grant a variance. This includes public comment and hearing notification in the Utah Administrative Rulemaking Bulletin: within 30 days after receipt.

2. Public comment period: within 20 days after publication.

3. Public hearing: within 30 days after publication

4. Notification of U.S. Department of Labor Regional Administrator for OSHA: 10 days after agency publication of intent.

5. Final Order: 120 days after receipt of variance application if publication of agency intent is made.

6. Rejection of variance application without publication of agency intent: 20 days after receipt of application.

a. Notification of U.S. Department of Labor Regional Administrator for OSHA: 20 days after receipt of application.

H. Public Notice of Granted Variances, Tolerances, Exemptions, and Limitations.

1. Every final action granting variance, exemption, or limitation under this rule shall be published as required under Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and the time table set forth in R614-1-9.G.

I. Acceptance of federally Granted Variances.

1. Where a variance has been granted by the U.S. Department of Labor, Occupational Safety and Health Administration, following Federal Promulgation procedures, the Administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the Administrator shall accept the variance (as federally accepted) and promulgate it for Utah under the provisions of Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah Legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the Regional Administrator will be so notified.

J. Revocation of a Variance.

1. Any variance (temporary or permanent) whether approved by the state or one accepted by State based on Federal approval, may be revoked by the Administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not afforded by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by the state for a specific work-site or place of employment within the state for reasons cited in R614-1-9.J.1. Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be afforded the employer.

3. Normally, permanent variances may be revoked or changed only after being in effect for at least six months.

K. Coordination.

1. All variances issued by the Administrator will be coordinated with the U.S. Department of Labor, OSHA to insure consistency and avoid improper unilateral action.

R614-1-10. Discrimination.

A. General.

1. The Act provides, among other things, for the adoption of occupational safety and health standards, research and development activities, inspections and investigations of work places, and record keeping requirements. Enforcement procedures initiated by the Commission; review proceedings as required by Title 63G, Chapter 4, Administrative Procedures Act; and judicial review are provided by the Act.

2. This rule deals essentially with the rights of employees afforded under section 34A-6-203 of the Act. Section 34A-6-203 of the Act prohibits reprisals, in any form, against employees who exercise rights under the Act.

3. The purpose is to make available in one place interpretations of the various provisions of Section 34A-6-203 of the Act which will guide the Administrator in the performance of his duties thereunder unless and until otherwise directed by authoritative decisions of the courts, or concluding, upon reexamination of an interpretation, that it is incorrect.

B. Persons prohibited from discriminating.

Section 34A-6-203 defines employee protections under the Act, because the employee has exercised rights under the Act. Section 34A-6-103(11) of the Act defines "person". Consequently, the prohibitions of Section 34A-6-203 are not limited to actions taken by employers against their own employees. A person may be chargeable with discriminatory action against an employee of another person. Section 34A-6-203 would extend to such entities as organizations representing employees for collective bargaining purposes, employment agencies, or any other person in a position to discriminate against an employee. (See, Meek v. United States, F. 2d 679 (6th Cir., 1943); Bowe v. Judson C. Burnes, 137 F 2d 37 (3rd Cir., 1943).)

C. Persons protected by section 34A-6-203.

1. All employees are afforded the full protection of Section 34A-6-203. For purposes of the Act, an employee is defined in Section 34A-6-103(6). The Act does not define the term "employ". However, the broad remedial nature of this legislation demonstrates a clear legislative intent that the existence of an employment relationship, for purposes of Section 34A-6-203, is to be based upon economic realities rather than upon common law doctrines and concepts. For a similar interpretation of federal law on this issue, see, U.S. v. Silk, 331 U.S. 704 (1947); Rutherford Food Corporation v. McComb, 331 U.S. 722 (1947).

2. For purposes of Section 34A-6-203, even an applicant for employment could be considered an employee. (See, NLRB v. Lamar Creamery, 246 F. 2d 8 (5th Cir., 1957).) Further, because Section 34A-6-203 speaks in terms of any employee, it is also clear that the employee need not be an employee of the discriminator. The principal consideration would be whether the person alleging discrimination was an "employee" at the time of engaging in protected activity.

3. In view of the definitions of "employer" and "employee" contained in the Act, employees of a State or political subdivision thereof would be within the coverage of Section 34A-6-203.

D. Unprotected activities distinguished.

1. Actions taken by an employer, or others, which adversely affect an employee may be predicated upon nondiscriminatory grounds. The proscriptions of Section 34A-6-203 apply when the adverse action occurs because the employee has engaged in protected activities. An employee's engagement in activities protected by the Act does not automatically render him immune from discharge or discipline for legitimate reasons, or from adverse action dictated by non-prohibited considerations. (See, NLRB v. Dixie Motor Coach Corp., 128 F. 2d 201 (5th Cir., 1942).)

2. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated. (See, Mitchell v. Goodyear Tire and Rubber

Co., 278 F. 2d 562 (8th Cir., 1960); Goldberg v. Bama Manufacturing, 302 F. 2d 152 (5th Cir., 1962).) Ultimately, the issue as to whether a discharge was because of protected activity will have to be determined on the basis of the facts in the particular case.

E. Specific protections - complaints under or related to the Act.

1. Discharge of, or discrimination against an employee because the employee has filed "any complaint under or related to this Act" is prohibited by Section 34A-6-203. An example of a complaint made "under" the Act would be an employee request for inspection pursuant to Section 34A-6-301(6). However, this would not be the only type of complaint protected by Section 34A-6-203. The range of complaints "related to" the Act is commensurate with the broad remedial purposes of this legislation and the sweeping scope of its application, which entails the full extent of the commerce power. ((See Cong. Rec., vol. 116 P. 42206 December 17, 1970).)

2. Complaints registered with Federal agencies which have the authority to regulate or investigate occupational safety and health conditions are complaints "related to" this Act. Likewise, complaints made to State or local agencies regarding occupational safety and health conditions would be "related to" the Act. Such complaints, however, must relate to conditions at the workplace, as distinguished from complaints touching only upon general public safety and health.

3. Further, the salutary principles of the Act would be seriously undermined if employees were discouraged from lodging complaints about occupational safety and health matters with their employers. Such complaints to employers, if made in good faith, therefore would be related to the Act, and an employee would be protected against discharge or discrimination caused by a complaint to the employer.

F. Proceedings under or related to the act.

1. Discharge of, or discrimination against, any employee because the employee has exercised the employee's rights under or related to this Act is also prohibited by Section 34A-6-203. Examples of proceedings which would arise specifically under the Act would be inspections of work-sites under Section 34A-6-301 of the Act, employee contest of abatement date under Section 34A-6-303 of the Act, employee initiation of proceedings for promulgation of an occupational safety and health standard under Section 34A-6-202 of the Act and Title 63G, Chapter 3, employee application for modification of revocation of a variance under Section 34A-6-202(4)(c) of the Act and R614-1-9., employee judicial challenge to a standard under Section 34A-6-202(6) of the Act, and employee appeal of an order issued by an Administrative Law Judge, Commissioner, or Appeals Board under Section 34A-6-304. In determining whether a "proceeding" is "related to" the Act, the considerations discussed in R614-1-10.G. would also be applicable.

2. An employee need not himself directly institute the proceedings. It is sufficient if he sets into motion activities of others which result in proceedings under or related to the Act.

G. Testimony.

Discharge of, or discrimination against, any employee because the employee "has testified or is about to testify" in proceedings under or related to the Act is also prohibited by Section 34A-6-203. This protection would of course not be limited to testimony in proceedings instituted or caused to be instituted by the employee, but would extend to any statements given in the course of judicial, quasi-judicial, and administrative proceedings, including inspections, investigations, and administrative rulemaking or adjudicative functions. If the employee is giving or is about to give testimony in any proceeding under or related to the Act, he would be protected against discrimination resulting from such testimony.

H. Exercise of any right afforded by the Act.

1. In addition to protecting employees who file complaints, institute proceedings under or related to the Act it also prohibited by Section 34A-6-203 discrimination occurring because of the exercise "of any right afforded by this Act." Certain rights are explicitly provided in the Act; for example, there is a right to participate as a party in enforcement proceedings (34A-6-303). Certain other rights exist by necessary implications. For example, employees may request information from the Utah Occupational Safety and Health Administration; such requests would constitute the exercise of a right afforded by the Act. Likewise, employees interviewed by agents of the Administrator in the course of inspections or investigations could not subsequently be discriminated against because of their cooperation.

2. Review of the Act and examination of the legislative history discloses that, as a general matter, there is no right afforded by the Act which would entitle employees to walk off the job because of potential unsafe conditions at the workplace. Hazardous conditions which may be violative of the Act will ordinarily be corrected by the employer, once brought to his attention. If corrections are not accomplished, or if there is dispute about the existence of a hazard, the employee will normally have opportunity to request inspection of the workplace pursuant to Section 34A-6-301 of the Act, or to seek the assistance of other public agencies which have responsibility in the field of safety and health. Under such circumstances, therefore, an employer would not ordinarily be in violation of Section 34A-6-203 by taking action to discipline an employee for refusing to perform normal job activities because of alleged safety or health hazards.

a. Occasions might arise when an employee is confronted with a choice between not performing assigned tasks or subjecting himself to serious injury or death arising from a hazardous condition at the workplace. If the employee, with no reasonable alternative, refuses in good faith to expose himself to the dangerous condition, he would be protected against subsequent discrimination. The condition causing the employee's apprehension of death or injury must be of such a nature that a reasonable person, under the circumstances then confronting the employee, would conclude that there is a real danger of death or serious injury and that there is insufficient time, due to the urgency of the situation, to eliminate the danger through resort to regular statutory enforcement channels. In addition, in such circumstances, the employee, where possible, must also have sought from his employer, and been unable to obtain, a correction of the dangerous condition.

I. Procedures - Filing of complaint for discrimination.

1. Who may file. A complaint of Section 34A-6-203 discrimination may be filed by the employee himself, or by a representative authorized to do so on his behalf.

2. Nature of filing. No particular form of complaint is required.

3. Place of filing. Complaint should be filed with the Administrator, Division of Occupational Safety and Health, Labor Commission, 160 East 300 South, Salt Lake City, Utah 84114-6650, Telephone 530-6901.

4. Time for filing.

a. Section 34A-6-203(2)(b) provides protection for an employee who believes that he has been discriminated against.

b. A major purpose of the 30-day period in this provision is to allow the Administrator to decline to entertain complaints which have become stale. Accordingly, complaints not filed within 30 days of an alleged violation will ordinarily be presumed to be untimely.

c. However, there may be circumstances which would justify tolling of the 30-day period on recognized equitable principles or because of strongly extenuating circumstances, e.g., where the employer has concealed, or misled the employee regarding the grounds for discharge or other adverse action;

where the employee has, within the 30-day period, resorted in good faith to grievance-arbitration proceedings under a collective bargaining agreement or filed a complaint regarding the same general subject with another agency; where the discrimination is in the nature of a continuing violation. In the absence of circumstances justifying a tolling of the 30-day period, untimely complaints will not be processed.

J. Notification of administrator's determination.

The Administrator is to notify a complainant within 90 days of the complaint of his determination whether prohibited discrimination has occurred. This 90-day provision is considered directory in nature. While every effort will be made to notify complainants of the Administrator's determination within 90 days, there may be instances when it is not possible to meet the directory period set forth in this section.

K. Withdrawal of complaint.

Enforcement of the provisions of Section 34A-6-203 is not only a matter of protecting rights of individual employees, but also of public interest. Attempts by an employee to withdraw a previously filed complaint will not necessarily result in termination of the Administrator's investigation. The Administrator's jurisdiction cannot be foreclosed as a matter of law by unilateral action of the employee. However, a voluntary and uncoerced request from a complainant to withdraw his complaint will be given careful consideration and substantial weight as a matter of policy and sound enforcement procedure.

L. Arbitration or other agency proceedings.

1. An employee who files a complaint under Section 34A-6-203(2) of the Act may also pursue remedies under grievance arbitration proceedings in collective bargaining agreements. In addition, the complainant may concurrently resort to other agencies for relief, such as the National Labor Relations Board. The Administrator's jurisdiction to entertain Section 34A-6-203 complaints, to investigate, and to determine whether discrimination has occurred, is independent of the jurisdiction of other agencies or bodies. The Administrator may file action in district court regardless of the pendency of other proceedings.

2. However, the Administrator also recognizes the policy favoring voluntary resolution of disputes under procedures in collective bargaining agreements. (See, e.g., Boy's Market, Inc. v. Retail Clerks, 398 U.S. 235 (1970); Republic Steel Corp. v. Maddox, 379 U.S. 650 (1965); Carey v. Westinghouse Electric Co., 375 U.S. 261 (1964); Collier Insulated Wire, 192 NLRB No. 150 (1971).) By the same token, due deference should be paid to the jurisdiction of other forums established to resolve disputes which may also be related to Section 34A-6-203 complaints.

3. Where a complainant is in fact pursuing remedies other than those provided by Section 34A-6-203, postponement of the Administrator's determination and deferral to the results of such proceedings may be in order. (See, Burlington Truck Lines, Inc., v. U.S., 371 U.S. 156 (1962).)

4. Postponement of determination. Postponement of determination would be justified where the rights asserted in other proceedings are substantially the same as rights under Section 34A-6-203 and those proceedings are not likely to violate the rights guaranteed by Section 34A-6-203. The factual issues in such proceedings must be substantially the same as those raised by Section 34A-6-203 complaint, and the forum hearing the matter must have the power to determine the ultimate issue of discrimination. (See, Rios v. Reynolds Metals Co., F. 2d (5th Cir., 1972), 41 U.S.L.W. 1049 (October 10, 1972): Newman v. Avco Corp., 451 F. 2d 743 (6th Cir., 1971).)

5. Deferral to outcome of other proceedings. A determination to defer to the outcome of other proceedings initiated by a complainant must necessarily be made on a case-to-case basis, after careful scrutiny of all available information. Before deferring to the results of other proceedings, it must be clear that those proceedings dealt adequately with all factual issues, that the proceedings were fair, regular, and free of procedural infirmities, and that the outcome of the proceedings was not repugnant to the purpose and policy of the Act. In this regard, if such other actions initiated by a complainant are dismissed without adjudicative hearing thereof, such dismissal will not ordinarily be regarded as determinative of the Section 34A-6-203 complaint.

M. Employee refusal to comply with safety rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Act are not exercising any rights afforded by the Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations, will not ordinarily be regarded as discriminatory action prohibited by Section 34A-6-203. This situation should be distinguished from refusals to work, as discussed in R614-1-10.H.

R614-1-11. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information, and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope.

1. Except as provided in paragraphs R614-1-11.B.3. through 6. below, this rule applies to all requests by UOSH personnel to obtain access to records in order to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of R614-1-12.D.

2. For the purposes of this rule, "personally identifiably employee medical information" means employee medical information accompanied by either direct identifiers (name, address, social security number, payroll number, etc.) or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees (e.g., exact age, height, weight, race, sex, date of initial employment, job title, etc.).

3. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not a personally identifiable form. This section does not apply to records required by R614-1-8 to death certificates, or to employee exposure records, including biological monitoring records defined by R614-1-3.M. or by specific occupational safety and health standards as exposure records.

4. This rule does not apply where UOSH compliance personnel conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance record keeping requirements of an occupational safety and health standard, or with R614-1-12. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. The UOSH compliance personnel shall not record and take off-site

any information from medical records other than documentation of the fact of compliance or non-compliance.

5. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

6. This rule does not apply where a written directive by the Administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

7. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible persons.

1. UOSH Administrator. The Administrator of the Division of Occupational Safety and Health of the Labor Commission shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH Medical Records Officer. The Administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH Medical Records Officer. The UOSH Medical Records Officer shall report directly to the Administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the Administrator as to the approval or denial of written access orders.

b. Assuring that written access orders meet the requirements of paragraphs R614-1-11.D.2. and 3. of this rule.

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders.

d. Regulating the use of direct personal identifiers.

e. Regulating internal agency use and security of personally identifiable employee medical information.

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees.

g. Preparing an annual report of UOSH's experience under this rule.

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH Investigator. The Principal UOSH Investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the Principal UOSH Investigator shall be professionally trained in medicine, public health, or allied fields (epidemiology, toxicology, industrial hygiene, bio-statistics, environmental health, etc.)

D. Written access orders.

1. Requirement for written access order. Except as provided in paragraph R614-1-11.D.4. below, each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the Administrator upon the recommendation of the UOSH Medical Records Officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the Administrator and the UOSH Medical Records Officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information.

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access, and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought.

b. The general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information.

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site.

d. The name, address, and phone number of the Principal UOSH Investigator and the names of any other authorized persons who are expected to review and analyze the medical information.

e. The name, address, and phone number of the UOSH Medical Records Officer, and

f. The anticipated period of time during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If the specific written consent of an employee is obtained pursuant to R614-1-12.D., and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. Whenever personally identifiable employee medical information is obtained through specific written consent and taken off-site, a Principal UOSH Investigator shall be promptly named to assure protection of the information, and the UOSH Medical Records Officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of paragraphs R614-1-11.H.

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of his or her findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave his or her control without the permission of the UOSH Medical Records Officer.

E. Presentation of written access order and notice to employees.

1. The Principal UOSH Investigator, or someone under his or her supervision, shall present at least two (2) copies each of the written access order and an accompanying cover letter to the employer prior to examining or obtaining medical information subject to a written access order. At least one copy of the

written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the Principal UOSH Investigator or to the UOSH Medical Records Officer.

2. The Principal UOSH Investigator shall promptly present a copy of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The Principal UOSH Investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The Principal UOSH Investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the Principal UOSH Investigator shall promptly provide to the employer an adequate number of copies of the written access order (which does not identify specific employees by direct personal identifier) and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections concerning a written access order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH Medical Records Officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH Medical Records Officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH Medical Records Officer may revoke a written access order and direct that any medical information obtained by it by returned to the original record holder or destroyed. The principal UOSH Investigator shall assure that such instructions by the UOSH Medical Records Officer are promptly implemented.

G. Removal of direct personal identifiers. Whenever employees medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the Principal UOSH Investigator shall, unless otherwise authorized by the UOSH Medical Records Officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The Principal UOSH Investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal agency use of personally identifiable employee medical information.

1. The Principal UOSH Investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The Principal UOSH Investigator, the UOSH Medical Records Officer, the Administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor is authorized to examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the office of the State Attorney General, and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of R614-1-11.D. through G. are repeated with respect to the secondary purpose.

5. Whenever practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH Medical Records Officer and the Principal UOSH Investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and destruction of records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH Medical Records Officer. The UOSH Medical Records Officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an agency analysis using personally identifiable employee medical information.

1. The UOSH Medical Records Officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

2. Annual report. The UOSH Medical Records Officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the UOSH Administrator which shall be made available to the public. This report shall discuss:

a. The number of written access orders approved and a summary of the purposes for access;

b. The nature and disposition of employee; collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

c. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

L. Inter-agency transfer and public disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH (other than to The Attorney General's Office) or disclosed to the public (other than to the affected employee or the original record holder) except when required by law or when approved by the Administrator.

2. Except as provided in paragraph R614-1-11.L.3. below, the Administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Privacy Act to the extent that the Privacy Act applies to the requested information (See 5 U.S.C. 552a(b); 29 CFR 70a.3).

3. Upon the approval of the Administrator, personally identifiable employee medical information may be transferred to:

a. The National Institute for Occupational Safety and Health (NIOSH).

b. The Department of Justice when necessary with respect to a specific action under the federal Occupational Safety and Health Act of 1970 and Utah Occupational Safety and Health Act of 1973.

4. The Administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The Administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the State Attorney General's Office, the UOSH Medical Records Officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH Medical Records Officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

M. Effective date.

This rule shall become effective on January 15, 1981.

R614-1-12. Access to Employee Exposure and Medical Records.

A. Purpose.

To provide employees and their designated representatives a right of access to relevant exposure and medical records, and to provide representatives of the Administrator a right of access to these records in order to fulfill responsibilities under the Utah Occupational Safety and Health Act. Access by employees, their representatives, and the Administrator is necessary to yield both direct and indirect improvements in the detection, treatment, and prevention of occupational disease. Each employer is responsible for assuring compliance with this Rule, but the activities involved in complying with the access to medical records provisions can be carried out, on behalf of the employer, by the physician or other health care personnel in charge of employee medical records. Except as expressly provided, nothing in this Rule is intended to affect existing legal and ethical obligations concerning the maintenance and confidentiality of employee medical information, the duty to disclose information to a patient/employee or any other aspect of the medical-care relationship, or affect existing legal obligations concerning the protection of trade secret information.

B. Scope.

1. This rule applies to each general industry, maritime, and construction employer who makes, maintains, contracts for, or has access to employee exposure or medical records, or analyses thereof, pertaining to employees exposed to toxic substances or harmful physical agents.

2. This rule applies to all employee exposure and medical records, and analyses thereof, of employees exposed to toxic substances or harmful physical agents, whether or not the records are related to specific occupational safety and health standards.

3. This rule applies to all employee exposure and medical records, and analyses thereof, made or maintained in any manner, including on an in-house or contractual (e.g., fee-for-service) basis. Each employer shall assure that the preservation and access requirements of this rule are complied with regardless of the manner in which records are made or maintained.

C. Preservation of records.

1. Unless a specific occupational safety and health standard provides a different period of time, each employer shall assure the preservation and retention of records as follows:

a. Employee medical records. Each employee medical record shall be preserved and maintained for a least the duration of employment plus thirty (30) years, except that health insurance claims records maintained separately from the employer's medical program and its records need not be retained for any specified period.

b. Employee exposure records. Each employee exposure record shall be preserved and maintained for at least thirty (30) years, except that:

(1) Background data to environmental (workplace) monitoring or measuring, such a laboratory reports and worksheets, need only be retained for one (1) year so long as the sampling results, the collection methodology (sampling plan), a description of the analytical and mathematical methods used, and a summary of other background data relevant to interpretation of the results obtained, are retained for at least thirty (30) years; and

(2) Material safety data sheets and paragraph R614-1-3.M.4. records concerning the identity of a substance or agent need not be retained for any specified period as long as some record of the identity (chemical name if known) of the substance or agent, where it was used, and when it was used is retained for at least thirty (30) years; and

c. Analyses using exposure or medical records. Each analysis using exposure or medical records shall be preserved and maintained for at least thirty (30) years.

2. Nothing in this rule is intended to mandate the form,

manner, or process by which an employer preserves a record so long as the information contained in the record is preserved and retrievable, except that X-ray films shall be preserved in their original state.

D. Access to records.

1. Whenever an employee or designated representative requests access to a record, the employer shall assure that access is provided in a reasonable time, place, and manner, but in no event later than fifteen (15) days after the request for access is made.

2. Whenever an employee or designated representative requests a copy of a record, the employer shall, within the period of time previously specified, assure that either:

a. A copy of the record is provided without cost to the employee or representative;

b. The necessary mechanical copying facilities (e.g., photocopying) are made available without cost to the employee or representative for copying the record; or

c. The record is loaned to the employee or representative for a reasonable time to enable a copy to be made.

3. Whenever a record has been previously provided without cost to an employee or designated representative, the employer may charge reasonable, non-discriminatory administrative costs (i.e., search and copy expenses but not including overhead expenses) for a request by the employee or designated representative for additional copies of the record, except that:

a. An employer shall not charge for an initial request for a copy of new information that has been added to a record which was previously provided; and

b. An employer shall not charge for an initial request by a recognized or certified collective bargaining agent for a copy of an employee exposure record or an analysis using exposure or medical records.

4. Nothing in this rule is intended to preclude employees and collective bargaining agents from collectively bargaining to obtain access to information in addition to that available under this rule.

5. Employee and designated representative access.

a. Employee exposure records. Each employer shall, upon request, assure the access of each employee and designated representative to employee exposure records relevant to the employee. For the purpose of this rule exposure records relevant to the employee consist of:

(1) Records of the employee's past or present exposure to toxic substances or harmful physical agents,

(2) Exposure records of other employees with past or present job duties or working conditions related to or similar to those of the employee,

(3) Records containing exposure information concerning the employee's workplace or working conditions, and

(4) Exposure records pertaining to workplaces or working conditions to which the employee is being assigned or transferred.

b. Employee medical records.

(1) Each employer shall, upon request, assure the access of each employee to employee medical records of which the employee is the subject, except as provided in R614-1-12.D.4.

(2) Each employer shall, upon request, assure the access of each designated representative to the employee medical records of any employee who has given the designated representative specific written consent. R614-1-12A., Appendix A to R614-1-12., contains a sample form which may be used to establish specific written consent for access to employee medical records.

(3) Whenever access to employee medical records is requested, a physician representing the employer may recommend that the employee or designated representative:

(a) Consult with the physician for the purposes of reviewing and discussing the records requested;

(b) Accept a summary of material facts and opinions in lieu of the records requested;, or

(c) Accept release of the requested records only to a physician or other designated representative.

(4) Whenever an employee requests access to his or her employee medical records, and a physician representing the employer believes that direct employee access to information contained in the records regarding a specific diagnosis of a terminal illness or a psychiatric condition could be detrimental to the employees health, the employer may inform the employee that access will only be provided to a designated representative of the employee having specific written consent, and deny the employee's request for direct access to this information only. Where a designated representative with specific written consent requests access to information so withheld, the employer shall assure the access of the designated representative to this information, even when it is known that the designated representative will give the information to the employee.

(5) Nothing in this rule precludes physician, nurse, or other responsible health care personnel maintaining employee medical records from deleting from requested medical records the identity of a family member, personal friend, or fellow employee who has provided confidential information concerning an employee's health status.

c. Analysis using exposure or medical records.

(1) Each employer shall, upon request, assure the access of each employee and designated representative to each analysis using exposure or medical records concerning the employee's working conditions or workplace.

(2) Whenever access is requested to an analysis which reports the contents of employee medical records by either direct identifier (name, address, social security number, payroll number, etc.) or by information which could reasonably be used under the circumstances indirectly to identify specific employees (exact age, height, weight, race, sex, date of initial employment, job title, etc.) the employer shall assure that personal identifiers are removed before access is provided. If the employer can demonstrate that removal of personal identifiers from an analysis is not feasible, access to the personally identifiable portions of analysis need not be provided.

(3) UOSH access.

(a) Each employer shall, upon request, assure the immediate access of representatives of the Administrator to employee exposure and medical records and to analysis using exposure or medical records. Rules of agency practice and procedure governing UOSH access to employee medical records are contained in R614-1-8.

(b) Whenever UOSH seeks access to personally identifiable employee medical information by presenting to the employer a written access order pursuant to R614-1-8, the employer shall prominently post a copy of the written access order and its accompanying cover letter for at least fifteen (15) working days.

E. Trade Secrets.

1. Except as provided in paragraph R614-1-12.E.2., nothing in this rule precludes an employer from deleting from records requested by an employee or designated representative any trade secret data which discloses manufacturing processes, or discloses the percentage of a chemical substance in a mixture, as long as the employee or designated representative is notified that information has been deleted. Whenever deletion of trade secret information substantially impairs evaluation of the place where or the time when exposure to a toxic substance or harmful physical agent occurred, the employer shall provide alternative information which is sufficient to permit the employee to identify where and when exposure occurred.

2. Notwithstanding any trade secret claims, whenever access to records is requested, the employer shall provide access

to chemical or physical agent identities including chemical names, levels of exposure, and employee health status data contained in the requested records.

3. Whenever trade secret information is provided to an employee or designated representative, the employer may require, as a condition of access, that the employee or designated representative agree in writing not to use the trade secret information for the purpose of commercial gain and not to permit misuse of the trade secret information by a competitor or potential competitor of the employer.

F. Employee information.

1. Upon an employee's first entering into employment, and at least annually thereafter, each employer shall inform employees exposed to toxic substances or harmful physical agents of the following;

a. The existence, location, and availability of any records covered by this rule;

b. The person responsible for maintaining and providing access to records; and

c. Each employee's right of access to these records.

2. Each employer shall make readily available to employees a copy of this rule and its appendices, and shall distribute to employees any informational materials concerning this rule which are made available to the employer by the Administrator.

G. Transfer of Records

1. Whenever an employer is ceasing to do business, the employer shall transfer all records subject to this Rule to the successor employer. The successor employer shall receive and maintain these records.

2. Whenever an employer is ceasing to do business and there is no successor employer to receive and maintain the records subject to this standard, the employer shall notify affected employees of their rights of access to records at least three (3) months prior to the cessation of the employer's business.

3. Whenever an employer either is ceasing to do business and there is no successor employer to receive and maintain the records, or intends to dispose of any records required to be preserved for at least thirty (30) years, the employer shall:

a. Transfer the records to the Director of the National Institute for Occupational Safety and Health (NIOSH) if so required by a specific occupational safety and health standard; or

b. Notify the Director of NIOSH in writing of the impending disposal of records at least three (3) months prior to the disposal of the records.

4. Where an employer regularly disposes of records required to be preserved for at least thirty (30) years, the employer may, with at least (3) months notice, notify the Director of NIOSH on an annual basis of the records intended to be disposed of in the coming year.

a. Appendices. The information contained in the appendices to this rule is not intended, by itself, to create any additional obligations not otherwise imposed by this rule nor detract from any existing obligation.

H. Effective date. This rule shall become effective on December 5, 1980. All obligations of this rule commence on the effective date except that the employer shall provide the information required under R614-1-12.F.1. to all current employees within sixty (60) days after the effective date.

R614-1-12A. Appendix A to R614-1-12 SAMPLE.

Authorization letter for the Release of Employee Medical Record Information to Designated Representative.

I, (full name of worker/patient), hereby authorize (individual or organization holding the medical records), to release to (individual or organization authorized to receive the medical information), the following medical information from my personal medical records: (Describe generally the information desired to be released).

I give my permission for this medical information to be used for the following purpose: ....., but I do not give permission for any other use or re-disclosure of this information.

(Note---Several extra lines are provided below so that you can place additional restrictions on this authorization letter if you want to. You may, however, leave these lines blank. On the other hand, you may want to (1) specify a particular expiration date for this letter (if less than one year): (2) describe medical information to be created in the future that you intend to be covered by this authorization letter, or (3) describe portions of the medical information in you records which you do not intend to be released as a result of this letter.)

Full name of Employee or Legal Representative

Signature of Employee or Legal Representative

Date of Signature

R614-1-12B. Appendix B to R614-1-12 Availability of NIOSH Registry of Toxic Effects of Chemical Substances (RTECS).

R614-1-12 applies to all employee exposure and medical records, and analysis thereof, of employees exposed to toxic substances or harmful physical agents (see R614-1-12.B.2.). The term "toxic substance" or "harmful physical agent" is defined by paragraph R614-1-3.FF. to encompass chemical substances, biological agents, and physical stresses for which there is evidence of harmful health effects. The standard uses the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) as one of the chief sources of information as to whether evidence of harmful health effects exists. If a substance is listed in the latest printed RTECS, the standard applies to exposure and medical records (and analysis of these records) relevant to employees exposed to the substances.

It is appropriate to note that the final standard does not require that employers purchase a copy of RTECS and many employers need not consult RTECS to ascertain whether their employee exposure or medical records are subject to the standard. Employers who do not currently have the latest printed edition of the NIOSH RTECS, however, may desire to obtain a copy. The RTECS is issued in an annual printed edition as mandated by Rule 20(a)(6) of the Occupational Safety and Health Act (29 U.S.C. 669 (a)(6)). The 1978 edition is the most recent printed edition as of May 1, 1980. Its Forward and Introduction describes the RTECS as follows:

"The annual publication of a list of known toxic substances is a NIOSH mandate under the Occupational Safety and Health Act of 1970. It is intended to provide basic information on the known toxic and biological effects of chemical substances for the use of employers, employees, physicians, industrial hygienists, toxicologists, researchers, and, in general, anyone concerned with the proper and safe handling of chemicals. In turn, this information may contribute to a better understanding of potential occupational hazards by everyone involved and ultimately may help to bring about a more healthful workplace environment.

"This registry contains 142,247 listings of chemical substances: 33,929 are names of different chemicals with their associated toxicity data and 90,318 are synonyms. This edition includes approximately 7,500 new chemical compounds that did not appear in the 1977 Registry.

"The Registry's purposes are many, and it serves a variety of users. It is a single source document for basic toxicity information and for other data, such as chemical identifiers and information necessary for the preparation of safety directives and hazard evaluations for chemical substances. The various types of toxic effects linked to literature citations provide

researchers and occupational health scientists with an introduction to the toxicological literature, making their own review of the toxic hazards of a given substance easier. By presenting data on the lowest reported doses that produce effects by several routes of entry in various species, the Registry furnishes valuable information to those responsible for preparing safety data sheets for chemical substances in the workplace. Chemical and production engineers can use the Registry to identify the hazards which may be associated with chemical intermediates in the development of final products, and thus can more readily select substitutes or alternate processes which may be less hazardous.

"In this edition of the Registry, the editors intend to identify "all known toxic substances" which may exist in the environment and to provide pertinent data on the toxic effects from known does entering an organism by any route described. Data may be used for the evaluation of chemical hazards in the environment, whether they be in the workplace, recreation area, or living quarters.

"It must be reemphasized that the entry of a substance in the Registry does not automatically mean that it must be avoided. A listing does mean, however, that the substance has the documented potential of being harmful if misused, and care must be exercised to prevent tragic consequences."

The RTECS 1978 printed edition may be purchased for $13.00 from the Superintendent of Documents, U.S. Government Printing Office (GPO), Washington, D.C. 20402 (202-783-3238) (GPO Stock No. 017-033-00346-7). The 1979 printed edition is anticipated to be issued in the summer of 1980. Some employers may also desire to subscribe to the quarterly update to the RTECS which is published in a microfiche edition. An annual subscription to the quarterly microfiche may be purchase from the GPO for $14.00 (Order the "Microfiche Edition. Registry of Toxic Effects of Chemical Substances"). Both the printed edition and the microfiche edition of RTECS are available for review at many university and public libraries throughout the country. The latest RTECS editions may also be examined at OSHA Technical Data Center, Room N2439-Rear, United States Department of Labor, 200 Constitution Avenue, N.W., Washington, D.C. 20210 (202-523-9700), or any OSHA Regional or Area Office (See major city telephone directories under United States Government-Labor Department).

KEY: safety
May 22, 2008 **34A-6**
Notice of Continuation November 2, 2007

R651. Natural Resources, Parks and Recreation.
R651-411. OHV Use in State Parks.
R651-411-1. Definitions.

(1) "OHV" means "off-highway vehicle" and includes the following vehicle types:

(a) Four-wheel drive automobiles or trucks;

(b) All-terrain vehicles (ATVs) designed to carry one or two passengers; and

(c) Snowmobiles.

R651-411-2. OHV Use-Restrictions.

(1) OHVs are to be used only in designated areas.

(2) Designated ice areas for OHV use are only those ice areas that are accessed via the board ramps to public ice fishing areas. These areas are at Bear Lake, East Canyon, Escalante, Hyrum, Jordanelle, Millsite, Otter Creek, Palisade, Piute, Red Fleet, Rockport, Scofield, Starvation, Steinaker and Yuba state parks.

(3) Responsibility for any accidents or problems while using OHVs in state parks rests with the user.

KEY: off-highway vehicles
July 19, 2004 41-22-10
Notice of Continuation January 13, 2009 63-11-17

R657. Natural Resources, Wildlife Resources.
R657-13. Taking Fish and Crayfish.
R657-13-1. Purpose and Authority.

(1) Under authority of Sections 23-14-18 and 23-14-19 of the Utah Code, the Wildlife Board has established this rule for taking fish and crayfish.

(2) Specific dates, areas, methods of take, requirements and other administrative details which may change annually and are pertinent are published in the proclamation of the Wildlife Board for taking fish and crayfish.

R657-13-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2.

(2) In addition:

(a) "Aggregate" means the combined total of two or more species of fish or two or more size classes of fish which are covered by a limit distinction.

(b) "Angling" means fishing with a rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, baits, or lures attached to it, and is held in the hands of, or within sight (not to exceed 100 feet) of, the person fishing.

(c)(i) "Artificial fly" means a fly made by the method known as fly tying.

(ii) "Artificial fly" does not mean a weighted jig, lure, spinner, attractor blade, or bait.

(d) "Artificial lure" means a device made of rubber, wood, metal, glass, fiber, feathers, hair, or plastic with a hook or hooks attached. Artificial lures, including artificial flies, do not include fish eggs or other chemically treated or processed natural baits or any natural or human-made food, or any lures that have been treated with a natural or artificial fish attractant or feeding stimulant.

(e) "Bag limit" means the maximum limit, in number or amount, of protected wildlife that one person may legally take during one day.

(f) "Bait" means a digestible substance, including worms, cheese, salmon eggs, marshmallows, or manufactured baits including human-made items that are chemically treated with food stuffs, chemical fish attractants or feeding stimulants.

(g) "Camp" means, for the purposes of this rule, any place providing temporary overnight accommodation for anglers including a camper, campground, tent, trailer, cabin, houseboat, boat, or hotel.

(h) "Chumming" means dislodging or depositing in the water any substance not attached to a hook, line, or trap, which may attract fish.

(i) "Commercially prepared and chemically treated baitfish" means any fish species or fish parts which have been processed using a chemical or physical preservation technique other than freezing including irradiation, salting, cooking, or oiling and are marketed, sold or traded for financial gain as bait.

(j) "Dipnet" means a small bag net with a handle that is used to scoop fish or crayfish from the water.

(k) "Filleting" means the processing of fish for human consumption typically done by cutting away flesh from bones, skin, and body.

(l) "Fishing contest" means any organized event or gathering where anglers are awarded prizes, points or money for their catch.

(m) "Float tube" means an inflatable floating device less than 48 inches in any dimension, capable of supporting one person.

(n) "Free Shafting" means to release a pointed shaft that is not tethered or attached by physical means to the diver in an attempt to take fish while engaged in underwater spearfishing.

(o) "Gaff" means a spear or hook, with or without a handle, used for holding or lifting fish.

(p) "Game fish" means Bonneville cisco; bluegill; bullhead; channel catfish; crappie; green sunfish; largemouth bass; northern pike; Sacramento perch; smallmouth bass; striped bass, trout (rainbow, albino, cutthroat, brown, golden, brook, lake/mackinaw, kokanee salmon, and grayling or any hybrid of the foregoing); tiger muskellunge; walleye; white bass; whitefish; wiper; and yellow perch.

(q) "Handline" means a piece of line held in the hand and not attached to a pole used for taking fish or crayfish.

(r) "Immediately Released" means that the fish should be quickly unhooked and released back into the water where caught. Fish that must be immediately released cannot be held on a stringer, or in a live well or any other container or restraining device.

(s) "Lake" means the standing water level existing at any time within a lake basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the lake.

(t) "Length measurement" means the greatest length between the tip of the head or snout and the tip of the caudal (tail) fin when the fin rays are squeezed together. Measurement is taken in a straight line and not over the curve of the body.

(u) "Liftnet" means a small net that is drawn vertically through the water column to take fish or crayfish.

(v) "Motor" means an electric or internal combustion engine.

(w) "Nongame fish" means species of fish not listed as game fish.

(x) "Possession limit" means, for purposes of this rule only, one bag limit, including fish at home, in a cooler, camper, tent, freezer, livewell or any other place of storage.

(y) "Protected aquatic wildlife" means, for purposes of this rule only, all species of fish, crustaceans, or amphibians.

(z) "Reservoir" means the standing water level existing at any time within a reservoir basin. Unless posted otherwise, a stream flowing inside or within the high water mark is not considered part of the reservoir.

(aa) "Second pole" means fishing with one additional rod, pole, tipup, handline, or trollboard that has a single line with legal hooks, bait, or lures attached to it and is held in the hands of, or within sight of the person fishing.

(bb) "Seine" means a small mesh net with a weighted line on the bottom and float line on the top that is drawn through the water. This type of net is used to enclose fish when its ends are brought together.

(cc) "Setline" means a line anchored to a non-moving object and not attached to a fishing pole.

(dd) "Single hook" means a hook or multiple hooks having a common shank.

(ee) "Snagging" or "gaffing" means to take a fish in a manner that the fish does not take the hook voluntarily into its mouth.

(ff) "Spear" means a long-shafted, sharply pointed, hand held instrument with or without barbs used to spear fish from above the surface of the water.

(gg) "Spearfishing (underwater)" means fishing by a person swimming, snorkeling, or diving and using a mechanical device held in the hand, which uses a rubber band, spring, pneumatic power, or other devise to propel a pointed shaft to take fish from under the surface of the water.

(hh) "Tributary" means a stream flowing into a larger stream, lake, or reservoir.

(ii)(i) "Trout" means species of the family Salmonidae, including rainbow, albino, cutthroat, brown, golden, brook, tiger, lake (mackinaw), splake, kokanee salmon, and grayling or any hybrid of the foregoing.

(ii) "Trout" does not include whitefish or Bonneville cisco.

R657-13-3. Fishing License Requirements and Free Fishing Day.

(1) A license is not required on free fishing day, a

Saturday in June, annually. All other laws and rules apply.

(2) A person 12 years of age or older shall purchase a fishing license before engaging in any regulated fishing activity pursuant to Section 23-19-18.

(3) A person under 12 years of age may fish without a license and take a full bag and possession limit.

R657-13-4. Fishing Contests.

(1) All fishing contests shall be held pursuant to R657-58 Fishing Contests and Clinics.

R657-13-5. Interstate Waters And Reciprocal Fishing Permits.

(1) Bear Lake

(a) The holder of a valid Utah or Idaho fishing or combination license may fish within both the Utah and Idaho boundaries of Bear Lake with one fishing pole. With the purchase of a valid Utah fishing or combination license and a Utah second pole permit, or a valid Idaho fishing or combination license and an Idaho two-pole permit, an angler may fish with two poles anywhere on Bear Lake that is open to fishing. A second pole or two-pole permit must be purchased from the state of original license purchase.

(b) Only one bag limit may be taken and held in possession even if licensed in both states.

(2) Reciprocal Fishing Permits

(a) The purchase of a reciprocal fishing permit allows a person to fish across state boundaries of interstate waters.

(b) Reciprocal fishing permits are offered for Lake Powell and Flaming Gorge Reservoir (See Subsections (3) and (4).)

(c) Utah residents may obtain reciprocal fishing permits by contacting the state of Arizona for Lake Powell and the state of Wyoming for Flaming Gorge.

(d) Nonresidents may obtain reciprocal fishing permits through the division's web site, from online license agents and division offices.

(e) The reciprocal fishing permit must be:

(i) used in conjunction with a valid unexpired fishing or combination license from a reciprocating state; and

(ii) signed by the holder as the holder's name appears on the valid unexpired fishing or combination license from the reciprocating state.

(f) Reciprocal fishing permits are valid for 365 days from the date of purchase.

(g) Anglers are subject to the laws and rules of the state in which they are fishing.

(h) Only one bag limit may be taken and held in possession even if licensed in both states.

(3) Lake Powell Reservoir

(a) Any person qualifying as an Arizona resident and having in their possession a valid resident Arizona fishing license and a Utah reciprocal fishing permit for Lake Powell can fish within the Utah boundaries of Lake Powell.

(b) Any person who is not a resident of Utah or Arizona must purchase the appropriate nonresident licenses for Utah and Arizona to fish both sides of Lake Powell.

(c) Only Utah and Arizona residents are allowed to purchase reciprocal permits to fish both sides of Lake Powell.

(4) Flaming Gorge Reservoir

Any person possessing a valid Wyoming fishing license and a Utah reciprocal fishing permit for Flaming Gorge is permitted to fish within the Utah waters of Flaming Gorge Reservoir.

R657-13-6. Angling.

(1) While angling, the angler shall be within sight (not to exceed 100 feet) of the equipment being used at all times, except setlines.

(2) Angling with more than one line is unlawful, except:

(a) when using a valid second pole permit in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license;

(b) while fishing for crayfish without the use of fish hooks;

(c) while fishing through the ice at Flaming Gorge Reservoir. A second pole permit is not required when fishing through the ice at Flaming Gorge Reservoir, or when fishing for crayfish with lines without hooks.

(3) No artificial lure may have more than three hooks.

(4) No line may have attached to it more than two baited hooks, two artificial flies, or two artificial lures, except for a setline or while fishing at Flaming Gorge Reservoir or Lake Powell.

(5) When angling through the ice, the hole may not exceed 12 inches across at the widest point, except at Bear Lake, Flaming Gorge Reservoir, and Fish Lake where specific limitations apply.

R657-13-7. Fishing With More than One Pole (Second Pole Permits).

(1) A person may use a second pole to take fish on all waters open to fishing provided they have an unexpired fishing or combination license and a valid second pole permit, except as provided in Subsection (5) below.

(2)(a) A second pole permit may be obtained through the division's web site, from license agents and division offices.

(b)(i) A second pole permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(ii) A second pole permit does not allow an angler to take more than one daily bag or possession limit.

(3) Anglers under 12 years of age must purchase a valid fishing or combination license and second pole permit in order to use a second pole.

(4) A second pole permit shall only be used by the person to whom the second pole permit was issued.

(5) A person may use up to six lines without a second pole permit when fishing at Flaming Gorge Reservoir through the ice. When using more than two lines at Flaming Gorge Reservoir, the angler's name shall be attached to each line, pole, or tip-up, and the angler shall check only their lines.

R657-13-8. Setline Fishing.

(1) A person may use a setline to take fish only in the Bear River proper downstream from the Idaho state line, including Cutler Reservoir and outlet canals; Little Bear River below Valley View Highway (SR-30); Malad River; and Utah Lake.

(2)(a) Angling with one pole is permitted while setline fishing, except as provided in Subsection (b).

(b) A person who obtains a second pole permit may fish with two poles while setline fishing.

(3) No more than one setline per angler may be used and it may not contain more than 15 hooks.

(4)(a) A setline permit may be obtained through the division's web site, from license agents and division offices.

(b) A setline permit is required in addition to a valid Utah one day, seven day or annual fishing or combination license.

(c) A setline permit is a 365 day permit valid only when used in conjunction with an unexpired Utah one day, seven day or annual fishing or combination license.

(5) When fishing with a setline, the angler shall be within 100 yards of the surface or bank of the water being fished.

(6) A setline shall have one end attached to a nonmoving object, not attached to a fishing pole, and shall have attached a legible tag with the name, address, and setline permit number of the angler.

(7) Anglers under 12 years of age must purchase a valid Utah one day, seven day or annual fishing or combination license and setline permit in order to use a setline.

R657-13-9. Underwater Spearfishing.

(1) Underwater spearfishing is permitted from official sunrise to official sunset only, except as provided in Subsection (6).

(2) Use of artificial light is unlawful while engaged in underwater spearfishing, except as provided in Subsection (6).

(3) Free shafting is prohibited while engaged in underwater spearfishing.

(4) Causey Reservoir, Deer Creek Reservoir, Fish Lake, Flaming Gorge Reservoir, Jordanelle Reservoir, Ken's Lake, Lake Powell, Lost Creek Reservoir, Pineview Reservoir (with the exception of tiger muskie), Red Fleet Reservoir, Steinaker Reservoir, Starvation Reservoir, Willard Bay Reservoir and Yuba Reservoir are open to taking game and nongame fish by means of underwater spearfishing from June 1 through November 30. These are the only waters open to underwater spearfishing for game and nongame fish, except as provided in Subsection (9) below.

(5) Lake Powell is open to taking carp and striped bass by means of underwater spearfishing from January 1 through December 31.

(6) Flaming Gorge is open to taking burbot by means of underwater spearfishing from January 1 through December 31, 24 hours each day. Artificial light is permitted while engaged in underwater spearfishing for burbot at Flaming gorge. Artificial light may not be used at other waters nor may it be used when pursuing other fish species in Flaming Gorge. No other species of fish may be taken with underwater spearfishing techniques at Flaming Gorge between official sunset and official sunrise.

(7) The bag and possession limit for underwater spearfishing is the same as the bag and possession limit applied to anglers using other techniques in the waters listed in Subsection (4) above and as identified in the annual Utah Fishing Proclamation issued by the Utah Wildlife Board.

(8) Nongame fish may be taken by underwater spearfishing only in the waters listed in Subsection (4) above and as provided in Section R657-13-14.

(9) Carp may be taken by means of underwater spearfishing from any water open to angling during the open angling season set for a given body of water.

R657-13-10. Dipnetting.

(1) Hand-held dipnets may be used to land game fish legally taken by angling. However, they may not be used as a primary method to take game fish from Utah waters except at Bear Lake where they are permitted for Bonneville Cisco.

(2) The opening of the dipnet may not exceed 18 inches.

(3) When dipnetting through the ice, the size of the hole is unrestricted.

(4) Hand held dipnets may also be used to take crayfish and nongame fish, except prohibited fish.

R657-13-11. Restrictions on Taking Fish and Crayfish.

(1) Artificial light is permitted while angling, except when underwater spearfishing. However artificial light is permitted while underwater spearfishing for burbot in Flaming Gorge.

(2) A person may not obstruct a waterway, use a chemical, explosive, electricity, poison, crossbow, firearm, pellet gun, or archery equipment to take fish or crayfish, except as provided in Subsection R657-13-14(1)(c) and Section R657-13-20.

(3) A person may not take protected aquatic wildlife by snagging or gaffing, except at Lake Powell where a gaff may be used to land striped bass. It is unlawful to possess a gaff at waters, except at Lake Powell.

(4) Chumming is prohibited on all waters, except as provided in Section R657-13-20.

(5) The use of a float tube or a boat, with or without a motor, for fishing is unlawful on some waters. Boaters should be aware that other agencies may have additional restrictions on the use of float tubes, boats, or boats with motors on some waters.

(6) Nongame fish and crayfish may be taken only as provided in Sections R657-13-14 and R657-13-15.

R657-13-12. Bait.

(1) Use or possession of corn, hominy, or live baitfish while fishing is unlawful.

(2) Use or possession of tiger salamanders (live or dead) while fishing is unlawful.

(3) Use or possession of any bait while fishing on waters designated artificial fly and lure only is unlawful.

(4) Use or possession of artificial baits which are commercially imbedded or covered with fish or fish parts while fishing is unlawful.

(5) Use or possession of bait in the form of fresh or frozen fish or fish parts while fishing is unlawful, except as provided below and in Subsections (7) and (8).

(a) Dead Bonneville cisco may be used as bait only in Bear Lake.

(b) Dead yellow perch may be used as bait only in: Deer Creek, Echo, Fish Lake, Gunnison, Hyrum, Johnson, Jordanelle, Mantua, Mill Meadow, Newton, Pineview, Rockport, Starvation, Utah Lake, Willard Bay and Yuba reservoirs.

(c) Dead white bass may be used as bait only in Utah Lake and the Jordan River.

(d) Dead shad, from Lake Powell, may be used as bait only in Lake Powell. Dead shad must not be removed from the Glen Canyon National Recreation Area.

(e) Dead fresh or frozen salt water species including sardines and anchovies may be used as bait in any water where bait is permitted.

(f) Dead mountain sucker, white sucker, Utah sucker, redside shiner, speckled dace, mottled sculpin, fat head minnow, Utah chub, and common carp may be used as bait in any water where bait is permitted.

(6) Commercially prepared and chemically treated baitfish or their parts may be used as bait in any water where bait is permitted.

(7) The eggs of any species of fish caught in Utah, except prohibited fish, may be used in any water where bait is permitted. However, eggs may not be taken or used from fish that are being released.

(8) Use of live crayfish for bait is legal only on the water where the crayfish is captured. It is unlawful to transport live crayfish away from the water where captured.

(9) Manufactured, human-made items that may not be digestible, that are chemically treated with food stuffs, chemical fish attractants, or feeding stimulants may not be used on waters where bait is prohibited.

R657-13-13. Prohibited Fish.

(1) The following species of fish are classified as prohibited and may not be taken or held in possession:

(a) Bonytail (Gila elegans);
(b) Bluehead sucker (Catostomus discobolus);
(c) Colorado pikeminnow (Ptychocheilus lucius);
(d) Flannelmouth sucker (Catostomus latipinnis);
(e) Gizzard shad (Dorosoma cepedianum);
(f) Grass carp (Ctenopharyngodon idella);
(g) Humpback chub (Gila cypha);
(h) June sucker (Chasmistes liorus);
(i) Least chub (Iotichthys phlegethontis);
(j) Leatherside chub (Snyderichthys copei);
(k) Razorback sucker (Xyrauchen texanus);
(l) Roundtail chub (Gila robusta);
(m) Virgin River chub (Gila seminuda);
(n) Virgin spinedace (Lepidomeda mollispinis); and

(o) Woundfin (Plagopterus argentissimus).

(2) Any of these species taken while attempting to take other legal species shall be immediately released.

R657-13-14. Taking Nongame Fish.

(1)(a) Except as provided in Subsections (b) and (c), a person possessing a valid Utah fishing or combination license may take nongame fish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(b) A person may not take any species of fish designated as prohibited in Section R657-13-13.

(c) Nongame fish may not be taken in the following waters, except carp may be taken by angling, archery, spear, or underwater spearfishing:

(i) San Juan River;

(ii) Colorado River;

(iii) Green River (from confluence with Colorado River upstream to Colorado state line in Dinosaur National Monument);

(iv) Green River (from Colorado state line in Brown's Park upstream to Flaming Gorge Dam, including Gorge Creek, a tributary entering the Green River at Little Hole);

(v) White River (Uintah County);

(vi) Duchesne River (from Myton to confluence with Green River);

(vii) Virgin River (Main stem, North, and East Forks).

(viii) Ash Creek;

(ix) Beaver Dam Wash;

(x) Fort Pierce Wash;

(xi) La Verkin Creek;

(xii) Santa Clara River (Pine Valley Reservoir downstream to the confluence with the Virgin River);

(xiii) Diamond Fork;

(xiv) Thistle Creek;

(xv) Main Canyon Creek (tributary to Wallsburg Creek);

(xvi) South Fork of Provo River (below Deer Creek Dam); and

(xvii) Snake Valley waters (west and north of US-6 and that part of US-6 and US-50 in Millard and Juab counties).

(2) Nongame fish, except those species listed in Section R657-13-13, may be taken by angling, traps, bow and arrow, liftnets, dipnets, seine, spear or underwater spearfishing in the waters specified in Subsection R657-13-9(4).

(3) Seines shall not exceed 10 feet in length or width.

(4) Cast nets must not exceed 10 feet in diameter.

(5) Lawfully taken nongame fish shall be either released or killed immediately upon removing them from the water, however, they may not be left or abandoned on the shoreline.

R657-13-15. Taking Crayfish.

(1) A person possessing a valid Utah fishing or combination license may take crayfish for personal, noncommercial purposes during the open fishing season set for the given body of water.

(2) Crayfish may be taken by hand or with a trap, pole, liftnet, dipnet, handline, or seine, provided that:

(a) game fish or their parts, or any substance unlawful for angling, is not used for bait;

(b) seines shall not exceed 10 feet in length or width;

(c) no more than five lines are used, and no more than one line may have hooks attached (bait is tied to the line so that the crayfish grasps the bait with its claw); and

(d) live crayfish are not transported from the body of water where taken.

R657-13-16. Possession and Transportation of Dead Fish and Crayfish.

(1)(a) At all waters except Strawberry Reservoir, Scofield Reservoir, Panguitch Lake and Jordanelle Reservoir, game fish may be dressed, filleted, have heads and/or tails removed, or otherwise be physically altered after completing the act of fishing or reaching a fish cleaning station, camp, or principal means of land transportation. It is unlawful to possess fish while engaged in the act of fishing that have been dressed or filleted. This shall not apply to fish that are processed for immediate consumption or to fish held from a previous day's catch.

(b) Trout and/or salmon taken at Strawberry Reservoir, Scofield Reservoir and Panguitch Lake, and smallmouth bass taken at Jordanelle may not be filleted and the heads or tails may not be removed in the field or in transit.

(2) A legal limit of game fish or crayfish may accompany the holder of a valid fishing or combination license within Utah or when leaving Utah.

(3) A person may possess or transport a legal limit of game fish or crayfish for another person when accompanied by a donation letter.

(4) A person may not take more than one bag limit in any one day or possess more than one bag limit of each species or species aggregate regardless of the number of days spent fishing.

(5) A person may possess or transport dead fish on a receipt from a registered commercial fee fishing installation, a private pond owner, or a short-term fishing event. This receipt shall specify:

(a) the number and species of fish;

(b) date caught;

(c) the certificate of registration number of the installation, pond, or short-term fishing event; and

(d) the name, address, telephone number of the seller.

R657-13-17. Possession of Live Fish and Crayfish.

(1) A person may not possess or transport live protected aquatic wildlife except as provided by the Wildlife Code or the rules and proclamation of the Wildlife Board.

(2) For purposes of this rule, a person may not transport live fish or crayfish away from the water where taken.

(3) This does not preclude the use of live fish stringers, live wells, or hold type cages as part of normal angling procedures while on the same water in which the fish or crayfish are taken.

R657-13-18. Release of Tagged or Marked Fish.

Without prior authorization from the division, a person may not:

(1) tag, mark, or fin-clip fish for the purpose of offering a prize or reward as part of a contest;

(2) introduce a tagged, marked, or fin-clipped fish into the water; or

(3) tag, mark, or fin-clip a fish and return it to the water.

R657-13-19. Season Dates and Bag and Possession Limits.

(1) All waters of state fish rearing and spawning facilities are closed to fishing.

(2) State waterfowl management areas are closed to fishing except as specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(3) The season for taking fish and crayfish is January 1 through December 31, 24 hours each day. Exceptions are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

(4)(a) Bag and possession limits are specified in the proclamation of the Wildlife Board for taking fish and crayfish and apply statewide unless otherwise specified.

(b)(i) A person may not fish in waters that have a specific bag or size limit while possessing fish in violation of that limit.

(ii) Fish not meeting the size, bag, or species provisions on specified waters shall be returned to the water immediately.

(c)(i) Trout, salmon and grayling that are not immediately released and are held in possession, dead or alive, are included in the person's bag and possession limit.

(ii) Once a trout, salmon or grayling is held in or on a stringer, fish basket, livewell, or by any other device, a trout, salmon or grayling may not be released.

(5) A person may not take more than one bag limit in any one day or have in possession more than one bag limit of each species or species aggregate regardless of the number of days spent on fishing.

R657-13-20. Variations to General Provisions.

Variations to season dates, times, bag and possession limits, methods of take, use of a float tube or a boat for fishing, and exceptions to closed areas are specified in the proclamation of the Wildlife Board for taking fish and crayfish.

KEY: fish, fishing, wildlife, wildlife law

January 7, 2009	**23-14-18**
Notice of Continuation October 11, 2007	**23-14-19**
	23-19-1
	23-22-3

R657. Natural Resources, Wildlife Resources.
R657-60. Aquatic Invasive Species Interdiction.
R657-60-1. Purpose and Authority.

(1) The purpose of this rule is to define procedures and regulations designed to prevent and control the spread of aquatic invasive species within the State of Utah.

(2) This rule is promulgated pursuant to authority granted to the Wildlife Board in Sections 23-27-401, 23-14-18, and 23-14-19.

R657-60-2. Definitions.

(1) Terms used in this rule are defined in Section 23-13-2 and 23-27-101.

(2) In addition:

(a) "Conveyance" means a terrestrial or aquatic vehicle, including a vessel, or a vehicle part that may carry or contain a Dreissena mussel.

(b) "Decontaminate" means to:

(i) Self-decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) removing all plants, fish, mussels and mud from the equipment or conveyance;

(B) draining all water from the equipment or conveyance, including water held in ballast tanks, bilges, livewells, and motors; and

(C) drying the equipment or conveyance for no less than 7 days in June, July and August;18 days in September, October, November, March, April and May; 30 days in December, January and February; or expose the equipment or conveyance to sub-freezing temperatures for 72 consecutive hours; or

(ii) Professionally decontaminate equipment or a conveyance that has been in an infested water in the previous 30 days by:

(A) Using a professional decontamination service approved by the division to apply scalding water (140 degrees Fahrenheit) to completely wash the equipment or conveyance and flush any areas where water is held, including ballast tanks, bilges, livewells, and motors.

(c) "Dreissena mussel" means a mussel of the genus Dreissena at any life stage, including a zebra mussel, a quagga mussel and a Conrad's false mussel.

(d) "Controlling entity" means the owner, operator, or manager of a water body, facility, or a water supply system.

(e) "Equipment" means an article, tool, implement, or device capable of carrying or containing water or Dreissena mussel.

(f) "Facility" means a structure that is located within or adjacent to a water body.

(g) "Infested water" includes all the following:

(i) Grand Lake, Colorado;

(ii) lower Colorado River between Lake Mead and the Gulf of California;

(iii) Lake Granby, Colorado;

(iv) Lake Mead in Nevada and Arizona;

(v) Lake Mohave in Nevada and Arizona;

(vi) Lake Havasu in California and Arizona;

(vii) Lake Pueblo in Colorado;

(viii) Lake Pleasant in Arizona;

(ix) San Justo Reservoir in California;

(x) Southern California inland waters in Orange, Riverside, San Diego, Imperial, and San Bernardino counties;

(xi) Shadow Mountain Reservoir, Colorado;

(xii) Willow Creek Reservoir; Colorado;

(xiii) coastal and inland waters east of the100th Meridian in North America; and

(xiv) other waters established by the Wildlife Board and published on the DWR website.

(h) "Vessel" means every type of watercraft used or capable of being used as a means of transportation on water.

(i) "Water body" means natural or impounded surface water, including a stream, river, spring, lake, reservoir, pond, wetland, tank, and fountain.

(j) "Water supply system" means a system that treats, conveys, or distributes water for irrigation, industrial, wastewater treatment, or culinary use, including a pump, canal, ditch or, pipeline.

(i) "Water supply system" does not included a water body.

R657-60-3. Possession of Dreissena Mussels.

(1) Except as provided in Subsections R657-60-3(2) and R657-60-5(2), a person may not possess, import, ship, or transport any Dreissena mussel.

(2) Dreissena mussels may be imported into and possessed within the state of Utah with prior written approval of the Director of the Division of Wildlife Resources or a designee.

R657-60-4. Reporting of Invasive Species Required.

(1) A person who discovers a Dreissena mussel within this state or has reason to believe a Dreissena mussel may exist at a specific location shall immediately report the discovery to the division.

(2) The report shall include the following information:

(a) location of the Driessena mussels;

(b) date of discovery;

(c) identification of any conveyance or equipment in which mussels may be held or attached; and

(d) identification of the reporting party with their contact information.

(3) The report shall be made in person or in writing:

(a) at any division regional or headquarters office or;

(b) to the division's toll free hotline at 1-800-662-3337; or

(c) on the division's website at www.wildlife.utah.gov/law/hsp/pf.php.

R657-60-5. Transportation of Equipment and Conveyances That Have Been in Infested Waters.

(1) The owner, operator, or possessor of any equipment or conveyance that has been in an infested water shall:

(a) immediately drain all water from the equipment or conveyance at the take out site, including water held in ballast tanks, bilges, livewells, motors, and other areas of containment; and

(b) immediately inspect the interior and exterior of the equipment or conveyance at the take out site for the presence of Dreissena mussels.

(2) If all water in the equipment or conveyance is drained and the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment and conveyance are free from mussels or shelled organisms, fish, plants and mud, the equipment and conveyance may be transported in or through the state directly from the take out site to the location where it will be:

(a) professionally decontaminated; or

(b) stored and self-decontaminated.

(3) If all the water in the equipment or conveyance is not drained or the inspection undertaken pursuant to Subsection (1)(b) reveals the equipment or conveyance has attached mussels or shelled organisms, fish, plants, or mud, the equipment and conveyance shall not be moved from the take out site until the division is contacted and written or electronic authorization received to move the equipment or conveyance to a designated location for professional decontamination.

(4) A person shall not place any equipment or conveyance that has been in an infested water in the previous 30 days into any other water body or water supply system in the state without first decontaminating the equipment or conveyance.

R657-60-6. Certification of Decontamination.

(1) The owner, operator or possessor of a vessel desiring

to launch on a water body in Utah must:

(a) verify the vessel and any launching device have not been in an infested water in the previous 30 days; or

(b) certify the vessel and launching device have been decontaminated.

(2) Certification of decontamination is satisfied by:

(a) previously completing self-decontamination since the vessel and launching device were last in an infested water and completely filling out and dating a decontamination certification form which can be obtained from the division; or

(b) providing a signed and dated certificate by a division approved professional decontamination service verifying the vessel and launching device were professionally decontaminated since the vessel and launching device were last in an infested water.

(3) Both the decontamination certification form and the professional decontamination certificate, where applicable, must be signed and placed in open view in the window of the launching vehicle prior to launching or placing the vessel in a body of water.

(4) It is unlawful under Section 76-8-504 to knowing falsify a decontamination certification form.

R657-60-7. Wildlife Board Designations of Infested Waters.

(1) The Wildlife Board may designate a geographic area, water body, facility, or water supply system as infested with Dreissena mussels pursuant to Section 23-27-102 and 23-27-401 without taking the proposal to or receiving recommendations from the regional advisory councils.

R657-60-8. Closure Order for a Water Body, Facility, or Water Supply System.

(1)(a) If the division detects or suspects a Dreissena mussel is present in a water body, facility, or water supply system, the division director or designee may, with the concurrence of the executive director, issue an order closing the water body, facility, or water supply system to the introduction or removal of conveyances or equipment.

(b) The director shall consult with the controlling entity of the water body, facility, or water supply system when determining the scope, duration, level and type of closure that will be imposed in order to avoid or minimize disruption of economic and recreational activities.

(2)(a) A closure order issued pursuant to Subsection (1) shall be in writing and identify the:

(i) water body, facility, or water supply system subject to the closure order;

(ii) nature and scope of the closure or restrictions;

(iii) reasons for the closure or restrictions;

(iv) conditions upon which the order may be terminated or modified; and

(v) sources for receiving updated information on the status of infestation and closure order.

(b) The closure order shall be mailed, electronically transmitted, or hand delivered to:

(i) the controlling entity of the water body, facility, or water supply system; and

(ii) any governmental agency or private entity known to have economic, political, or recreational interests significantly impacted by the closure order; and

(iii) any person or entity requesting a copy of the order.

(c) The closure order or its substance shall further be:

(i) posted on the division's web page; and

(ii) published in a newspaper of general circulation in the state of Utah or the affected area.

(3) If a closure order lasts longer than seven days, the division shall provide the controlling entity and post on its web page a written update every 10 days on its efforts to address the Dreissena mussel infestation.

(a) The 10 day update notice cycle will continue for the duration of the closure order.

(4)(a) Notwithstanding the closure authority in Subsection (1), the division may not unilaterally close or restrict a water supply system infested with Dreissena mussels where the controlling entity has prepared and implemented a control plan in cooperation with the division that effectively eradicates or controls the spread of Dreissena mussels from the water supply system.

(b) The control plan shall comply with the requirements in R657-60-9.

R657-60-9. Control Plan Required.

(1) The controlling entity of a water body, facility, or water supply system may develop and implement a control plan in cooperation with the division prior to infestation designed to:

(a) avoid the infestation of Dreissena mussels; and

(b) control or eradicate an infestation of Dreissena mussels that might occur in the future.

(2) A pre-infestation control plan developed consistent with the requirements in Subsection (3) and approved by the division will eliminate or minimize the duration and impact of a closure order issued pursuant to Section 23-27-303 and R657-60-8.

(3) Upon detection of a Dreissena mussel and issuance of a division closure order involving a water body, facility, or water supply system without an approved control plan, the controlling entity shall cooperate with the division in developing and implementing a control plan to address the:

(a) scope and extent of the infestation;

(b) actions proposed to control the pathways of spread of the infestation;

(c) actions proposed to control or eradicate the infestation;

(d) methods to decontaminate the water body, facility, or water supply system, if possible;

(e) actions required to systematically monitor the level and extent of the infestation; and

(f) requirements and methods to update and revise the plan with scientific advances.

(4) Any post-infestation control plan prepared pursuant to Subsection (3) shall be approved by the Division before implementation.

R657-60-10. Procedure for Establishing a Memorandum of Understanding with the Utah Department of Transportation.

(1) The division director or designee shall negotiate an agreement with the Utah Department of Transportation for use of ports of entry for detection and interdiction of Dreissena Mussels illegally transported into and within the state. Both the Division of Wildlife Resources and the Department of Transportation must agree upon all aspects of Dreissena Mussel interdiction at ports of entry.

(2) The Memorandum shall include the following:

(a) methods and protocols for reimbursing the department for costs associated with Dreissena Mussel interdiction;

(b) identification of ports of entry suitable for interdiction operations;

(c) identification of locations at a specific port of entry suitable for interdiction operations;

(d) methods and protocols for disposing of wastewater associated with decontamination of equipment and conveyances;

(e) dates and time periods suitable for interdiction efforts at specific ports of entry;

(f) signage notifying motorists of the vehicles that must stop at the port of entry for inspection;

(g) priorities of use during congested periods between the department's port responsibilities and the division's interdiction activities;

(h) methods for determining the length, location and dates of interdiction;

(i) training responsibilities for personnel involved in interdiction activities; and

(j) methods for division regional personnel to establish interdiction efforts at ports within each region.

R657-60-11. Penalty for Violation.

A violation of any provision of this rule is punishable as provided in Section 23-13-11.

KEY: fish, wildlife, wildlife law
January 7, 2009 **23-27-401**
23-14-18
23-14-19

R722. Public Safety, Criminal Investigations and Technical Services, Criminal Identification.
R722-900. Review and Challenge of Criminal Record.
R722-900-1. Purpose.

Subsection 53-10-108(8)(a) requires the Commissioner of Public Safety to establish procedures to allow an individual to review his criminal history record information. Subsection 53-10-108(8)(c) requires the Commissioner to establish procedures to allow an individual to challenge the completeness and accuracy of his criminal history record information as contained in the department's computerized criminal history files. The purpose of this rule is to establish those procedures.

R722-900-2. Authority.

This rule is authorized by Sections 53-10-108 and 63G-3-201.

R722-900-3. Review.

An individual may review the department's criminal history record information about him, by contacting the Bureau of Criminal Identification (BCI) and:

(a) filling out an application provided by BCI;
(b) providing a set of fingerprints;
(c) providing a copy of a government issued photo i.d.;
(d) filling out and signing a criminal history waiver form provided by BCI; and
(e) paying a $10 processing fee.

R722-900-4. Application by Mail.

(a) Individuals who are unable to apply in person may obtain an application from BCI, be fingerprinted at a local law enforcement agency, and then mail the completed application, fingerprints, signed waiver, and $10 processing fee to BCI at Box 148280, Salt Lake City, Utah 84114-8280.

(b) The local law enforcement agency verifies the identity of the individual by checking a government issued photo i.d. at the time of fingerprinting and signs the application form.

R722-900-5. Challenge.

(a) An individual may challenge the completeness and accuracy of his criminal history record information by filling out a challenge form provided by BCI. The submittal of a challenge form will be handled as an informal adjudicative proceeding in accordance with Section 63G-4-203. If the department denies the challenge, no further hearing, review, or reconsideration shall be granted. The individual making the challenge will be required to prove to the satisfaction of BCI through the use of appropriate documentation that the department's criminal history record information is incomplete or inaccurate.

(b) If BCI is satisfied that the individual has sufficiently documented that his/her criminal history record information is incomplete or inaccurate, BCI will amend the individual's files accordingly.

(c) An individual who is dissatisfied with the decision made by BCI regarding the completeness or accuracy of the department's criminal history record information on him/her, may appeal the decision to district court in accordance with Section 63G-4-402.

KEY: criminal records
December 15, 1998 53-10-108(8)
Notice of Continuation November 17, 2008

R746. Public Service Commission, Administration.
R746-350. Application to Discontinue Telecommunications Service.
R746-350-1. Purpose and Authority.

A. Authorization -- Section 54-4-1 provides that the Public Service Commission shall have the power to regulate utilities and to supervise their business operations. Section 54-3-1 requires that the terms and conditions of the provision of service be just and reasonable.

B. Purpose -- This rule is intended to address situations where a telecommunications corporation has determined to stop providing Basic Telecommunications Service to subscribed customers in a Utah service area. The rule will provide subscribed customers an opportunity to migrate their service to an alternative service or a different provider prior to the Exiting Provider's discontinuance of the subscribed service. No telecommunications corporation may discontinue the provision of Basic Telecommunications Service to existing customers in a service area, or portions thereof, without first complying with this rule or receiving an exemption from the Commission.

R746-350-2. Definitions.

Terms -- The meaning of the terms used in this rule shall be consistent with their general usage in the telecommunications industry, Title 54 of the Utah Code or as defined below:

A. "Basic Telecommunications Service" means the telecommunications services defined as Basic Telecommunications Service in Rule 746-360-2.C.

B. "Commission" means the Public Service Commission of Utah.

C. "Division" means the Division of Public Utilities.

D. "Exiting Provider" means a telecommunications corporation that seeks to stop or eliminate providing Basic Telecommunications Service to subscribed customers in a service area, or portion thereof, located in Utah. It does not include a telecommunications corporation that discontinues telecommunications service as a result of the customer's request or pursuant to the provisions of other rules or orders of the Commission. It does not include a temporary change in the provision of service that may arise from maintenance, repair or failure of a telecommunications corporation's equipment or facilities.

E. "Intended Date of Discontinuance" means the date upon which an Exiting Provider intends to discontinue providing Basic Telecommunications Service pursuant to this rule.

F. "Replacement Provider" means a telecommunications corporation that undertakes providing Basic Telecommunications Service to customers of the Exiting Provider after the Exiting Provider is permitted to discontinue service.

R746-350-3. Application and Notice.

A. Application -- Unless subject to R746-350-4.E for exclusive facilities, an Exiting Provider shall file an application with the Commission and the notices identified hereafter not less than 50 days prior to the Intended Date of Discontinuance.

B. Notices -- An Exiting Provider shall provide written notice to the following:

1. the Division;

2. subscribed customers that will be affected by the discontinuance of service;

3. telecommunications corporations providing the Exiting Provider with resold telecommunications services, essential facilities or services, or unbundled network elements (UNEs), if they are part of or used to provide Basic Telecommunications Service to the Exiting Provider's affected customers; and

4. the national number administrator, when applicable, authorizing the release of all unassigned telephone numbers unless the Exiting Provider establishes a need to retain the telephone numbers.

R746-350-4. Application and Notice Contents.

A. Application -- The application to the Commission required by R746-350-3.A must include:

1. applicant's name, complete mailing address, including street, city, state, and zip code, telephone number, e-mail address, and the names under which the applicant is providing telecommunications service in Utah;

2. name, mailing address, telephone number and e-mail address of a person or persons, designated by the Exiting Provider, to contact for questions about the application;

3. identification of the associated service territory, or portion thereof, proposed for discontinuance;

4. the Intended Date of Discontinuance, which shall not be sooner than 50 days after the date on which the Exiting Provider files the application with the Commission;

5. acknowledgment that by signing the application, the applicant and its successors understand and agree that:

a. filing of the application does not, by itself, constitute authority to discontinue any service;

b. discontinuance shall occur as ordered by the Commission; and

c. the Exiting Provider shall assist in the porting of any assigned telephone numbers to a Replacement Provider.

6. an affidavit signed by an officer or principal of the Exiting Provider attesting under penalty of perjury that the contents of the application are true, accurate, and correct; and

7. a copy of the notices required in this rule.

B. Notice to the Division -- The notice to the Division required in R746-350-3.B.1 shall be a copy of the application submitted to the Commission.

C. Notice to Customers -- The notice to customers required in R746-350-3.B.2 must, at a minimum, include:

1. the Intended Date of Discontinuance on which Basic Telecommunications Service is planned to be discontinued; and

2. information on how to contact the Exiting Provider by telephone in order to obtain information such as how customers may receive a refund on any unused service or how to contact regulatory agencies to obtain information on possible replacement providers. The Exiting Provider shall continue to provide refund information, via a customer service number, for 60 days after the date of discontinuance of service;

D. Notice to Other Companies -- The notice to other companies required in R746-350-3.B.3 must, at a minimum, include:

1. the Intended Date of Discontinuance of Basic Telecommunications Service; and

2. telephone contact information to enable other companies to obtain additional information regarding the discontinuance of service.

3. Until chosen as the Replacement Provider, telecommunications corporations receiving notices under R746-350-3.B.3 may not use information contained in the notices to initiate marketing efforts unless the information is first made available to other telecommunications corporations for their marketing efforts.

E. Earlier Notice for Exclusive Facilities -- Notwithstanding the requirements set forth in R746-350-3.A and R746-350-4.A.4, if an Exiting Provider has ownership or control of the only facilities readily available to provide Basic Telecommunications Service to customers so that another telecommunications corporation would either need to acquire control of those facilities or install its own facilities in order to serve the customers of the Exiting Provider, then the following shall be required:

1. The Exiting Provider shall provide notice to the Commission, the Division and to telecommunications corporations identified in the Commission's list of certificated

telecommunications companies at least 120 days prior to its Intended Date of Discontinuance. The notice shall grant other telecommunications corporations 40 days to respond indicating any interest in obtaining the facilities and their transfer.

2. The Exiting Provider shall file its application to discontinue service with the Commission at least 75 days prior to the Intended Date of Discontinuance.

3. The Commission shall determine the timing of any further proceedings, including the timing of further notices.

F. Notice to the National Number Administrator -- Unless the Exiting Provider has established a need to retain the telephone numbers, the notice required in R746-350-3.B.4 shall include identification of all telephone numbers assigned to customers, identification of all unassigned or administrative numbers available for reassignment to other providers and the date the unassigned telephone numbers will be available for reassignment.

R746-350-5. Commission Proceedings upon Application to Discontinue Service.

A. Proceeding -- The Commission will act upon an application to discontinue service within the time period ending on the Intended Date of Discontinuance. If an Exiting Provider fails to comply with this rule and customers have not had an adequate opportunity to obtain a replacement telecommunications service or locate a Replacement Provider, if one exists, the Exiting Provider may be required to continue to provide service until the earlier of: the date on which a Replacement Provider is able to provide service, or a date ordered by the Commission. The Commission may use the proceedings on an Exiting Provider's application to resolve disputes between the Exiting Provider and a possible Replacement Provider to facilitate the migration of the Exiting Provider's customers to alternative telecommunications services that may be available. The Commission may use the proceeding to address requirements of R746-349-5, Utah Code Section 54-8b-18, or any other requirements associated with a change in service providers.

B. Liability -- Nothing in this rule, however, shall be construed as shielding the Exiting Provider from any legal liability to its customers or any other person or entity, whether the liability is grounded in contract, tort or otherwise, including any obligation for any interconnection payment required to maintain service to the Exiting Provider's customers.

C. Rates or Terms -- Nothing in this rule shall require the Replacement Provider to provide any service at rates or on terms other than those published in the Replacement Provider's tariffs, price lists, or contract with the customer.

D. Obligation -- Nothing in this rule obligates the Replacement Provider to undertake any obligation of the Exiting Provider. To the contrary, unless expressly agreed in writing or ordered by the Commission, it shall be presumed that the Replacement Provider has not undertaken any obligation of the Exiting Provider.

KEY: exiting provider, replacement provider, telecommunications, services
January 15, 2004 54-4-1
Notice of Continuation January 14, 2009 54-3-1

R746. Public Service Commission, Administration.
R746-365. Intercarrier Service Quality.
R746-365-1. General Provisions.

A. Application and Authority -- This rule shall apply to telecommunications corporations that are obligated to interconnect facilities and equipment for the mutual exchange of telecommunications traffic pursuant to 54-8b-2.2.

1. This rule provides service guidelines to ensure that telecommunications corporations, individually and jointly, will engineer, design, equip and provision an efficient public telecommunications network with attendant operational support systems and joint network planning processes that will:

a. prevent impairment of public telecommunication services attributable to the provisioning of essential facilities and services used to provide local exchange service, including unreasonable blocking of telecommunications traffic carried by or exchanged between the networks of multiple telecommunications corporations;

b. ensure that each incumbent local exchange carrier timely provides essential interconnection facilities and services to other telecommunications corporations that is at least equal in quality to that provided by the incumbent local exchange carrier to itself or to any of its subsidiaries or affiliates, or to any other carrier with whom the incumbent local exchange carrier interconnects, or provides interconnection facilities and services or that otherwise is adequate, efficient, just and reasonable.

2. This rule defines guidelines relating to interconnection and the exchange of traffic that apply to all telecommunications carriers and further defines additional guidelines relating to interconnection and the exchange of traffic that apply only to incumbent local exchange carriers, as required by the federal Telecommunications Act of 1996, 47 U.S.C. Section 251.

3. This rule specifies network performance and service quality guidelines applicable to telecommunications corporations interconnecting pursuant to 54-8b-2.2 and upon which the Commission may rely in determining whether service is just, adequate, and reasonable.

4. This rule establishes specific network monitoring and reporting obligations for incumbent local exchange carriers.

5. Incumbent local exchange carriers with less than 50,000 access lines shall be exempt from this rule. If a carrier receives a bona fide request for interconnection made pursuant to the notice and exemption provisions of 47 U.S.C. Section 251 (f), in the event the Commission determines that the requirements of Section 251(f)(1)(B) are met and the Commission terminates the exemption, the Commission may also consider what service standards shall apply to the incumbent local exchange carrier and may promulgate rules to implement applicable standards.

6. The adoption of this rule by the Commission neither precludes subsequent amendment pursuant to applicable statutory procedures, nor the grant of a temporary exemption by the Commission as provided in R746-100-16, Deviation from Rules.

R746-365-2. Definitions.

A. The meaning of terms used in these rules shall be consistent with their general usage in the telecommunications industry unless specifically defined in 54-8b-2, R746-348, or this rule. As used in this rule, unless context states otherwise, the following definitions shall apply:

1. "Affiliate" -- means, with respect to any telecommunications corporation, a person that directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. For purposes of this subsection, the term "own" means to own an equity interest, or the equivalent, of more than ten percent.

2. "Blocking" -- means the occurrence of insufficient capacity between the end office or tandem of a telecommunications corporation and the end office or tandem of another telecommunications corporation, and includes a call not completed because of insufficient capacity usually evidenced by a fast busy signal or message that circuits are busy.

3. "Busy Hour" -- means the uninterrupted period of 60 minutes during the day when the traffic is at its maximum.

4. "Business Day" -- means any day other than Saturday, Sunday or other day on which commercial banks in Utah are authorized or required to close.

5. "CFR" -- means the Code of Federal Regulations.

6. "Commission" -- means the Public Service Commission of Utah.

7. "Competitive Local Exchange Carrier" (CLEC) -- means an entity certificated to provide local exchange services that does not otherwise qualify as an incumbent local exchange carrier.

8. "Delayed Service Order" -- means a written or electronic order for an essential interconnection service or facility that is not filled on or before the standard installation interval or the date specified in a FOC, whichever occurs first.

9. "End User" -- means the person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency purchasing the telecommunications service for its own use, and not for resale.

10. "FCC" -- means the Federal Communications Commission.

11. "Federal Act" -- means the Federal Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (codified at 47 U.S.C. Section 151 et seq.).

12. "Firm Order Confirmation" (FOC) -- means notice provided by one telecommunications corporation to another in electronic or manual form of acceptance of a service order and the date that the service order will be completed.

13. "Incumbent Local Exchange Carrier" (ILEC) -- is defined as it is in R746-348, Interconnection.

14. "Interoffice Trunk Facilities" -- means the facilities, including transport, switching and cross-connect facilities, necessary for the transmission and routing of telephone exchange service between two end offices, or an end office and a tandem office.

15. "Local Exchange Carrier" -- means a telecommunications provider, authorized by the Commission, that provides local exchange service in a defined geographic service territory.

16. "Network Element" or "Network Facility" -- is defined as it is in R746-348-2. Interconnection.

17. "Order Completion Notification" (OCN) -- means notice provided by one telecommunications corporation to another in electronic or manual form that a service order has been completed.

18. "OSS Interface" -- means a system of communications links, computer hardware and software and associated equipment providing access into an ILEC's operational support systems for human-to-computer or computer-to-computer communication. This definition is conjunctive to the definition of "operational support" contained in R746-348-2, Interconnection.

19. "Service Order" -- means a written or electronic request for essential facilities or services made to effectuate 54-8b-2.2 and section 251 of the federal act.

20. "Trouble Report" -- means an oral, written or electronic report received by a telecommunications corporation from an end user of public telecommunications service, or, an oral, written or electronic report received by one telecommunications corporation from another who purchases essential facilities or services from the former. In either case, a Trouble Report communicates improper functioning of facilities over which the providing telecommunications corporation exercises control. A trouble report is used by telecommunications corporations to monitor repair and

maintenance actions required for disposition of out-of-service or substandard service conditions.

21. "Wholesale Services" -- means essential services available to telecommunications corporations for the purpose of resale to end users.

22. "Wire Center" -- means a building that contains the necessary telecommunications facilities and functions to terminate, switch, route and interconnect local exchange, interoffice, and interexchange public telecommunication services.

R746-365-3. Network Guidelines Applicable to All Telecommunications Corporations.

A. Engineering -- All telecommunications corporations shall construct network facilities in conformance with network design standards and specifications.

B. Stricter Standards -- If an interconnection agreement is adopted pursuant to negotiation or arbitration under the Federal Act, the agreements may contain obligations and performance standards for network facilities and services that are stricter than the guidelines contained in this rule.

R746-365-4. Service Quality Guidelines.

A. Service Quality Applicable to All Telecommunications Corporations --

1. Carrier Provisioning Intervals -- Each telecommunications corporation shall provide essential facilities and associated services in accordance with the following provisioning intervals and shall separately measure each provisioning interval for commonly used circuit or facility types. The provisioning interval is the elapsed time measured in hours from a telecommunications corporation's receipt of a service order to return of an OCN. The percentage of service orders completed on time will be determined by the number of orders completed within the installation interval or the committed due date specified in a FOC. The cumulative elapsed time for each circuit or facility type is divided by the total number of corresponding completed service orders for each circuit or facility type to derive measures of service order flow-through, as further enumerated in R746-365-5. A telecommunications corporation shall return a FOC within two business days of receipt of a service order from another telecommunications corporation.

a. Interoffice Trunking Facilities -- Pursuant to forecasting requirements established in R746-365-6, forecasted trunk, routing and switching facilities shall be provisioned to any requesting local exchange carrier within 30 days of receipt of a service order, unless otherwise agreed to by the requesting carrier.

(i) Service Orders Presented Under Approved Forecasts -- A telecommunications corporation shall complete all service orders for essential facilities and services requested by another telecommunications corporation that comport with four-month projections contained in a joint forecast developed pursuant to R746-365-6(C).

b. Number Portability -- Telecommunications corporations shall provide either interim number portability or permanent number portability to a requesting carrier. The installation interval for interim number portability shall not exceed three business days following receipt of a service order. Permanent number portability shall be provided pursuant to Federal Communications Commission requirements.

2. Trouble Reports --

a. Receipt, Investigation and Recording -- Each telecommunications corporation shall provide for the receipt of trouble reports 24 hours a day, seven days a week. Each telecommunications corporation providing public telecommunications service shall investigate and respond to each trouble report. Each telecommunications corporation shall maintain a record of trouble reports made by end users and other telecommunications corporations which complies with R746-365-5(B)(4).

b. Emergency Out-of-Service -- Provisions shall be made to clear emergency out-of-service trouble at all hours, consistent with the public interest and the personal safety of a telecommunication corporations personnel. Emergency or alternative service shall be provided local law enforcement and public safety agencies during the period of any network interruption.

c. Notice of Unusual Repairs and Planned Interruptions -- If unusual repairs preclude prompt disposition of a reported trouble, telecommunications corporations shall notify all affected telecommunications corporations. If service must be interrupted for purposes of rearranging facilities or equipment, all affected telecommunications corporations shall be notified and the work shall be completed in the least disruptive manner in order to minimize public inconvenience.

d. Repair Intervals -- Each telecommunications corporation shall seek to clear out-of-service trouble reports received from another telecommunications corporation within the following intervals, unless other repair intervals have been agreed to:

TABLE

DS - 3, OC - 3 and higher	2 hours
DS - 1, Fractional DS - 1, Design DS - 0, and Local Interconnection Trunks	4 hours
Residential and Business Resale POTS	24 hours

The repair interval for clearing a trouble between telecommunications corporations is the elapsed time measured in hours and tenths of hours from the time a trouble report is received by a telecommunications corporation to the time the telecommunications corporation returns a valid trouble resolution notification. Elapsed time shall be measured by common circuit or facility types and trouble disposition and closure recorded in accordance with R365-5(B)(4).

3. Network Performance Levels -- Each telecommunications corporation shall engineer, furnish and install essential facilities and services designed to meet busy hour demand, and to prevent unreasonable blocking. The following minimum network performance standards apply to:

a. Interoffice Facilities --

(i) Local and extended area service interoffice trunk facilities shall have a minimum engineering design standard of (P.01) grade of service.

(ii) Intertandem facilities shall have a minimum engineering design standard of B.0025 (P.0025) grade of service.

b. Outside Plant -- Each telecommunications corporation shall engineer, construct and maintain cable and wire between an end user network interface device and the serving wire center in conformance with current industry standards, as described in R746-365-3(B), and common engineering practices.

B. Service Quality and Other Network Guidelines Applicable to ILECs --

1. Operational Support Systems --

a. OSS Interfaces -- Each ILEC shall undertake all commercially reasonable efforts to facilitate parity of access to operational support systems the incumbent local exchange carrier uses to store and retrieve information related to network engineering and administration.

b. Testing of OSS Interfaces -- Each telecommunications corporation shall upon request jointly conduct with one or more telecommunications corporations testing of OSS interfaces used to obtain access to operational support systems. OSS Interface testing shall commence not more than 45 days after a request for testing is received by a telecommunications corporation. The telecommunications corporations shall determine the duration

of tests which shall be conducted among noncommercial end user accounts. No unreasonable limitation shall be imposed by an ILEC on another telecommunications corporation's ability to test intercarrier OSS Interfaces to ensure compatibility between ILEC and the other telecommunications corporation's operational support systems.

2. Network Provisioning Intervals -- Each ILEC shall provide essential facilities and services that comply with the following installation intervals:

a. Network Elements -- Each ILEC shall provision essential network facilities and services in accordance with the following intervals and shall measure provisioning intervals for each of the following loop facilities and services as described in R746-365-5-(C)(3)(c).

(i) Unbundled Loops -- Provisioning intervals for an unbundled loop will vary by circuit and facility type, the number of loops requested on a service order, availability of facilities and whether or not a dispatch of ILEC personnel must occur. The following essential facilities will be provisioned for telecommunications corporations within the specified intervals.

TABLE

Facility Type	Quantity	Interval
DS0 or analog equivalent, dispatch, facilities available:	1 - 24	5 days
	24 - n	negotiated
DS0 or voice grade equivalent, no dispatch:	1 - 24	3 days
	24 - n	7-10 days
DS1 -- Facilities provisioned and available:		5 days
ISDN -- Facilities provisioned and available:		7 days
XDSL -- Facilities provisioned and available:		7 days
DS3 -- Facilities provisioned and available:		7 days
OC3 -- Facilities provisioned and available:		15 days
OC4 - Higher -- Facilities provisioned and available:		15 days or negotiated due date.

b. Wholesale Services -- Installation intervals for wholesale services shall vary depending upon whether an existing end user service provided by an ILEC is transferred to another telecommunications corporation, or, is a new service installation.

(i) An ILEC shall transfer wholesale services without changes for an existing end user served by the ILEC within one business day following receipt of a service order from the telecommunications corporation.

(ii) An ILEC shall transfer wholesale service with changes for an existing end user served by the ILEC within three business days following receipt of a service order from the telecommunications corporation.

(iii) An ILEC shall install new wholesale service to a new end user, if facilities are available, within three days following receipt of a service order from the telecommunications corporation.

c. Collocation -- The following provisioning intervals and optional arrangements are common to both virtual and physical collocation:

(i) Upon receipt by an ILEC of a request for collocation, the ILEC shall within 15 days notify the telecommunications corporation whether sufficient space exists. If the telecommunications corporation disputes an ILECs denial of a request for collocation, and the carriers cannot negotiate a mutually satisfactory resolution, the telecommunications corporation may petition the Commission pursuant to Section 54-8b-17 for an expedited hearing and resolution of the dispute. The burden shall be on the ILEC to demonstrate to the Commission that collocation is not practical due to space limitations or is technically infeasible.

(ii) If collocation is available, the ILEC shall within 25 days following receipt of a request for collocation provide a written quotation containing all non-recurring charges for construction of the telecommunications corporation's requested collocation arrangement.

(iii) The telecommunications corporation shall within 30 days following receipt of the ILEC's quotation, by written notice to the ILEC: 1) accept the quotation; 2) withdraw the request for collocation; or, 3) provide the ILEC an independent contractor quotation for construction of the requested collocation arrangement.

(iv) If the telecommunication corporation accepts the quotation from the ILEC, collocation equipment shall be installed on the ILEC's premises in accordance with the following provisioning intervals: 1) For physical collocation arrangements, the ILEC shall within 45 days of the telecommunication corporation's acceptance of the ILEC's quotation complete construction of the collocation space necessary and sufficient for installation of the CLEC's collocated interconnection facilities. The ILEC shall grant the telecommunications corporation access to the collocation space to install network elements therein. 2) For virtual collocation arrangements, the ILEC shall within 45 days after delivery of the telecommunication corporation's collocation equipment complete provisioning of all network facilities ordered by the telecommunications corporation.

(v) If the telecommunication corporation provides the ILEC an independent contractor quotation for construction associated with a collocation arrangement, the ILEC shall within 15 days of receipt of the quotation: 1) accept the proposal and grant to the independent contractor access to the ILEC's premises to complete construction of the collocation space and installation of the collocated interconnection facilities; 2) amend the ILEC's own quotation to perform on substantially similar terms, including, without limitation, price, the services specified in the independent contractor's quotation. If the telecommunication corporation accepts the ILEC's amended quotation, construction of the collocation space shall proceed as described in R746-365-4(B)(3)(c)(iv); or, 3) reject the proposal. If the ILEC refuses to accept an independent contractor quotation or amend its own quotation, the telecommunications corporation may petition the Commission for an expedited hearing and resolution of the dispute pursuant to R746-365-8(B).

R746-365-5. Monitoring and Reporting Requirements.

A. Availability and Retention of Records --

1. Availability of Records -- Each telecommunications corporation shall make network engineering and administrative records available for inspection by the Commission or its designee during normal operating hours.

2. Retention of Records -- All information required by this rule shall be preserved for at least 36 months after the date of entry.

3. Information Maintained -- Each telecommunications corporation shall maintain records of its network engineering and administrative operations in sufficient detail to permit review of network performance, provisioning intervals and general service quality provided other telecommunications corporations.

4. Rights of Division of Public Utilities -- Upon request made by the Division of Public Utilities, a telecommunications corporation shall provide within seven business days copies of any information requested. The Division of Public Utilities may request frequent monitoring of network performance, provisioning intervals and general service quality if evidence exists that public telecommunications services are impaired.

5. Special Study -- When requested by the Division of Public Utilities (the Division), an ILEC may file a study with the Division of Public Utilities evidencing actual provisioning intervals for network facilities and services or actual repair

intervals for services provided to a telecommunications corporation, to an affiliate, or, aggregated for its ten largest customers. The Division shall investigate the source of the ILEC's operational support evidence and, at its discretion, petition the Commission pursuant to R746-100-16, Deviation from Rules. If the Commission grants consideration of a petition, intervenors may audit the ILEC's operational support evidence underlying the results of its study.

B. Network Monitoring and Performance Reporting Obligations Applicable to All Telecommunications Corporations --

1. Monitoring -- Each telecommunications corporation shall monitor the use of its network so as to:

a. issue the reports required by this section; and

b. monitor the use of all trunk groups and other interconnection facilities and equipment on its own side of the point of interconnection between its network and the network of each interconnecting telecommunications corporation.

2. Call Blocking -- Each telecommunications corporation shall maintain a daily record, by wire center, of call blocking. The record shall indicate the percentage of calls blocked by trunk group utilized by each interconnecting telecommunications corporation. Each telecommunications corporation shall notify an interconnecting telecommunications corporation immediately if call blocking on any trunk group within in any wire center exceeds standard industry levels specified in R746-365-4(A)(2).

3. Delayed Service Orders -- Each telecommunications corporation shall maintain a record, by wire center, of each instance when it fails to supply essential facilities and services to an interconnecting telecommunications corporation in accordance with the provisioning intervals established in R746-365-4. The record shall provide the following data:

a. the name and address of the telecommunications corporation;

b. the circuit or facility type requested in the service order;

c. the date and hour the service order was received;

d. the reason for the delay;

e. the number of days the order has been delayed;

f. the expected order completion date for each service order;

g. whether an initial service order was supplemented by the requesting telecommunications corporation and, if so, the date and time the supplement was approved by the providing carrier;

h. a copy of the FOC provided the requesting telecommunications corporations.

4. Carrier Trouble Reports -- Each telecommunications corporations shall maintain a record, by wire center, of trouble reports received from another telecommunications corporations. The record shall:

a. identify the telecommunications corporation experiencing trouble;

b. the affected services;

c. the time, date and nature of the report;

d. the cause and action taken to clear the trouble and its recorded disposition;

e. the date and time of trouble clearance.

C. Performance Monitoring and Reporting Obligations Applicable to ILECs --

1. Service Provisioning Reports -- Each ILEC will provide interconnecting telecommunications corporations performance monitoring reports detailing the ILEC's provisioning of:

a. services to the ILEC's retail customers in the aggregate;

b. essential facilities and services provided to itself or any retail affiliate purchasing interconnection or access;

c. essential facilities and services provided in the aggregate to other telecommunications corporations purchasing interconnection; and

d. essential facilities and services provided to individual telecommunications corporations purchasing interconnection.

2. Service Response Description -- The ILEC shall develop a detailed narrative description of the procedures it employs in responding to calls from:

a. its retail customers;

b. its affiliated customers purchasing essential facilities and services for interconnection or local exchange access;

c. interconnecting telecommunications corporations; and

d. The service response description will be made available upon request to telecommunications corporations purchasing essential facilities and services for interconnection. The ILEC shall comply with the procedures outlined in its service response description.

3. Performance Monitoring Reports -- Performance monitoring reports shall include the following reports in addition to any additional reports the Commission may request:

a. Pre-Ordering Data -- Pre-ordering data means network administration data that resides in an ILECs operational support systems that includes, but is not limited to: facility availability, service availability, customer service records, appointment scheduling, telephone number reservation, feature function availability, and street address validation.

(i) Average OSS Response Interval for Pre-Ordering Data -- This report measures average response time per transaction for: customer service records; due date availability, address validation, feature function availability and telephone number selection and reservation. It shall be measured as: the Average Response Interval. The Average Response Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences between minuends expressed in Query Response date and time and subtrahends expressed in Query Submission date and time, the sum total dividend being divided by a divisor expressed as the number of Queries submitted in the reporting period.

(ii) OSS Interface Availability -- This report measures the percentage of time an OSS Interface is actually available for use compared to scheduled availability. It shall be measured as: the Percent System Availability. The Percent System Availability will equal the quotient of the following formula: the dividend expressed in the hours the OSS Interface functionality is actually available to CLECs during the report period divided by a divisor expressed in the number of hours the functionality was scheduled to be available during the reporting period, the quotient being expressed as a percentage.

b. Ordering --

(i) Firm Order Confirmation Timeline -- This report measures the average interval from receipt of a service order to distribution of an order confirmation notice. It shall be measured as: measured as the Mean FOC Interval. The Mean FOC Interval will equal the quotient of the following formula: the dividend expressed as the sum total of the differences of minuends expressed as the date and time of Firm Order Confirmation (FOCs) and subtrahends expressed as the date and time of Order acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders confirmed in the reporting period.

(ii) Reject Timelines -- This report measures average response time from receipt of service order to distribution of rejection notice. It shall be measured as: the Mean Reject Interval. The Mean Reject Interval will equal the quotient of the following formula: a dividend expressed as the total sum of the difference of minuends expressed as the date and time of Order Rejection and subtrahends expressed as the date and time of Order Acknowledgment, the sum total dividend being divided by a divisor expressed in the number of Orders Rejected in the reporting period.

(iii) Percentage Rejects -- This report measures the percentage of total service orders received and rejected by the

ILEC due to errors or omissions in the service order.

(iv) Timeliness of Order Completion Notification -- This report measures average response time from the actual completion date to distribution of service order completion notification. It shall be measured as: the Completion Interval. The Completion Interval shall equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Notice of Completion issued to the telecommunications corporations and subtrahends expressed as the date and time of Work Completion by the ILEC, the sum total dividend being divided by a divisor expressed as the number of Orders completed during the reporting period.

(v) Delayed Order Interval -- This report measures uncompleted orders where the committed due date on a firm confirmation order has passed. It shall be measured as: the Mean Delayed Order Interval. The Mean Delayed Order Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the reporting period close date and subtrahends expressed as the Committed Order Due date, the sum total dividend being divided by a divisor expressed as the number of Orders Pending and Past the Committed Due Date.

c. Provisioning --

(i) Average Completion Interval -- This report measures the average time from an ILECs receipt of service order to the completion date provided on an OCN. It shall be measured as: the Average Completion Interval. The Average Completion Interval will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the OCN date and time and subtrahends expressed as the Service Orders Submission date and time, the sum total dividend being divided by a divisor expressed as the count of Orders completed in the reporting period.

(ii) Percentage of Orders Completed On Time -- This report measures the percentage of total orders completed on or before the completion date provided on an OCN. It shall be measured as: the Percent Orders Completed on Time. The Percent Orders Completed on Time will equal the quotient of the following formula: a dividend expressed as the count of Orders Completed within ILEC Committed Due Date and a divisor expressed as the count of Orders Completed in the reporting period, the quotient being expressed as a percentage.

(iii) Percentage Missed Installation Appointments -- This report measures the percentage of service orders where installation of service is not performed at a time in which the customer concurs. It excludes misses when the other telecommunications corporation or end user causes the missed appointment. It shall be measured as: the Percentage Missed Installation Appointments. The Percentage Missed Installation Appointments will equal the quotient of the following formula: a dividend expressed as the count of appointments missed and a divisor expressed as the count of Wholesale Orders completed in the reporting period, the quotient being expressed as a percentage.

(iv) New Service Installation Trouble Within 30 Days -- This report measures the percentage of new service installations which prove defective within 30 days following completion of a service order. It shall be measured as: the Percentage New Service Installation Trouble within 30 days. The Percentage New service Installation Trouble within 30 days will equal the quotient of the following formula: a dividend expressed as the count of defective New Service Install in the past 30 days divided by a divisor expressed as the count of total New Service Installs in the past 30 days; the quotient being expressed as a percentage.

d. Maintenance --

(i) Trouble Report Rate -- This report measures the frequency of direct or referred trouble report incidents across a universe of facilities where the cause is determined to be in network facilities. It is measured as a percentile of lines or circuit types in service. It shall be measured as: the Trouble Report Rate. The Trouble Report Rate will equal the quotient of the following formula: a dividend expressed as the count of Initial and Repeated Trouble Reports in the reporting period divided by a dividend expressed as the number of Service Access Lines in service at the end of the reporting period; the quotient being expressed as a percentage. For purposes of R746-365-5C(1)(c) and (d), an ILEC shall exclude from its count of trouble reports queries made to the ILEC from another telecommunications corporation's end-user customers who are not served by the ILEC.

(ii) Missed Repair Appointments -- This report measures the percentage of trouble reports not cleared by the committed date and time. It excludes misses where the telecommunications corporation or end user caused the missed appointment. It shall be measured as: the Percentage Missed Repair Appointments. The Percentage Missed Repair Appointments will equal the quotient of the following formula: a dividend expressed as the count of Repair Appointments Missed divided by a divisor expressed as the count of Total Appointments; the quotient being expressed as a percentage.

(iii) Mean Time to Restore -- This report measures the restoral interval for resolution of maintenance and repair troubles. It measures the elapsed time from receipt of a trouble report to the time the reported trouble is cleared. It shall be measured as: the Mean Time to Restore. The Mean Time to Restore will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the date and time of Ticket Closure and subtrahends expressed as the date and time of Ticket creation, the sum total dividend being divided by a divisor expressed as the count of Trouble Tickets Closed in the reporting period.

(iv) Percentage Repeat Trouble Reports Within 30 Days -- This report measures the percentage of trouble reports on a line or circuit that has had a previous trouble report in the preceding 30 days. It shall be measured as: the Repeat Trouble Rate. The Repeat Trouble Rate will equal the quotient of the following formula: a dividend expressed as the count of Service Access Lines generating more than one Trouble Report within a continuous 30 day period divided by a divisor expressed as the number of Trouble Reports in the report period; the quotient being expressed as a percentage.

e. Billing --

(i) Timeliness of Daily Usage Feed -- This report measures the interval in hours between the recording of usage data and the transmission in proper format to a telecommunications corporation. It shall include usage originating at ILEC switches, resale and UNE switching, and not alternately billed messages received from other ILECs. It shall be measured as: the Mean Time to Provide Recorded Usage Records. The Mean Time to Provide Recorded Usage Records will equal the quotient of the following formula: a dividend expressed as the sum total of the differences of minuends expressed as the data set transmission time and subtrahends expressed as the time of message recording the sum total dividend being divided by a divisor expressed as the count of all messages transmitted in the reporting period; the quotient being expressed as a percentage.

f. Specific Performance Monitoring Reports -- The Commission, the Division of Public Utilities or a telecommunications corporation may request from the ILEC a report on a specific basis rather than on an average basis with respect to any of the information described in the foregoing performance monitoring reports.

4. Identifiable Carrier-Specific Information -- An ILEC shall ensure that any carrier specific information contained in the performance monitoring reports is disclosed only to the individual carrier. The ILEC shall not use any information

specific to a carrier for any purpose other than the reporting requirements contained herein.

R746-365-6. Joint Planning and Forecasting.

A. Planning --A telecommunications corporation will meet with another telecommunications corporation, interconnecting or planning to interconnect within the next calendar quarter, to participate in joint forecasting and planning as necessary to accommodate the design and provisioning responsibilities of both telecommunications corporations. At a minimum, the telecommunications corporations will meet once every calendar quarter.

B. Forecasting --

1. Forecasting is the joint responsibility of the telecommunications corporations. A forecast of interconnecting trunk group and other facilities and equipment required by the telecommunications corporations is required on a quarterly basis. The quarterly forecast shall project requirements for the following time intervals:

a. four months;

b. one year; and

c. three years.

To the extent practical, the one-year and three-year forecasts will be supplemented with historical data from time to time as necessary to improve the accuracy of the forecasts.

2. The forecasts shall include, for tandem-switched traffic, the quantity of the tandem-switched traffic forecasted for each end office.

3. The use of Common Language Location Identifier (CLLI-MSG) shall be incorporated into the forecasts.

4. The forecasts shall include a description of major network projects anticipated for the following year that could affect the other party to the forecast. Major network projects include trunking or network rearrangements, shifts in anticipated traffic patterns, or other activities that are reflected by a significant increase or decrease in trunking demand for the succeeding forecasting period.

5. The forecasts, in narrative form, shall also describe anticipated network capacity limitations, including any trunk groups when usage exceeds 80 percent of the trunk group capacity, and the procedure for eliminating capacity problems before any trunk group experiences blocking in excess of the standards set forth in R746-365-5(B)(2).

6. The forecasts shall include the requirements of the telecommunications corporations for each of the following trunk groups:

a. intraLATA toll and switched access trunks;

b. EAS and local trunks;

c. directory assistance trunks;

d. 911 and E911 trunks;

e. operator service trunks;

f. commercial mobile radio service and wireless traffic; and

g. meet point billing trunks.

7. Unless otherwise agreed, forecasting information exchanged between interconnecting local exchange carriers, or disclosed by one interconnecting local exchange carrier to the other, shall be deemed confidential and proprietary.

C. Procedure for Forecasting --

1. At least 14 days before a scheduled joint planning and forecasting meeting, the telecommunications corporations shall exchange information necessary to prepare the forecast described in R746-365-6(B). At a minimum, the telecommunications corporation will provide the other with the following information.

a. Existing Interconnection Locations -- For existing interconnection locations between the telecommunications corporations, each telecommunications corporation shall provide:

(i) blocking reports, at the individual trunk group level, detailing blocking at each end office, including overflow volumes, and blocking between the telecommunications corporation's end offices and tandem switches;

(ii) the existence of any network switching, capacity or other constraints.

(iii) any network reconfiguration plans for the telecommunications corporation's network.

b. New Markets -- They may request the following information concerning a specific market area in the other's Utah service territory into which they desire to expand their own network:

(i) The network design and office types in the market area.

(ii) The capabilities of the network in the market area.

(iii) Any plans to reconfigure the network in the market area.

c. Future need information -- The telecommunications corporation will provide the other with the following information:

(i) The number of trunk lines requested and the projected century call second loads used to formulate such request.

(ii) Whether internet providers will be served and the projected number of internet provider lines needed.

(iii) The projected busy hour(s) of the trunk groups.

(iv) The expected century call seconds on busy hours - how many century call seconds the last idle trunk line will carry.

(v) The projected service dates for the requested trunking groups for the first quarter forecasted.

(vi) The telecommunications corporation's forecast for direct trunk groups to any particular end office.

(viii) Any ramp up time anticipated for the use of the requested trunk lines, and an estimate of when the trunk group will reach capacity limits.

(x) Whether the telecommunications corporation requests usage and overflow data on the trunk groups which are directly connected to the other's end offices.

2. The telecommunications corporation shall prepare a joint forecast consistent with the requirements of R746-365-6(B) and shall submit the forecast to the other at least seven days before the scheduled joint planning meeting.

3. Prior to the scheduled joint planning meeting, the telecommunications corporation shall notify the other whether it accepts the four-month forecast, rejects the four-month forecast, or proposes specific modifications to the four-month forecast.

a. If the telecommunications corporation rejects the four -month forecast or proposes modifications to the forecast, the telecommunications corporation shall submit a written statement to the other outlining the reasons why the forecast, as prepared by the other, is unacceptable. The statement shall be supported by written documentation to support the telecommunications corporation's position.

b. At the joint planning meeting, the telecommunications corporations may agree on the terms of the four-month forecast, as initially presented, or with modifications agreed to by them. If no agreement is reached, the telecommunications corporations shall jointly outline all areas of disagreement.

4. If the telecommunications corporations cannot agree on the terms of the quarterly four-month forecast, either local exchange carrier may commence an expedited dispute resolution proceeding before the Commission, as provided in Section 54-8b-17. In that proceeding, the burden of persuasion shall be on an ILEC to demonstrate that a four-month quarterly forecast submitted by a CLEC is unreasonable.

5. To the extent the telecommunications corporations agree to the terms of a forecast, the terms shall be deemed approved for purposes of this section, and only those portions of a quarterly forecast actually in dispute shall be subject to the expedited dispute resolution proceeding.

6. If the telecommunications corporations agree on a four-month quarterly forecast, or, to the extent a forecast is approved by the Commission pursuant to the expedited dispute resolution proceeding, a telecommunications corporation shall be obligated to satisfy all service order requests made by the ordering telecommunications corporation that are consistent with the four-month projections contained in the approved forecast. Compliance with the terms of the forecast shall be based on the network provisioning interval standards set forth in R746-365-4(B)(2) as applicable.

D. Capacity Beyond the Four-month Forecast -- If a telecommunications corporation desires to order trunk groups, equipment, or facilities beyond the four-month forecast, but consistent with the one-year and three-year forecast, the telecommunications corporation may order the additional quantity if it pays a capacity reservation charge to the other telecommunications corporation from whom it orders.

E. Trunk Group Underutilization -- If a trunk group is under 60 percent of centum call seconds (ccs) capacity on a monthly average basis for each month of any three-month period, either telecommunications corporation may request to resize the trunk group, which resizing will not be unreasonably withheld. If the resizing occurs, the trunk group shall not be left with less than 25 percent excess capacity. In all cases the network performance levels and the network provisioning intervals as set forth in R746-365-4(A)(2) and R746-365-4(B)(3) shall be maintained. If the telecommunications corporations cannot agree to a resizing, either of them may file a petition with the Commission for an expedited dispute resolution proceeding as provided in Section 54-8b-17.

F. Point of Contact -- Telecommunications corporations shall provide a specified point of contact for planning, forecasting and trunk servicing purposes. The specified point of contact shall have all authority necessary to fulfill the responsibilities as set forth in this section.

R746-365-7. Remedies.

A. Commission Assessed Penalties -- The Commission may assess penalties, as provided in 54-7-25 and 54-8b-17, against any telecommunications corporation that unreasonably fails or refuses to comply with this rule, including, without limitation, the provisioning and forecasting provisions contained in this rule.

B. Carrier Charges and Offsets --

1. Failure to Comply with This Rule -- If a telecommunications corporation fails to meet the network guidelines, service quality guidelines, reporting and monitoring requirements, or other duties imposed on it by this rule, any affected telecommunications corporations may file a petition with the Commission to enforce the provisions of this rule. The proceeding may be brought on an expedited basis as provided in 54-8b-17.

2. Service Interruption -- A telecommunications corporation shall be entitled to a billing credit against amounts owed to an other telecommunications corporation for service interruption as follows:

a. If the telecommunications corporation's service or facility from another telecommunications corporation is interrupted and remains out-of-service for more than four but less than eight continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to one tenth of the providing telecommunications corporation's monthly rate for the affected service.

b. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than eight but less than 24 continuous hours after being reported by the interrupted telecommunications corporation, or found to be out-of-service by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to the providing telecommunications corporation's monthly rate for the affected service.

c. If the interrupted telecommunications corporation's service or facility from the providing telecommunications corporation is interrupted and remains out-of-service for more than 24 continuous hours after being reported by the-of-service interrupted telecommunications corporation or found to be interrupted by the providing telecommunications corporation, whichever occurs first, appropriate adjustments shall be automatically made by the providing telecommunications corporation to the interrupted telecommunications corporation's bill. The adjustment shall be a billing credit equal to three times the providing telecommunications corporation's monthly rate for the affected service.

KEY: interconnection, public utilities, telecommunications
June 1, 1999 54-8b-2
Notice of Continuation January 6, 2009

R807. Regents (Board of), University of Utah, Museum of Natural History (Utah).
R807-1. Curation of Collections from State Lands.
R807-1-1. Purpose.

(1) This rule ensures the adequate curation of all collections from lands owned or controlled by the state and its subdivisions through the selection and review of curation facilities and repositories.

R807-1-2. Authority.

(1) This rule is required by Title 53B, Chapter 17, and is enacted under the authority of Subsections 53B-17-603(2) and 53B-17-603(4)(b) and (c), and 53B-17-603(6).

R807-1-3. Definitions.

(1) The terms used in this rule are defined in Sections 9-8-302, 65A-1-1, 53B-17-603, and 63-73-1.

(a) "Collection" means a specimen and the associated records documenting the specimen and its recovery.

(b) "Critical paleontological resources" means vertebrate fossils and other exceptional fossils that are designated state paleontological landmarks as provided for in Section 63-73-16.

(c) "Curation facility" means:

(i) the museum;

(ii) an accredited facility meeting federal curation standards; or;

(iii) an appropriate state park.

(d) "Museum" means the Utah Museum of Natural History.

(e) "Repository" means:

(i) a facility designated by the museum through memoranda of agreement; or

(ii) a place of reburial.

(f) "Specimen" means:

(i) all man-made artifacts and remains of an archaeological or anthropological nature, found on or below the surface of the earth, excluding structural remains; and

(ii) remains of a critical paleontological nature found on or below the surface of the earth.

(2) In addition:

(a) "Appropriate permitting agency" means the Division of State History, the Geologic Survey, or the School and Institutional Trust Lands Administration as set forth in Sections 9-8-305 and 63-73-12,13.

(b) "Arbitration board" means ultimate arbitration authority as set forth in Section 53B-17-603(4)(c)(vii).

(c) "Committee" means the curation advisory committee;

(d) "State lands" means lands owned or controlled by the state and its subdivisions, and includes lands administered by the School and Institutional Trust Lands Administration.

R807-1-4. Clarification of 53B-17-603.

(1) For the purposes of Section 53B-17-603 and this rule:

(a) "Accredited" means current accreditation by the American Association of Museums or other nationally recognized accrediting institutions or agencies;

(b) "Appropriate state park" means a state park designated by the Division of Parks and Recreation as meeting and being in compliance with federal curation standards;

(c) "Federal curation policy" means: generally understood principles of federal and professional curation policy, and for archaeological collections, includes but is not limited to those as set forth in 36 CFR Part 79, 1996 ed., as amended and those federal rules implementing the Native American Grave Protection and Reburial Act (43 CFR Part 10, 1996 ed.);

(d) "Meeting federal curation standards" means that a facility has been designated by a federal agency as a repository and is in compliance with Federal curation policy.

R807-1-5. Curation Advisory Committee.

(1) The Museum shall establish a curation advisory committee and shall select the members of the Committee.

(2) The Committee shall be composed of at least eight members and shall include a representative from the Division of Parks and Recreation, the Division of Sovereign Lands and Forestry, the School and Institutional Trust Lands Administration, Division of Indian Affairs, Division of State History, Utah Geologic Survey, curation facilities, and may include representatives with interests in one or more of the following areas: education, research, cultural resource management, or curation.

(3) The Committee shall serve in an advisory capacity to the Museum.

(4) The Committee's responsibilities shall include advising the Museum on the following:

(a) the development and annual review of procedures relating to the designation of repositories;

(b) the designation of certain repositories or curation facilities, taking into consideration those factors listed in Section 53B-17-603(4)(c); and

(c) other means by which the Museum can ensure the adequate curation of all collections from state lands.

(5) The Committee shall meet with the Museum at least semiannually, as called by the Director of the Museum.

R807-1-6. Proof of Consultation.

(1) The Museum may enter into a memorandum of agreement with permitting agencies that establishes a process for providing persons applying for either a survey or an excavation permit with proof of consultation as required by Section Section 63-73-12(1)(c)(vi). That process will include:

(a) The Museum maintaining a list of curation facilities and repositories in Utah. The list shall include:

(i) their geographic location;

(ii) the types of collections they curate or desire to curate; and

(iii) for repositories, the types of collections they can adequately curate.

(b) A procedure for the permit applicant receiving a copy of the list.

(c) A procedure for the Museum receiving notification of the selected curation facility or repository and a copy of the permit application.

(d) A procedure whereby critical vertebrate paleontological resources may be curated by the permittee when the permittee is a curation facility.

(2) Collections obtained under an excavation permit shall be deposited by the permittee at the designated repository or curation facility no later than six months after the permittee provides the appropriate permitting agency with reports as required by law.

(3) Collections obtained under a survey permit shall be deposited at the designated repository or curation facility within one calendar year of completion of field work.

R807-1-7. Curation Standards.

(1) In order to be designated as an appropriate curation facility or repository for collections, a facility must provide evidence of its ability to continually provide adequate curation appropriate to the nature and content of the collection.

(2) Adequate curation is presumed for all curation facilities.

(3) Adequate curation for repositories means at a minimum:

(a) possessing and maintaining complete and accurate collection records;

(b) possessing and maintaining requisite facilities which have equipment and space in the physical plant dedicated solely

to the proper storage, study, and conservation of collections;

(c) possessing and maintaining the ability to keep collections under physically secure conditions within storage, laboratory, study, and exhibition areas;

(d) requiring staff and any consultants who are responsible for managing and preserving collections to be trained in the curation of collections;

(e) appropriately handling, storing, cleaning, conserving, and exhibiting collections to ensure the physical integrity of collections;

(f) storing records of collections, including site forms, field notes, artifact inventory lists, computer disks and tapes, catalog forms, photographs, and a copy of the final report in a manner that will protect them from theft and fire;

(g) conducting regular inspections and inventories of collections; and

(h) developing and implementing procedures regarding the accessioning, loan, exhibition, and deaccessioning of specimens.

R807-1-8. Designation of Repositories.

(1) Any facility, other than a place of reburial, seeking to be designated as a repository shall submit to the Museum:

(a) a completed Facility Assessment Form, a copy of which may be obtained from the Museum; and

(b) any other information relating to the facility's ability to provide adequate curation appropriate to the nature and content of collections requested by the Museum.

(2) If the Museum determines that a facility is able to provide adequate curation, the Museum will enter into a memorandum of agreement that will designate that facility as a repository and ensure continued adequate curation at that facility. The memoranda of agreement shall include the following:

(a) reporting provisions;

(b) provisions for periodic review and monitoring; and

(c) conditions triggering the revocation of collections from state lands.

(3) Any facility denied repository status may appeal the Museum's decision within 30 days of the denial of status pursuant to the procedures set forth in R807-1-13 below.

R807-1-9. Selection of a Repository or Curation Facility.

(1) A repository or curation facility seeking designation as a repository or curation facility shall notify the Museum of the nature of collections it wishes to curate by filing a request with the Museum. A request for designation shall include a discussion of the following as appropriate:

(a) identification of any specific site or project of interest to the repository or curation facility;

(b) repository or curation facility programs related to its proposed scientific and educational use of the requested collections; and

(c) proximity of the repository or curation facility to the point of origin of the requested collections.

(2) The Museum shall select a repository or curation facility for collections to be obtained from state lands under a survey permit, considering those factors listed in Section 53B-17-603(4)(c).

(3) The Museum in consultation with the Committee shall select a repository or curation facility for collections to be obtained from state lands under an excavation permit, taking into consideration those factors listed in Section 53B-17-603(4)(c).

(4) The Museum in consultation with the Committee shall designate a second repository or curation facility to curate collections if the repository or curation facility originally selected fails to provide adequate curation appropriate to the nature and content of the collection.

(5) Any curation facility or repository may appeal the selection of a repository or curation facility within 30 days after receiving notice of that selection through the procedures set forth in R805-1-13 below.

R807-1-10. Obligations of Repositories or Curation Facilities.

(1) Repositories or curation facilities shall immediately notify the Museum of any loss of accreditation, any changes resulting in a failure to meet federal curation standards, or any breach of a memorandum of agreement entered into with the Museum.

(2) If a repository or curation facility loses its accreditation, fails to meet federal curation standards, or breaches its memorandum of agreement, the Museum may require transfer of collections to another repository or curation facility.

(3) The Museum shall periodically review repositories to assure they are providing adequate curation appropriate to the nature and content of the collection. The Museum's reviews may occur through an on-site visit or submission of written reports from the repository. The Museum shall give the repository 30 days notice of a proposed review.

(4) Curation facilities with collections from state lands shall provide the Museum with copies of accreditation reports from the American Association of Museums or other nationally recognized accrediting institutions or agencies.

(5) Repositories or curation facilities shall provide an inventory of collections received from state lands to the Museum within 90 days of receipt of the collection.

(6) Repositories or curation facilities shall notify the Museum 30 days prior to undertaking any destructive analysis or exchange to allow the Museum opportunity to review and comment.

(7) Other than appropriate exchanges of collections and destructive analysis, no other form of permanent removal of collections shall take place.

(8) Repositories or curation facilities shall notify the Museum within 30 days of the accidental or any other loss or destruction of any specimen.

(9) Repositories or curation facilities shall not take any actions that would adversely affect recognition of the following:

(a) Collections obtained in exchange for collections found on school and institutional trust lands are owned by the respective trust and are subject to these rules;

(b) Collections recovered from school and institutional trust lands are owned by the respective trust;

(c) Any monies obtained by a curation facility or repository from sales of reproductions derived from collections found on state lands shall be given to the respective trust, except that the curation facility or repository may retain monies sufficient to recover the direct costs of preparation for sale and a reasonable fee for handling the sale. It is recognized that a curation facility or repository may contract with a third party to prepare and produce reproductions.

(d) Collections recovered from school and institutional trust lands shall be available for exhibition as the beneficiaries of the respective trust may request, subject to Museum's curation responsibilities and the repository or curation facility's budgetary and exhibit priorities.

R807-1-11. Reporting.

(1) The Museum shall annually submit to the Division of Sovereign Lands and Forestry and the School and Institutional Trust Lands Administration an inventory of collections received from their respective lands and placed in repositories or curation facilities.

(2) The Museum shall annually submit to the Division of Sovereign Lands and Forestry and the School and Institutional Lands Administration an inventory of specimens lost, destroyed,

or exchanged from their collections.

(3) The Museum shall annually submit to the Division of State History a list of collections received and places in repositories or curation facilities.

R807-1-12. Designation of Adjudicative Proceedings as Informal.

(1) All appeals shall be conducted informally.

R807-1-13. Procedures of Informal Adjudicative Proceedings.

(1) Any facility requesting an appeal of a Museum designation or selection shall include the following information in its request:

(a) the names and addresses of all persons known to have a direct interest in the requested Museum action and to whom a copy of the request for Museum action is being sent;

(b) the Museum's file number or other reference number, if known;

(c) the date that the request for Museum action was mailed;

(d) a statement of the legal authority and jurisdiction under which the Museum action is requested;

(e) a statement of the relief or action sought from the Museum; and

(f) a statement of the facts and reasons forming the basis for relief or Museum action.

(2) The facility requesting an appeal shall send a copy of the request by mail to each person known to have a direct interest in the requested agency action.

(3) The director of the Museum shall promptly review a request for relief and shall notify the facility in writing of:

(a) the decision;

(b) the reasons for the decision; and

(c) a notice of the right to review by the arbitration board within 30 days.

(4) Copies of the director's notification shall be sent to the facility making the request and to those parties who have previously expressed a direct interest in the request.

(5) The facility may request a review within 30 days of the director's final decision by submitting a written request to the Museum. The Museum director shall then request that the arbitration board, as set forth in 53B-17-603 (4)(c)(vii), shall meet.

(6) The arbitration board shall respond to the request within 30 days of notification.

KEY: curation, archaeological resources, paleontological resources

June 3, 1999 **53B-17-603(2)**
Notice of Continuation January 6, 2009 **53B-17-603(4)(b)**
9-8-305(1)(c)
63-73-12(1)©

R907. Transportation, Administration.
R907-3. Administrative Procedure.
R907-3-1. Additional Requirements: Policy.

The Utah Department of Transportation and Transportation Commission shall make available for public inspection, in its office, all its final written orders, decisions, opinions, and statements of general applicability adopted or used.

KEY: administrative procedures
1987 63G-4-102
Notice of Continuation November 29, 2006

R907. Transportation, Administration.
R907-64. Longitudinal and Wireless Access to Interstate Highway Rights-of-Way for Installation of Telecommunications Facilities.
R907-64-1. Purpose.

The purpose of this rule is to implement a program for facilitating longitudinal access and wireless access to interstate highway rights-of-way to provide for the installation, operation and maintenance of wireline and wireless telecommunications facilities in the rights-of-way. This rule recognizes the importance of quality of infrastructure of the Interstate System and that the safety and convenience of users of the Interstate System must be preserved to the greatest extent possible. Compatible with this principle, the rule also permits the use of the rights-of-way of the Interstate System for telecommunications facilities that support Federal and State laws that encourage competition in telecommunications services and the deployment of advanced telecommunications technologies. The Department shall, through designated personnel, facilitate such installations and maintenance of such facilities, which comply with the criteria established by this rule.

R907-64-2. Authority.

Subsection 72-7-108(2)(a) states that, except as provided in Subsection (4), the Department may allow a Telecommunication Facility Provider longitudinal access to the right-of-way of a highway on the Interstate System for the installation, operation, and maintenance of Telecommunication Facility.

R907-64-3. Definitions.

(1) "Department" means the Department of Transportation.

(2) "Clear Zone" means the total roadside border area, starting at the edge of the traveled way, available for safe use by errant vehicles. The width of the clear zone is dependent upon the traffic volumes, speeds and the roadway geometry.

(3) "Interstate System" means any existing or future highway included as a part of the national system on interstate and defense highways, as provided in the Federal Aid Highway Act of 1956 and any supplemental or amendatory acts, and which primarily consist of Interstate Highways I-15, I-215, I-70, I-80, and I-84.

(4) "Longitudinal access" means access to or use of any part of a right-of-way of a highway on the Interstate System that extends generally parallel to the right-of-way for a total of 30 or more linear meters.

(5) "Permit" means a document issued by the Department of Transportation to a Telecommunications Facility Provider which specifies the requirements and conditions under which longitudinal or wireless access to highway right-of-way of the Interstate System shall be allowed.

(6) "Right-of-way" means real property or an interest in real property, usually in a strip, acquired for or devoted to a highway.

(7) "Telecommunication Facility" means any telecommunication cable, line, fiber, wire, conduit, innerduct, access manhole, handhole, tower, pedestal, pole, box, transmitting equipment, receiving equipment, power equipment or other equipment, system and device used to transmit, receive, produce or distribute via wireless, wireline, electronic, or optical signal for communication purposes.

(8) "Telecommunications Facility Provider" means any owner or operator of a Telecommunication Facility.

(9) "Utility" includes telephone, wireline and wireless, gas, electricity, cable television, water, and sewer transmission lines, drainage and irrigation systems, and other similar utilities located in, on, along, across, over, through, or under any highway of the State Highway System.

(10) "Wireless access" means access to and use of any part of a right-of-way or rights-of-way on, any highway of the Interstate System for the purpose of constructing, installing, maintaining, using and operating Telecommunication Facilities for wireless telecommunications.

R907-64-4. Access Policy.

(1) Telecommunication facility accommodations on the Interstate System shall comply with the federal utilities accommodations policies set forth in 23 CFR 645 (1997): "It is in the public interest for utility facilities to be accommodated on the right-of-way when such use and occupancy of the highway right-of-way do not adversely affect highway or traffic safety, or otherwise impair the highway or its aesthetic quality, and do not conflict with the provisions of Federal, State or local laws or regulations."

(2) The Department also acknowledges that recent Federal and State Legislation, primarily the Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 70 (Feb. 8, 1996) and Utah Code Section 54-8b-1, encourage competition in the provision of telecommunications services, and the development and deployment of advanced telecommunication technologies, infrastructure, and networks. These legislative initiatives in turn have increased demand for rights-of-way, including highway rights-of-way, for the installation of Telecommunication Facilities necessary to support increased competition and deployment of an advanced telecommunication infrastructure.

(3) The Department also recognizes that longitudinal access and wireless access for Telecommunication Facilities may be provided without compromising highway integrity, safety, normal highway operation or maintenance activities, while contributing to the deployment and efficient operation of intelligent transportation systems.

(4) Therefore, effective on or after August 17, 1999, the Department may allow longitudinal access and wireless access on highways of the Interstate System for placement, construction, installation, maintenance, repair, use, operation, replacement and removal of Telecommunication Facilities, as authorized by Utah Code Section 72-7-108 and subject to compliance with this rule. This rule applies only to longitudinal access and wireless access for Telecommunication Facilities on rights-of-way within the Interstate System and does not alter the existing policy concerning other Utilities on interstate rights-of-way, or for accommodating Utilities on other facilities under the jurisdiction of the Department.

R907-64-5. Limitations and Conditions.

(1) Longitudinal and wireless access of Telecommunication Facilities shall be permitted only as approved by the Executive Director or designee in accordance with the criteria and procedures set forth in this rule.

(2) Occupancy by longitudinal access or wireless access shall comply with, and produce no significant compromise of, the following factors:

(a) highway safety requirements of federal and state law;

(b) written policy and agreements adopted by the Department;

(c) safe use of highways in the Interstate System by the traveling public;

(d) prudent use and management of the Interstate System and its rights-of-way;

(e) highway design;

(f) highway construction;

(g) highway operational and/or technical capacity;

(h) highway maintenance or stability;

(i) future expansion of the Interstate System;

(j) physical environmental features; and

(k) physical capacity of the right-of-way to accommodate longitudinal access.

(3) In the interest of safety and preservation of the

highway facility and pavement structure, the placement, installation, maintenance, repair, use, operation, replacement and removal of Telecommunications Facilities with longitudinal access or wireless access to the Right-of-way of the Interstate System shall be accommodated only when in compliance with the "MANUAL FOR ACCOMMODATION OF UTILITIES AND THE CONTROL AND PROTECTION OF STATE HIGHWAY RIGHTS OF WAY," as adopted by rule (Rule 930-6), and with 23 CFR 645 (1997), Subpart B, "Accommodation of Utilities."

(a) The location of all Telecommunication Facilities, whether above ground or below ground installations, including towers, pedestals, poles and boxes, within the highway right-of-way of the Interstate System shall be as set forth in the permit and/or the negotiated agreement between the Telecommunications Facility Provider and the Department. Telecommunications Facilities shall avoid: (a) use of through traffic roadways, lanes and ramps for construction, inspection, testing or maintenance activities; (b) placement of facilities within the median strip; (c) placement of facilities in a non-uniform alignment; (d) placement of facilities in places other than at or adjacent to the Right-of-way line and beyond the recovery or clear zone area; or (e) placement of facilities within the clear zone of through-traffic roadways, lanes or ramps. The Executive Director or designee is authorized to grant variances from the Manual and guidelines on a case-by-case basis. Variances will not be granted if, in the opinion of the Executive Director or designee, they create unacceptable risks or significant compromise of any factor listed in Subsection R907-64-5(2) of this rule.

(4) The Department may consider financial and technical qualifications of telecommunication facility providers, and specify insurance requirements for contractors authorized to enter Interstate System rights-of-way to construct, install, inspect, test, maintain or repair Telecommunication Facilities with longitudinal access or wireless access. During each period that the Department authorizes longitudinal access or wireless access for construction and installation, the Department may require approved Telecommunication Facility Providers to install Telecommunication Facilities into the same general location on the Interstate System; coordinate their planning and work; install in a joint trench; and equitably share costs.

(5) The Department shall manage and administer access to rights-of-way of the Interstate System in compliance with 47 U.S.C. 253 2005.

R907-64-6. Compensation.

(1) The Department shall require compensation from a Telecommunication Facility Provider under the provisions of Section 72-7-108 for longitudinal access or other use within the Right-of-way of the Interstate System consistent with the rate schedule adopted by the Department through rulemaking.

(2) Until the rate schedule has been formally adopted pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act, all agreements are subject to modification to comply with the rate schedule.

R907-64-7. Permits and Agreements.

(1) In accordance with 23 CFR 645 (2005) , subpart B, "Accommodations of Utilities," the Utah Code Section 72-6-116 "Regulation of Utilities-Relocation of Utilities," and Rule R930-6, which is described in the Department's "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights of Way," a Telecommunication Facility Provider shall be required to complete and sign an agreement with the Department prior to obtaining a permit for construction or installation of Telecommunication Facilities in the Right-of-way. Based on the statements of interest, if any, received by the Department in response to its advertisements of intent to consider opening highway segments in the Interstate System for construction and installation of Telecommunication Facilities, as provided for in Subsections R907-64-8(3) and (4) of this rule, the Department shall determine within 30 days of the deadline for the receipt of such statements of interest, whether to open such segments for such use. If the Department decides to open such segments of the Interstate System for construction and installation of Telecommunication Facilities, it shall notify each Telecommunication Facility Provider which filed a statement of interest of such decision in writing and direct them to file with the Office of the Deputy Director an application, as modified by the Department from time to time, for a permit for longitudinal access or wireless access on rights-of-way in the Interstate System. The Department shall also specify the deadline for the filing of such permit applications.

(2) The Department will review each permit application within 30 working days following receipt thereof, in accordance with the criteria set forth in this rule. The review process will begin only when the Telecommunication Facility Provider(s) submits a complete permit application, including all documentation, as required in the "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights-of-Way," Rule R930-6. No later than the end of the 30 working day review period, the Department will either: (a) issue to the Telecommunications Facility Provider a written notice that the permit application is accepted for the negotiation of an agreement for the construction and installation of Telecommunication Facilities in the right-of-way segment, or (b) issue to the Telecommunication Facility Provider a written denial of the permit application, together with the specific reasons why the permit application was not approved, based on the criteria set forth in this rule. If the Telecommunication Facility Provider's permit application has been accepted for negotiation of an agreement, the Department shall commence such negotiations not later than ten working days after the date of such notice of acceptance and shall proceed in a diligent manner to favorably conclude such negotiations, to execute the Department's standard form agreement with negotiated modifications necessary to accommodate the unique needs of each project, and to issue a permit for the construction and installation of Telecommunication Facilities in the right-of-way segment.

(3) Each agreement and permit shall comply with the contracting requirements listed or incorporated herein and authorize longitudinal access or wireless access only for the shorter of: (a) the time period requested by the Telecommunications Facility Provider, or (b) 30 years.

(4) No permit shall be issued prior to an agreement having been reached between the Department and Telecommunication Facility Providers. Failure of the parties to reach agreement shall cause longitudinal access to be denied and no permit shall be issued.

R907-64-8. Limited, Periodic Opportunities for Installation for Longitudinal Access.

(1) In order to minimize adverse impacts to rights-of-way and related highway facilities and pavement structures within the Interstate System and to avoid significant compromise of the safe, efficient and convenient use of the Interstate System for the traveling pubic, advertising for longitudinal access for constructing and installing Telecommunication Facilities in any particular segment of such Rights-of-Way shall be limited in frequency to once every 18 months, except that the Executive Director or designee may permit construction and installation of Telecommunications Facilities with longitudinal access more frequently than once every 18 months, based on factors in Section 64-5(2) of this rule.

(2) the 18 month period shall begin on the date of the Department's formal notice of intent to open access to any

highway segment in the Interstate System which has been noticed.

(3) When exercising the discretion to permit construction and installation of Telecommunications Facilities with longitudinal access to the Interstate System, the Executive Director or his or her designee shall consider all factors relevant to the Department's policy with respect to utility accommodations as expressed in this rule, including the safe, effective, efficient use of highways in the Interstate System by the traveling public, impacts on the Interstate System's operational capacity, and prudent economic management of the Interstate System. The Department may perform capacity surveys of the Interstate System rights-of-way to assure that longitudinal access is feasible prior to opening any segment of the Interstate System to longitudinal access for new or additional Telecommunication Facilities.

(4) The Department will advertise intent to consider opening highway segments in the Interstate System to provide opportunities for constructing and installing Telecommunications Facilities for longitudinal access and wireless access, by one or more of the following means; provided, however, that Telecommunication Facility Providers who have been granted a certificate of convenience and necessity by the Public Service Commission of Utah shall be given actual notice by mail:

(a) Publication of the intent notice for not less than five consecutive days in a newspaper of national circulation;

(b) Publication of the intent notice for not less than five consecutive days in a newspaper of statewide circulation;

(c) Publication of notices of the intent in the calendar or other regular publications of the Department and/or those of other state agencies or Departments; or

(d) Press or news releases from the Department to newspapers, magazines, periodicals, or telecommunications industry publications.

(5) Advertisements and notices of intent to consider opening highway segments for constructing and installing Telecommunications Facilities in Interstate System highway rights-of-way whether for longitudinal access or wireless access, shall contain all of the following:

(a) A description of the segment or segments of the Interstate System for which longitudinal access for the installation and construction of Telecommunications Facilities are proposed;

(b) A deadline that is not less than 30 days from the first date of publication or release of an advertisement or notice of intent to consider opening, as described above in Subsection (3), for the filing of statements of interest with the office of the Deputy Director by Telecommunications Facility Providers regarding their interest in installing and constructing Telecommunications Facilities in one or more specified highway segments of the Interstate System; and

(c) The required contents of the statements of interest, to be filed in response to the advertisements or notices, shall include the identity of the interested party, the financial and technical qualifications of the interested party, and any other information specified by the Department in the advertisement or notice.

(6) Statements of interest received by the Department shall be processed in accordance with the requirements set forth herein. Based on its review of the statements of interest received, the Department will notify those Telecommunication Providers who submitted statements of interest of its intent to open one or more of the highway segments advertised within 30 days. This notice will include instructions to initiate the permitting process as specified in "Manual for Accommodation of Utilities and the Control and Protection of State Highway Rights-of-Way," (Rule R930-6).

(7) The Department may enter into negotiations with one or more of the interested parties filing Statements of Interest toward the execution of an agreement or agreements and permits required under Section R907-64-7 above. After executing an agreement and permit, each telecommunications facility provider shall file them with the office of Right of Way.

R907-64-9. Removal and Relocation.

Pursuant to Subsection 72-7-108(7)(c) the Department shall require the removal and/or relocation of Telecommunication Facilities located on the Interstate System when highway changes are required to provide for the free and safe flow of traffic at the Telecommunication Facility Provider's expense. If prudent management of the interstate highway rights-of-way demand, The Department may require removal and/or relocation of such Telecommunication Facilities upon expiration or earlier termination of the permit or other agreements at the Telecommunication Facility Provider's expense, in accordance with applicable law.

KEY: right-of-way, interstate highway system
January 12, 2009 72-1-201
Notice of Continuation September 18, 2008 72-6-116

R907. Transportation, Administration.
R907-66. Incorporation and Use of Federal Acquisition Regulations on Federal-Aid and State-Financed Transportation Projects.
R907-66-1. Reason for Incorporation - Federal-Aid Projects and State Projects.

(1) 23 U.S.C. 112 requires States to use the Federal Acquisition Regulations (FAR), contained in 48 CFR Part 1 to calculate appropriate contract costs in all Federal-Aid transportation projects. Previously, federal law allowed States to develop their own cost principles and procedures in Federal-Aid projects.

(2) Consequently, the Department adopts and incorporates 48 CFR Part 1 for use in Federal-Aid transportation projects.

(3) Because many transportation projects that the Department administers receive federal aid, the Department believes it is generally most efficient to also use FAR when calculating contract cost principles and procedures in transportation projects financed solely with state funds. Therefore, the Departments also adopts and incorporates 48 CFR Part 1 for use in most state-financed transportation projects.

R907-66-2. Financial Screening.

(1) To verify that the calculated overhead and hourly billing rates comply with FAR, UDOT conducts an initial financial screening and approval of consultants desiring to submit a Statement of Qualification (SOQ) for architecture and engineering service contracts.

(2) Consultants shall update their financial screening information by submitting a new completed financial screening application and related information to the Consultant Services Division. The consultant shall file the updated applications annually, on the anniversary date of the initial filing.

R907-66-3. Contract Negotiations.

(1) UDOT negotiates consultant contracts with the firm it considers most qualified to provide such services, using guidelines developed by the Consultant Services Division. UDOT prepares independent estimates of the value of such services for use in negotiations.

(2) Negotiations follow state and federal procurement procedures and are based on compensation that UDOT considers fair and reasonable. Negotiations will end when UDOT decides that it cannot agree on terms with the first most qualified firm. UDOT will then begin negotiations with the next most qualified firm. This process continues until either mutually agreeable terms are negotiated or UDOT chooses to begin the selection process again to identify other firms qualified to provide such services.

(3) The guidelines for both selection and negotiations are public information and can be obtained by contacting the Consultant Services Division.

R907-66-4. Award of Contracts.

UDOT awards the contract to the best qualified consultant with which it can negotiate a fair and reasonable cost as required by state rules and FAR and in accordance with UDOT selection procedures and guidelines.

R907-66-5. Execution of Contracts.

UDOT considers no contract effective until funding has been approved and all signature lines have been filled in with the appropriate officer's signature.

KEY: transportation, contracts, reimbursement, bonuses
January 3, 2007 63G-6-105
Notice of Continuation November 29, 2006 72-1-201

R909. Transportation, Motor Carrier.
R909-3. Standards for Utah School Buses.
R909-3-1. Scope and Objectives.

(1) This document sets forth requirements for the design, construction, and operation of all school buses utilized, whether owned or leased by any school district, or privately owned and operated under contract with any school district. Local school districts and private schools have the responsibility for developing the specifications for and the procurement of school buses used in their pupil transportation programs and shall insure that their vehicles meet or exceed the standards contained herein. School districts are encouraged to specify requirements in excess of the standards whenever such action will enhance their transportation programs. Any additions of school bus equipment or alterations in the bus construction and operations not provided for in the Standards for Utah School Buses and Operations, 1994 Edition are prohibited without prior approval as outlined in Part H entitled "Exemption from or Modification of Requirements".

(2) Standards for Utah School Buses and Operations, 1994 Edition replaces the 1987 Standards for Utah School Buses and Operations. These standards will be effective August 31, 1994. All school buses ordered after the effective date and all school bus operators shall meet these standards. This document is intended to provide standards that meet or exceed Federal Motor Vehicle Safety Standards now in effect. Federal standards and Utah Motor Vehicle laws shall govern instances not specifically covered in these standards.

(3) Pupil transportation vehicles ordered before January 1, 1994 shall meet or exceed the Standards for Utah School Buses and Operations applicable at the time of order placement.

R909-3-2. Authority.

(1) These standards are issued under authority of Title 41 of the Utah Code Annotated which deals with the Utah State Department of Transportation. This statute, at 41-6-115, states "...The Department of Transportation by and with the advice of the State Board of Education and the Department of Public Safety shall adopt and enforce regulations not inconsistent with this chapter to govern the design and operation of all school buses when owned and operated by any school district or privately owned and operated under contract with any school district in this state, and such regulations shall by reference be made a part of any such contract with a school district. Every school district, its officers and employees, and every person employed under contract by a school district shall be subject to said regulations."

(2) Regulations contained herein are applicable to public schools and all operations under the jurisdiction of the State Board of Education. For standards or regulations applicable to private schools, refer to the Utah Code or regulations adopted by the Department of Transportation through Utah's Rule Making Act and published as a separate document.

R909-3-3. Responsibilities of Suppliers.

(1) School bus chassis and/or body dealers, distributors, and manufacturers must comply with the Standards for Utah School Buses and Operations, 1994 Edition. The bidder agrees to certify that the vehicle meets or exceeds all federal and state standards upon delivery of the vehicle.

(2) Certification: All manufacturers of school bus chassis, bodies, or complete buses desiring to supply such equipment for use in the State of Utah, shall provide the Pupil Transportation Specialist, Utah State Office of Education, and the Division of Safety, Utah Department of Transportation, with a certification that their products, identified by specific model numbers, meet or exceed all requirements of the Federal Motor Vehicle Safety Standards and the Standards for Utah School Buses and Operations, 1994 Edition. This certification must be accomplished before any equipment is supplied in the state and not later than February 1 of each succeeding calendar year. Manufacturers shall also provide such test data or other information necessary to substantiate their claim of compliance. Required supporting data are listed below:

(a) Supporting data for certification of school bus chassis shall include at least the following information, but may be supplemented with additional information if offered by the supplier or if requested by the purchaser:

(i) Manufacturer's gross vehicle weight rating.

(ii) Chassis weight, overall dimensions, and location of the center of gravity.

(iii) Engine performance curves (horse power torque vs. speed in revolutions per minute).

(iv) Power and gradient curves (with representative bus bodies).

(v) Exhaust system noise level.

(vi) Engine emission levels.

(vii) Axle capacities.

(viii) Spring capacities.

(ix) Brake system parameters or stopping distance vs. speed (with representative bus bodies).

(x) Horn noise level.

(xi) Temperature and quantity of hot water available for use in heating system.

(xii) Alternator output at the normal operating speed of the engine and at the engine manufacturer's recommended idle speed.

(xiii) Supporting data for certification of school bus bodies shall include, but not be limited to:

(A) Body dimensions, weights, and location of the center of gravity.

(B) Data from crash-worthiness tests conducted in accordance with Appendix 1. (Manufacturers will attach certification plate signifying vehicle compliance with Colorado Rack Test.)

(C) Data to verify compliance with the passenger seat cushion retention requirements as contained in FMVSS.

(D) Data to verify compliance with the passenger seat attachment strength requirements as contained in FMVSS.

(b) All certifications and supporting data shall be sent to the Pupil Transportation Specialist, Utah State Office of Education, 250 East 500 South, Salt Lake City, Utah 84111, and Safety Regulations Administrator, U.D.O.T., Office of Motor Carriers, 4501 South 2700 West, Salt Lake City, Utah 84119.

(c) A list of the certified bus manufacturers will be provided to the districts by March 1st each year.

(3) Delivery Requirements: The school bus manufacturer shall provide the following materials for the purchaser of a new school bus at the time the purchaser takes possession of the bus:

(a) Line set tickets for each individual unit of the bus, and a separate set of tickets for buses manufactured in two parts.

(b) A copy of the pre-delivery service performed and verified by a checkout form for each individual unit.

(c) Warranty book and statement of warranty for each individual unit. All warranties shall commence on the day that the purchaser takes possession of the completed bus.

(d) Service manual for each individual unit or group of identical units.

(e) Parts manual for each individual unit or group of identical units.

(4) Inspection and acceptance testing of new school buses: Not more than 30 days following delivery of any new school bus to a Utah school district, it shall be inspected by the Safety Inspection Office of the Utah Highway Patrol. Prior to any new school bus being placed into service, it shall be inspected and tested by a certified mechanic to verify conformance with these standards.

(a) Tests that will be conducted during the acceptance

inspection of a school bus shall include, at a minimum:

(i) Inventory of required safety features including district specifications.

(ii) Functions tests of all lamps and signals, emergency braking system, horn, and other operating systems.

(b) Failure to satisfy all requirements of the standards shall result in either the bus being given a provisional approval until the manufacturer brings the vehicle up to standards, an exemption from the subject requirement requested (See Part H), or the vehicle will be deadlined pending compliance. A provisional approval shall not be for more than 90 consecutive days. Failure to bring the bus up to standards or apply for an exemption during the provisional period shall result in the bus being deadlined.

(5) Body-On-Chassis Type School Bus: In case a school district elects to contract with one of two or more manufacturers who then subcontracts with the other manufacturers, it shall be the responsibility of the end supplier, as prime contractor, to assure that the completed bus satisfies both the chassis and body requirements.

(6) Notice of Noncompliance: Dealers, distributors, or manufacturers who supply school transportation vehicles in the State of Utah that do not comply with the Standards for Utah School Buses and Operations, 1994 Edition shall be notified of noncompliance and a general notice will be sent to all school districts and school transportation supervisors within the state advising that equipment supplied by the specified dealer, distributor, or manufacturer is not in compliance with Utah standards.

(7) If a dealer, distributor, or manufacturer has been notified of noncompliance in accordance with paragraph 3.06 and replaces or modifies the equipment to make it comply with the Utah Standards, a notice of compliance will be issued within 30 days after proof of compliance.

(8) School bus manufacturers shall be given at least 90 days notification of any changes in the Standards for Utah School Buses and Operations, 1994 Edition.

R909-3-4. Definitions.

(1) School bus designations used in this document are taken from the Ninth National Minimum Standards Conference on School Transportation (1980). It should be noted vehicles with a capacity for less than ten passengers cannot be certified as school buses under federal regulations.

(2) School Bus means every motor vehicle designed to carry more than ten persons and is used to transport school children to or from school or in connection with related activities. This definition does not include vehicles that only carry school children along with other passengers as part of the operation of a common carrier under the jurisdiction of the Utah Department of Transportation or Public Service Commission or those vehicles in informal or intermittent arrangements such as sharing of actual gasoline expense or participation in a car pool for the transportation of children to or from school or other school activity. Nor does this definition include "tour" type buses, whether owned, leased, or chartered by a school district solely for the purpose of transporting school children to and from non-academic events.

(3) TYPE A - A Type "A" school bus is a conversion or body constructed upon a van-type compact truck or a front-section vehicle, with a gross weight rating of 10,000 pounds or less, designed for carrying more than ten persons.

(4) TYPE B - A Type "B" school bus is a conversion or body constructed and installed upon a van or front-section vehicle chassis, or stripped chassis, with a vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. Part of the engine is beneath and/or behind the windshield and beside the driver's seat. The entrance door is behind the front wheels.

(5) TYPE C - A Type "C" school bus is a body installed upon a flat back cowl chassis with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. All of the engine is in front of the windshield and the entrance door is behind the front wheels.

(6) TYPE D - A Type "D" school bus is a body installed upon a chassis, with the engine mounted in the front, midships, or rear, with a gross vehicle weight rating of more than 10,000 pounds, designed for carrying more than ten persons. The engine may be behind the windshield and beside the driver's seat; it may be at the rear of the bus, behind the rear wheels, or midships between the front and rear axles. The entrance door is ahead of the front wheels.

(7) Multipurpose Passenger Vehicle (MP) means every motor vehicle with ten or less passenger positions (including the driver) and cannot be certified as a bus. (In determining passenger capacity, wheelchair positions are counted as passenger positions.) Although a school entity may use such a vehicle as station wagon, full-sized sedan, small van of non-school bus capacity, etc., to transport pupils to and from school or related events, the vehicle shall not be identified as a school bus (including color) and shall not stop or control traffic on the traveled portion of the roadway to load or unload passengers.

R909-3-5. Chassis Requirements.

(1) Air Cleaner

(a) The engine intake air system shall be furnished and properly installed by the chassis manufacturer to meet engine manufacturers' specifications.

(b) The intake air system for diesel engines may have an air cleaner restriction indicator properly installed by the chassis manufacturer to meet engine specifications.

(2) Axles

(a) Weight distribution of fully loaded bus on level surface shall not exceed the manufacturer's front gross axle weight rating and rear gross axle weight rating.

(b) The front and rear ends, including suspension assemblies, shall have a gross axle weight rating at ground, at least equal to that portion of the load as would be imposed by the chassis manufacturer's maximum gross vehicle weight rating.

(c) Two-speed rear axles are permissible, but if used, provisions shall be made to assure that the parking and emergency brake systems operate directly upon the rear axles or wheels and not upon the driveshaft.

(3) Block Heater

(a) Buses furnished with diesel engines must have an engine block heater, 110 volt minimum 700 watt with 400 CID or less engine and minimum 1000 watt for engines over 400 CID. They shall also be furnished with an ether/propane quick starting aid that is thermostatically controlled and pre-shot measurement type. (Exception: Diesel engines that are equipped with glow plug or air intake starting systems.)

(4) Brake Systems

(a) All buses larger than 49 passenger capacity (including driver) or furnished with a two-speed axle must be equipped with air brakes. Automatic slack adjusters shall be required on all air-brake equipped buses following adoption of this edition of the Standards.

(b) If the bus is equipped with a two-speed rear axle, the parking brake system shall operate directly upon the rear axle or wheels such that the parking brake system will not be disconnected from the wheels when the rear axle is in the neutral position. (Drive shaft brakes do not meet this requirement.)

(c) Vacuum Assist Systems:

(i) A gauge giving the value of the vacuum in the reservoir, in inches of mercury, shall be located in clear view of the driver.

(ii) An audible and visual signal shall be provided to warn the driver in case the vacuum in the reservoir is eight inches of mercury or less.

(d) Air Brake Systems:

(i) The compressor used in an air brake system shall be a minimum of 12 cubic feet and be driven by the engine.

(ii) Reservoir(s) shall be a minimum combined capacity of 3,750 cubic inches, except Type D buses for which the capacity shall be 4,500 cubic inches.

(A). There shall be a manually operated or an automatic condensation drain valve in each reservoir. If an automatic valve(s) is used it must be heated to prevent freezing.

(B). There shall be a safety valve installed in the first reservoir, which shall be set to release pressure should the reservoir pressure exceed 150 psi.

(iii) All tubing and hoses used in the air brake systems shall conform to applicable SAE standards and shall be installed so as to be protected against excessive heat and to accommodate the normal vibrations and motions of the vehicle without damage.

(iv) The low pressure warning signal shall be both audible and visual.

(v) Buses using air or vacuum in the operation of the brake system shall be equipped with warning signals, readily audible and visible to the driver, that will give a continuous warning when the air pressure available in the system for braking is 60 pounds per square inch (psi) or less or the vacuum in the system available for braking is eight (8) inches of mercury or less. An illuminated gauge shall be provided that will indicate to the driver the air pressure in pounds per square inch or the vacuum available for the operation of the brakes as shown in inches of mercury. Type A buses: Manufacturers' standards.

(A). Vacuum-assist brake systems shall have a reservoir used exclusively for brakes that shall be adequate to ensure against loss in vacuum at full stroke application if not more than 30 percent with the engine not running. Brake system on gas-powered buses shall include suitable and convenient connections for the installation of a separate vacuum reservoir.

(B). Any brake system dry reservoir shall be so safeguarded by a check valve or equivalent device, that in the event of failure or leakage in its connection to the source of compressed air or vacuum, the stored dry air or vacuum shall not be depleted by the leakage or failure.

(vi) Buses using a hydraulic-assist brake system shall be equipped with warning signals, readily audible and visible to the driver, that will provide continuous warning in the event of a loss of fluid flow from primary source or loss of electric source powering the back-up system. Type A buses: Manufacturers' standards.

(vii) The brake lines and booster-assist lines shall be protected from excessive heat and vibration and shall be installed in a manner that prevents chafing.

(viii) Air Dryer (optional): If required, shall be compatible with the air compressor. The expello valve of the air dryer shall be heated to prevent freezing.

(iv) Anti-lock braking systems, meeting manufacturers' standards, are approved optional equipment.

(e) Parking Brake System: The school bus shall at all times be equipped with a parking brake system adequate to hold the vehicle or combination on any grade on which it is operated under any condition of loading on a surface free from ice and snow.

(f) All brake systems should be designed to permit visual inspection of brake lining wear without removal of any chassis components.

(5) Cooling System

(a) The engine cooling system radiator shall be of sufficient capacity to cool the engine at all speeds in all gears. It shall be of heavy duty type with increased capacity for high altitude operation. A coolant recovery or surge tank system is required on all type A, B, C, and D buses.

(b) The cooling system fan shall be of heavy duty design and shall include a fan clutch.

(c) The cooling system shall be equipped with a heavy duty truck type water pump.

(d) Permanent ethylene-glycol base antifreeze shall be provided by the chassis manufacturer to protect the cooling system to at least 40 degrees below zero Fahrenheit.

(e) When a chassis is equipped with an automatic transmission, a heavy duty cooling system with increased capacity in the radiator, fan, transmission cooler, and other necessary components to provide for the additional cooling required by the automatic transmission shall be furnished.

(f) Shutters (optional): Radiator shutters, when required, shall be air, hydraulic, or vacuum operated and shall be of the shutter-stat temperature control type. A petcock shall be furnished at the air or vacuum supply to shut off supply from air or vacuum source.

(6) Bumper, Front

(a) Energy-absorbing bumpers are not permitted.

(b) Front bumper shall be furnished by chassis manufacturer as part of the chassis on type A, B, and C buses. When type D chassis are supplied to a body company by a chassis manufacturer, the body company shall supply the front bumper as part of the body installation.

(c) The front bumper shall be heavy-duty channel steel of one-piece construction at least 3/16-inch thick and not less than an 8-inch face after forming. (Exception: Type A vehicle at least 1/8-inch thick.)

(d) The front bumper shall be of wrap-around design extended to offer maximum protection of fender lines without permitting snagging or hooking.

(e) The front bumper shall be attached to the frame and extend forward of grille, head lamps, fender, or hood.

(f) The front bumper shall permit the bus to be lifted by a vertical force applied to the bottom of the bumper without damaging either the bumper or its mountings.

(7) Clutch

(a) School bus chassis using manual transmission shall be equipped with a heavy-duty single-disc truck clutch with a diameter not less than the minimum dimensions given below, or a dual disc unit of similar capacity:

TABLE

10 to 30 passenger bus	11-inch diameter
31 to 42 passenger bus	12-inch diameter
43 passenger or larger bus	13-inch diameter

(b) Clutch torque capacity shall be equal to or greater than the engine torque output.

(8) Color

(a) Chassis and front bumper shall be black. Hood, cowl, and fenders shall be in National School Bus Yellow. Wheels shall be the color used by manufacturers.

(9) Drive Shaft

(a) Drive shaft shall be protected by a metal guard or guards around circumference of the drive shaft to reduce the possibility of it whipping through the floor or dropping to the ground if broken.

(10) Electrical System

(a) All buses shall be equipped with at least a 12-volt electrical system.

(b) Battery: A storage battery shall be provided which is of sufficient capacity to take care of starting the engine, lighting, signal devices, heating, and other electrical equipment and shall be compatible with the size alternator supplied with the chassis. Minimum capacities are specified below:

TABLE I

Bus Type	Cold Cranking Amperes at 0 degrees F.
Types A and B - gas	515 Amperes.
Types C and D - gas	800 Amperes.
Types A, B, C, D - diesel	1,000 Amperes.

(c) Storage battery shall have minimum cold cranking capacity rating equal to the cranking current required for 30 seconds at 0 degrees Fahrenheit (-17.8c) and a minimum reserve capacity rating of 120 minutes at 25 amps. Higher capacities may be required depending upon optional equipment and local environmental conditions.

(d) Since all batteries in Type B, C, and D buses are to be located in a sliding tray, the battery shall be temporarily mounted on the chassis frame by the chassis manufacturer.

(e) Generator or Alternator.

(i) Generating Unit: All school buses shall be equipped with an engine driven alternator with rectifier capable of producing the minimum current specified, and capable of producing 30 percent of its maximum rated output at the normal engine idle speed.

(ii) The generating or alternating unit shall be driven by a dual or serpentine belt system directly from the crankshaft or a positive-driven accessory shaft of the engine. (Exception: Type A and B buses rated 14,500 lb. GVW or less.)

(iii) Type A bus shall have a minimum 65 ampere hour alternator; type B bus rated over 15,000 lb. GVW shall be equipped with a heavy duty truck or bus type alternator meeting SAE J 180, having minimum output rating of 100 amperes; type B buses rated at 14,500 GVW or less shall have an alternator rated at 80 amperes; type C bus alternators shall have a rating of 120 amperes; type D bus alternators shall have a rating of 160 amperes.

(iv) Type B, C, and D buses rated at 15,000 lb GVW or more, shall have a generator or alternator with a minimum charging rate of 30 amperes at manufacturer's recommended engine idle speed (12 volt system), and shall be ventilated and voltage controlled and, if necessary, current controlled.

(v) Type A, B, C, and D buses equipped with an electrical power lift shall have a minimum 100 ampere hour alternator.

(vi) A direct-drive generator or alternator is permissible in lieu of belt drive. Belt drive shall be capable of handling the rated capacity of the generator or alternator with no detrimental effect on other driven components.

(f) Regulator. The regulator(s) shall be of a fully solid-state design.

(g) Wiring.

(i) The engine and frame shall be electrically interconnected by a bonding strap of adequate size to assure proper functioning of the electrical system.

(ii) All wiring shall conform to current applicable recommended practices of the Society of Automotive Engineers.

(iii) All wiring shall use a standard color and number coding. Each chassis shall be delivered with a wiring diagram that coincides with the wiring of the chassis.

(iv) Chassis manufacturer shall install a readily accessible terminal strip or plug on the body side of the cowl, or at an accessible location in the engine compartment of vehicles designed without a cowl, that shall contain the following terminals for the body connections:

(A) Main 100 amp body circuit.

(B) Tail lamps.

(C) Right turn signal.

(D) Left turn signal.

(E) Stop lamps.

(F) Back up lamps.

(G) Instrument panel lights (rheostat controlled by headlamp switch).

(v) Circuits.

(A) An appropriate identifying diagram (color and number coded) for electrical circuits shall be provided to the body manufacturer for distribution to the end user.

(vi) Engine Fire Extinguishers.

(A) Manufacturer may provide an automatic fire extinguisher system in the engine compartment on gasoline-powered lift buses.

(11) Exhaust System

(a) Exhaust pipe, muffler, and tailpipe shall be outside bus body compartment and attached to chassis.

(b) Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel.

(c) Tailpipe may (a) extend beyond rear axle and extend beyond outer shell but not beyond the bumper, and be mounted outside of chassis frame rail at end point, or (b) extend to the left side of the bus, behind the driver's compartment outboard of chassis center line and extend to but not beyond the perimeter of the body. Type A bus is manufacturer's standard. On Type C and D buses, no exhaust pipe shall exit beneath an emergency door or fuel fill.

(d) Exhaust system on gasoline-powered chassis shall be properly insulated from fuel tank connections by a securely attached metal shield at any point where it is twelve inches or less from tank or tank connections.

(e) Muffler shall be constructed of corrosion-resistant material.

(12) Fenders, Front, Type C Vehicles

(a) Total spread of outer edges of front fenders, measured at fender line, shall exceed total spread of front tires when front wheels are in straight ahead position.

(b) Front fenders shall be properly braced and free from any body attachments. Front fenders and hood must be tilt-away type to allow maximum access to engine compartment.

(13) Frame and Passenger Load

(a) Gross vehicle weight (GVW) is the sum of the average chassis weight, the average body weight, the driver's weight, and total seated pupil weight. For purposes of calculation, the driver's weight is 150 pounds, and the pupil weight is 120 pounds per pupil.

(b) Gross Vehicle Weight (GVW) shall not exceed the chassis manufacturer's gross vehicle weight rating (GVWR) for the chassis.

(c) Gross Vehicle Weight (GVW) shall not exceed 185 pounds per published net horse-power of the engine at the manufacturer's recommended maximum revolutions per minute.

(d) Manufacturers' gross vehicle weight ratings shall be furnished in duplicate (unless more are requested) by manufacturers to the state agency having pupil transportation jurisdiction. The State agency shall, in turn, transmit such ratings to other state agencies responsible for development or enforcement of state standards for school buses.

(e) Chassis GVW Rating: The GVW used in design of the chassis and its frame shall be the minimum GVW calculated in Subsection 16.01 above or the next larger standard GVW rating supplied by the manufacturer.

(f) Any secondary manufacturer that modifies the original chassis frame shall guarantee workmanship and materials used in such modification.

(g) Any frame modification shall not be for the purpose of extending the wheelbase.

(h) Holes in top or bottom flanges or side units of frame, and welding to frame shall not be permitted except as provided or accepted by chassis manufacturer.

(i) Frame Construction:

(i) Frame shall be designed to correspond with or exceed standard performance criteria for heavy-duty trucks of same general load specifications used for severe service.

(ii) When frame side members are used, they shall be of one-piece construction; provided that if there is a necessity to extend frame side members, such extension shall be designed and furnished by chassis or body manufacturer with a guarantee and installation shall be made by either body or chassis manufacturer and guaranteed by company making the installation. Extensions of frame lengths are permissible only when such alterations are behind rear hanger of rear springs and shall not be for purpose of extending wheelbase. All such extensions shall be of sufficient material, quality, and strength to provide the same support and durability of manufacturer's standard frame side members.

(iii) Chassis frame will extend to rear body cross member.

(iv) Welding to frame side rails which is necessary by design to strengthen, modify, or alter basic vehicle configuration shall be performed and guaranteed by the body or chassis manufacturer making the modification.

(14) Fuel Tank

(a) Fuel tank or tanks of minimum 30-gallon capacity with a 25-gallon actual draw shall be provided by the chassis manufacturer for Types A, B, and C buses. Type C buses with a passenger capacity of 36 or greater shall be supplied with a 60-gallon fuel tank. All Type D buses shall be provided with a minimum 60-gallon fuel tank. The tank(s) shall be filled and vented to the outside of the body, the location of which shall be so that accidental fuel spillage will not drip or drain on any part of the exhaust system.

(b) No portion of the fuel system that is located to the rear of the engine compartment, except the filler tube, shall extend above the top of the chassis frame rail. Fuel lines shall be mounted to obtain maximum possible protection by the chassis frame.

(c) Fuel filter with replaceable element shall be installed between fuel tank and engine.

(d) If a tank size other than 30-gallon is supplied, location of front of tank and filler spout must remain as specified by SBMI Design Objectives, and the draw capacity shall be 83% of the tank capacity. January 1985 edition.

(e) The fuel tank on vehicles constructed with a power lift unit may be mounted on left chassis rail or behind rear wheels.

(f) Auxiliary tank may be added. Installation of alternative fuel tanks shall comply with all applicable fire codes.

(g) Fuel tank(s) may be mounted on left or right sides of frame, either to the rear of the rear axle, front of the rear axle between the wheelbase, or between the frame rails. All installations must meet FMVSS 301.

(15) Governor

(a) An engine governor is permissible. When it is desired to limit road speed, a road speed governor should be installed.

(b) When engine is remotely located from driver, a governor shall be installed to limit engine speed to maximum revolutions per minute recommended by engine manufacturer, or a tachometer shall be installed so engine speed may be known to driver.

(16) Heating System

(a) The chassis engine shall have plugged openings for the purpose of supplying hot water for the bus heating system. The opening shall be suitable for attaching 3/4-inch pipe thread/hose connector.

(b) The engine shall be capable of supplying water having a temperature of at least 170 degrees Fahrenheit at a flow rate of 50 pounds per minute at the return end of 30 feet of one inch inside diameter automotive hot water heater hose.

(17) Horn

(a) Bus shall be equipped with dual horns of standard make with each horn capable of producing complex sound in bands of audio frequencies between 250 and 2,000 cycles per second and tested per Society of Automotive Engineers Standard J-377.

(b) Air Horn (Optional): Air horn, if required, shall be dual-horn type under the control of the driver. The control may be pull-cable type, hand-operated dash-mounted switch, or foot operated. Air horn shall be mounted to the roof of the bus body or the chassis frame where it is protected from mud and other corrosives.

(18) Lamps and Signals

(a) The chassis manufacturer shall equip the front of a conventional, body-on-chassis bus with headlamps, turn signals, and side marker lamps (Types A and C).

(b) The bus shall be equipped with at least two dual beam headlamps of the sealed beam type, with at least one headlamp on each side of the bus. The headlamps shall be located at a height of not more than 54 inches or less than 24 inches when measured vertically from the center of the lamp to the level ground on which the unloaded bus stands.

(c) The bus shall be equipped with a manually-operated dimmer switch for use by the driver in selecting either the high or low beam of the headlights.

(d) Fog lights or driving lights are optional. If required, they shall have an operating switch that is independent of the headlight switch.

(19) Instruments and Instrument Panel

(a) Chassis shall be equipped with the following instruments and gauges. Lights in lieu of gauges are not acceptable except as noted. Optional instruments and gauges are identified as such.

(i) Speedometer.

(ii) Odometer which will give accrued mileage to seven digits including tenths of miles.

(iii) Voltmeter

(A) Voltmeter with graduated scale compatible with the electrical system (Type A, B, C, and D buses).

(B) Ammeter with graduated charge and discharge with ammeter and its wiring compatible with generating capacities is permitted in lieu of voltmeter.

(iv) Oil-pressure gauge.

(v) Water temperature gauge.

(vi) Fuel gauge.

(vii) High beam headlight indicator.

(viii) Brake indicator gauge (vacuum or air) 2-inch diameter.

(ix) Light indicator in lieu of gauge permitted on vehicle equipped with hydraulic-over-hydraulic brake system.

(x) Glow-plug indicator light where appropriate.

(xi) Tachometer (optional).

(xii) A self-cancelling directional signal switch shall be provided by the chassis manufacturer. It shall have a hazard warning switch in combination with the directional signal switch.

(xiii) Turn-signal indicator lights.

(xiv) Service-hour meter is optional on diesel engine-equipped buses.

(xv) Engine warning system for low oil pressure and/or high engine temperature is optional.

(xvi) Tachograph or on-board computer are optional.

(b) All instruments shall be easily accessible for maintenance and repair.

(c) Above instruments and gauges shall be full-faced and shall be mounted on the instrument panel in such a manner that each is clearly visible to the driver while in normal seated position. Instruments and gauges may be mounted individually or in "cluster" fashion. In addition, they may be independently removable or may be constructed as a solid state combined panel in which case the entire panel is removable.

(d) Instrument panel shall have lamps of sufficient candlepower to illuminate all instruments, gauges, and shift selector indicator for automatic transmission.

(20) Oil Filter

(a) Oil filter of replaceable element type shall be provided and shall be connected by flexible oil lines if it is not of built-in or engine-mounted design. Oil filter shall have capacity of at least one quart.

(21) Openings

(a) All openings in floorboard or firewall between chassis and passenger compartment, such as for gearshift and parking brake lever, shall be sealed unless they are to be altered by the bus body manufacturer. All openings between chassis and passenger compartment made due to alterations by the bus body manufacturer will be sealed by the bus body manufacturer.

(22) Retarder, Driveline, or Exhaust Brakes

(a) Driveline retarders or exhaust brakes, if used, shall maintain the speed of the fully loaded school bus at 19.0 mph or 30 km/hr on a 5 per cent grade for 3.5 miles or 6 kilometers.

(23) Shock Absorbers

(a) Bus shall be equipped with front and rear double-action heavy-duty shock absorbers compatible with manufacturers' rated axle capacities at each wheel location.

(24) Springs

(a) Capacity of springs or suspension assemblies shall be commensurate with chassis manufacturers' gross vehicle weight ratings.

(b) If rear leaf springs are used, they shall be either air or progressive type. Front or rear springs may be parabolic.

(c) Springs or suspension assemblies shall be of ample resiliency under all load conditions and of adequate strength to sustain the loaded bus without evidence of overload.

(d) Springs or suspension assemblies shall be designed to carry their share of the GVW.

(e) If leaf-type springs are used, the front of the main leaf eye shall be protected by a second leaf wrapper eye (front and/or rear springs).

(25) Steering Gear

(a) Steering gear shall be approved by chassis manufacturer and designed to assure safe and accurate performance when vehicle is operated with maximum load and at maximum speed. All buses shall be equipped with heavy-duty, truck-type integral gear hydraulic power steering that shall assure safe and accurate performance when the fully loaded vehicle is operated at maximum speed. Hydraulic power steering is required and shall be of the integral type with integral valves.

(b) If external adjustments are required, steering mechanism must be accessible to accomplish same.

(c) No changes shall be made in steering apparatus that are not approved by chassis manufacturer.

(d) There shall be clearance of at least two inches between steering wheel and cowl, instrument panel, windshield, or any other surface.

(e) The steering mechanism shall provide for easy adjustment for lost motion.

(f) The steering system shall be designed to provide means for lubrication of all wear-points, if wear-points are not permanently lubricated.

(26) Tires and Wheels

(a) Tires and wheels of proper size and tires with load rating commensurate with chassis manufacturers' gross vehicle weight ratings shall be provided.

(b) Dual rear wheels and tires shall be provided on all school buses.

(c) All tires on any given vehicle shall be of same size and load rating. The load range of all tires shall meet or exceed the gross axle weight rating as required by FMVSS 120.

(d) If vehicle is equipped with a spare tire, the wheel and tire shall be of the same size and load rating as those mounted on the vehicle.

(e) If a tire carrier is required, it shall be suitably mounted in accessible location outside the passenger compartment.

(f) All wheels on any given vehicle shall be of same size and load rating capacity. Wheels shall be steel disc type; cast or spoke wheels are not permitted.

(27) Tow Hooks

(a) Two front and two rear heavy duty frame mounted tow hooks shall be furnished on all buses Types B, C, and D. Tow hooks must be attached so as not to project beyond the front or rear bumpers. The front tow hooks shall be furnished by the chassis manufacturer, and the rear tow hooks furnished by the body manufacturer on Type C buses. Front and rear tow hooks shall be furnished by the body manufacturer on Types B and D buses. The installation shall be according to manufacturers' specifications.

(28) Transmission

(a) The input torque capacity of the transmission shall be at least ten percent greater than the maximum net torque developed by the engine.

(b) The transmission shall be equipped with an automatic back-up light switch for the operation of the back-up light mounted on the rear of the school bus body. The switch will be wired to the back-up light by the body manufacturer. This switch is to be activated by moving the gear shift lever into the "reverse" position.

(c) Manual Transmission:

(i) Manual transmission shall be of heavy-duty type. For buses with a capacity of 30 or more passengers, transmission shall have four speeds forward and one in reverse. For buses with a capacity of over 30 passengers, transmissions shall have five speeds forward and one in reverse.

(ii) Manual transmissions shall be synchromesh or constant-mesh in all gears except first and reverse.

(d) Automatic transmission shall provide for not less than three forward speeds and one reverse speed. The shift selector, if applicable, shall provide a detent between each gear position when the gear selector quadrant and shift selector are not steering column mounted. (Exception: Type A and B buses.)

(29) Turning Radius

(a) Chassis with a wheel base of 264 inches or less shall have a right and left turning radius of not more than 42.5 feet.

(b) Chassis with a wheelbase of 265 inches or more shall have a right and left turning radius of not more than 44.5 feet.

(30) Undercoating

(a) Chassis manufacturer or its agent shall coat undersides of steel or metallic front fenders with rust-proofing compound for which compound manufacturers have certified to chassis builder that compound meets or exceeds all performance and qualitative requirements of paragraph 3.4 of Federal Specification TT-C-520B using modified test.

(31) Weight Distribution

(a) Weight distribution of fully-loaded bus on level surface shall not exceed the manufacturer's front gross axle rating and rear gross axle rating.

R909-3-6. Body Requirements.

(1) Aisle

(a) Minimum clearance of all aisles including aisle to emergency door(s) shall be 12 inches.

(b) Seat backs shall be slanted sufficiently to give aisle clearance of 15 inches at tops of seat backs.

(2) Backup Warning Alarm (Optional)

(a) An automatic audible alarm may be installed behind the rear axle and shall comply with the Society of Automotive Engineers published Backup Alarm Standards (SAE 994b) specifying 97+-4dsB(A) for rubber tired vehicles.

(3) Battery

(a) Battery is to be furnished by chassis manufacturer.

(b) The body manufacturer shall supply a compartment to securely attach battery on slide-out or swing-out tray in a closed, vented compartment in the body skirt, whereby battery may be

exposed for convenient servicing. Battery compartment door or cover shall be hinged at front or top and secured by adequate and conveniently operated latch or other type fastener. (Exception: Type A.)

(4) Bumper (Front)

(a) See Chassis Standard, R909-3-5(6).

(5) Bumper (Rear)

(a) Bumper shall be of pressed steel channel or equivalent material at least 3/16-inch thick and nine inches wide (high), and of sufficient strength to permit pushing by another vehicle of the same GVW rating without permanent distortion. (Exception: Type A bus, minimum 3/16 inch x 8 inch.)

(b) Bumper shall be wrapped around back corners of bus. It shall extend forward at least 12 inches, measured from rear-most point of body at floor line.

(c) Bumper shall be attached to chassis frame in such a manner that it may be easily removed, shall be so braced as to develop full strength of bumper section from rear or side impact, and shall be designed to discourage hitching of rides.

(d) Bumper shall extend at least one inch beyond rear-most part of body surface measured at floor line.

(e) The bumper provided by the chassis manufacturer may be used on Type A buses.

(6) Ceiling

(a) See "Insulation" and "Interior," Body Standards, R909-3-6(18) and (19).

(7) Chains

(a) See "Wheelhousing," Body Standards, R909-3-6(79).

(8) Color

(a) The school bus body shall be painted a uniform National School Bus Yellow. The roof may be painted white.

(b) The color known as National School Bus Yellow was designated as such by the 1939 National Conference on School Bus Standards. The National Bureau of Standards of the U.S. Department of Commerce assisted in developing this color and its colorimetric specifications, as follows:

TABLE II

Colorimetric Specifications
National School Bus Yellow

C.I.E. Chromaticity Coordinates		Daylight Reflectance Y(%)		
x	y	max	std	min
.5211	.4549	-	41.	40.

Dominant Wavelength in millicrons			Excitation Purity P(%)		
max	std	min	max	std	min
584.5	583.5	582.5	-	93.7	89

(c) At the 1980 Conference, the colors in use were reviewed. A color standard was selected, slightly different from the above, and specific tolerances were chosen. These tolerances will insure a continuity of appearance from bus to bus, and within the same bus when different elements are finished or refinished at different times. Specification for the Standard Color, with light and dark tolerances (Upper and Lower Reflectance), are shown below in tabular form.

TABLE III

Specifications for Standard Color

For Source C				
CIE Chromaticity Coordinates		Reflectance	Reflectance Tolerances	
x	y	Y(%)	Upper	Lower
.5089	.4408	40.14%	41.77%	38.45%

(d) The body exterior paint trim, bumper, lamp hoods, emergency door arrow, and lettering shall be black.

(9) Construction

(a) Construction shall be of prime commercial quality steel or other metal or material with strength at least equivalent to all-steel and corrosion resistance at least equivalent to all-steel as certified by bus body manufacturer (See Section 54, Metal Treatment). Types B, C, and D buses shall meet joint strength standards. Type A buses shall meet joint strength standards for the passenger compartment only as specified in FMVSS-221.

(b) Construction shall provide a reasonably dustproof and watertight product.

(c) A certification plate shall be affixed to the inside of each body in the same area as the body serial number. This certification plate shall contain the following or similar wording: "(manufacturer's name) does hereby certify that (body serial number) has been constructed with standard and/or optional equipment that meets the Colorado Racking Load Test in accordance with Utah State School Bus Standards in effect at time of manufacture."

(10) Defrosters

(a) Defrosting and defogging equipment shall direct a sufficient flow of heated air onto the windshield, the window to the left of the driver, and the glass in the viewing area directly to the right of the driver to eliminate frost, fog, and snow. The defroster unit shall have a separate blower motor in addition to the heater motors. Defrosting and defogging equipment for Type A vehicles shall direct a sufficient flow of heated air onto the windshield to eliminate frost, fog, and snow.

(b) The defrosting system shall conform to Society of Automotive Engineers Standards J-381 and J-382.

(c) The defroster and defogging system shall be capable of furnishing heated outside ambient air except that the part of the system furnishing additional air to the windshield, entrance door and step-well may be of the recirculating air type.

(d) Auxiliary fans are not to be considered as a defrosting and defogging system.

(e) Portable heaters may not be used.

(11) Doors

(a) Service Door:

(i) The service door shall be either manual or power-operated under the control of driver and shall be designed to afford easy release and prevent accidental opening. When hand lever is used, no part shall come together so as to shear or crush fingers, and shall have a heavy duty chrome control handle with lubricated bushings or bearings.

(ii) The service door shall be located on right side of bus opposite driver and within direct view of driver.

(iii) The service door shall have minimum horizontal opening of 24 inches and minimum vertical opening of 68 inches.

(iv) The service door shall be of split type, sedan type, or jack-knife type. (Split-type door includes any sectioned door which divides and opens inward or outward.) If one section of split-type door opens inward and the other opens outward, front section shall open outward.

(v) Lower as well as upper panels shall be of approved safety glass. Bottom of lower glass panel shall not be more than 10 inches from the top surface of the bottom step when bus is unloaded. Top of upper glass panel shall not be more than six inches from top of door.

(vi) Vertical closing edges on the entrance door(s) shall be equipped with flexible material to protect childrens' fingers from injury.

(vii) All doors shall be equipped with padding at the top edge of each door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(viii) Optional skid plates to protect door step wells may be installed.

(b) Emergency Doors.

(i) Emergency door shall be hinged on the right side if the door is in the rear center of the bus and on the front side if the door is on the left side of the bus. It shall open outward and shall be labeled inside and outside to indicate how it is to be opened.

(ii) Upper portion of emergency door shall be equipped with approved safety glass, exposed area of which shall be not less than 400 square inches. The lower portion of the rear center emergency door shall be equipped with a minimum of 350 square inches of approved safety glass.

(iii) There shall be no steps leading to emergency door.

(iv) The words "EMERGENCY DOOR", both inside and outside in letters at least two inches high, shall be placed at top of or directly above the emergency door or on the door in the metal panel above the top glass.

(v) The emergency door shall be equipped with padding at the top edge of each door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(vi) The side emergency door, if installed, must meet the requirements set forth in FMVSS 217, S 5.4.2.1, (b), regardless of its use with any other combination of emergency exits.

(vii) All emergency doors, exit windows, and push-out type windows shall be furnished with an audible buzzer to indicate to the driver that the exit is open. Side exit door must be furnished with a three-point bar lock.

(viii) Emergency Exit(s).

(A) Each school bus shall be equipped with either (1) an emergency door located in the center of the rear end or (2) if the engine or a storage compartment is located in the rear, a left side emergency door in the rear half of the bus and an emergency window in the rear end. Double side emergency exits are permitted.

(I) The passage to the emergency door shall be kept clear of obstructions and there shall be no steps leading to the emergency door.

(II) A left side emergency door shall be equipped with safety glass in the upper portion. The lower portion shall be at least the same gauge metal as used in the body.

(III) A positive, mechanical device shall be used that holds the door open and prevents it from closing during emergencies and evacuation drills.

(IV) A rear emergency window (used in conjunction with a left-hand emergency door) shall be at least 16 inches high and 54 inches wide on buses 80 inches or more in total width and at least 16 inches high and 48 inches wide on buses less than 80 inches in total width.

(V) A rear emergency window shall be hinged from the top, and designed to prevent accidental reclosing in an emergency. A header pad that lines the upper length of the window opening shall be furnished.

(VI) Paneling of sufficient strength to support the weight of an occupant shall cover the space between the top of the rear davenport seat and the inside lower ledge of the rear emergency window.

(VII) Emergency doors shall be designed to be opened from either the inside or outside of the bus and shall be equipped with a fastening device which may be quickly released but is designed to offer protection against accidental release. Control from the driver's seat is not permitted. Provisions for opening from the outside shall consist of a nondetachable device designed to prevent hitching-to, but to permit opening when necessary. There shall be no exterior body projections that could injure pupils exiting through the emergency window or door other than the proper opening controls.

(VIII) If the latch handle on the outside of the emergency door is not located on the outer edge of the door, a door pull shall be affixed in the extreme left-hand location at the bottom to prevent hitching-on. The emergency pull shall be constructed of heavy metal and shall be free from any sharp edges likely to cause injury.

(IX) Emergency doors shall be equipped with a slide-bar, cam-operated lock. Slide bar shall have minimum stroke of one inch. The door lock shall be equipped with an interior handle that extends approximately to the center of the emergency door. The handle shall lift up to release the lock. The latch handle shall be protected by a metal guard of adequate width to prevent the handle from being actuated by a child falling against the door, but shall have sufficient clearance above the latch handle to permit easy grasp of the handle. The handle shall be of sufficient length to permit a small child to open the door.

(X) Emergency door lock shall be equipped with suitable electric plunger-switch connected with a buzzer located in the driver's compartment. Switch shall be enclosed in a metal case, and wires leading from switch shall be concealed in the bus body. Switch shall be so installed that the plunger contacts the outer edge of slide bar in such a manner that any movement of slide bar will immediately close circuit on the switch and activate the buzzer.

(XI) Rear emergency windows shall be equipped with a latch or latches on the inside designed for quick release, but offering protection against accidental release. Windows shall also be equipped with a latching mechanism that can be actuated from the outside. The outside release shall be nondetachable and be designed to prevent hitching-to.

(XII) The window latch shall be equipped to activate the electric buzzer when the latch is released.

(XIII) Emergency doors, hatches, or windows shall be installed, constructed, and identified as prescribed in FMVSS 217. Roof hatches are optional and must be equivalent in quality to the Transpec Triple Value model. Push-out windows are optional.

(XIV) There shall be a head bumper pad installed on the inside of the top of the emergency doors. This pad shall be approximately three inches in width and one inch thick and shall extend across the entire top of the door opening.

(12) Fire Extinguishers

(a) The bus shall be equipped with at least one pressurized, dry chemical type fire extinguisher complete with hose, approved by Underwriters Laboratories. Extinguisher must be mounted in a bracket located in the driver's compartment and must be readily accessible to the driver and passengers. A pressure gauge shall be mounted on the extinguisher so as to be easily read without moving the extinguisher from its mounted position.

(b) The fire extinguisher shall be rated at 3A40BC or greater. The operating mechanism shall be sealed with a type of seal that will not interfere with the use of the fire extinguisher.

(13) First Aid and Body Fluid Clean-up Kits

(a) The bus shall have a first-aid kit in a removable, moisture and dustproof metal container mounted in an accessible place within driver's compartment. This place shall be marked to indicate its location.

(i) Minimum contents are as follows:

(A) 2 - 1" x 2-1/2 yards adhesive tape rolls

(B) 24 - sterile gauze pads 3" x 3"

(C) 100 - 3/4" x 3" adhesive bandages

(D) 8 - 2" bandage compress

(E) 10 - 3" bandage compress

(F) 2 - 3" x 6 yards sterile gauze roller bandages

(G) 2 - nonsterile triangular bandages approximately 40" x 36" x 54" with 2 safety pins

(H) 3 - sterile gauze pads 36" x 36"

(I) 3 - sterile eye pads

(J) 1 - blunt-end scissors

(K) 1 - pair latex gloves

(L) 1 - mouth-to-mouth airway

(b) In addition to the first aid kit, all buses shall have a body fluid clean-up kit in a metal container properly labeled and mounted.

(i) Minimum contents are:

(A) Full sized polyethylene apron

(B) Surgical face mask

(C) Protective goggles

(D) 1 pair latex gloves

(E) Absorption matter (4 ounces.)

(F) 2 biohazard disposal bags (at least one red in color)

(G) Antibacterial disenfectant in crystal, liquid or powder form (2 ounces), or in towlette form.

(H) 2 large paper towels

(I) Clean-up spatula, plastic or cardboard

(c) Plastic clean-up kit containers purchased prior to the adoption of this edition of the Standards are acceptable. Containers purchased following adoption of this edition must be metal.

(14) Floor

(a) Floor in underseat area, including tops of wheelhousings, driver's compartment, and toeboard, shall be covered with smooth rubber floor covering or equivalent having minimum overall thickness of .125 inch.

(b) Floor covering in aisle shall be of aisle-type rubber or equivalent, wear-resistant, and ribbed. Minimum overall thickness shall be .187 inch measured from tops of ribs. Floor covering in driver's compartment may be ribbed.

(c) Floor covering must be permanently bonded to floor and must not crack when subjected to sudden changes in temperature. Bonding or adhesive material shall be waterproof and shall be of type recommended by manufacturer of floor-covering material. All seams must be sealed with waterproof sealer and covered with a metal strip.

(d) Metal cove moldings shall be furnished along all floor to sidewall areas, and rear floor to sidewall areas including corners.

(15) Heaters

(a) Heaters shall be of hot-water type.

(b) If only one heater is used, it shall be of fresh air or combination fresh air and recirculating type.

(c) If more than one heater is used, additional heaters may be of recirculating air type.

(d) The heating system shall be capable of maintaining throughout the bus a temperature of not less than 40 degrees Fahrenheit at the average minimum January temperature as established by the U.S. Department of Commerce, Weather Bureau, for the area in which the vehicle is to be operated.

(e) All heaters installed by body manufacturers shall bear a name plate that shall indicate the heater rating in accordance with SBMI Code 001. Said plate, to be affixed by the heater manufacturer, shall constitute certification that the heater performance is as specified in the SBMI Code cited above.

(f) Heater hoses shall be adequately supported to guard against excessive wear due to vibration. The hoses shall not dangle or rub against the chassis or sharp edges and shall not interfere with or restrict the operation of any engine function. Heater hose shall conform to SAE J20c. Heater lines on the interior of bus shall be shielded to prevent scalding of the driver or passengers.

(g) Each hot water system installed by a body manufacturer shall include a shutoff valve installed in the pressure and return lines at or near the engine in an accessible location.

(h) There shall be a water flow regulating valve installed in the pressure line for convenient operation by the driver.

(i) Accessible bleeder valves shall be installed in an appropriate place in the return lines of body company-installed heaters to remove air from the heater lines.

(j) Heater motors, cores, and fans must be readily accessible for service. Access panels shall be provided as needed.

(k) The body company shall furnish permanent type ethylene-glycol base antifreeze that will provide for protection to the cooling and heating system to at least 40 degrees below zero Fahrenheit.

(l) An auxiliary heater booster water pump shall be furnished by the body company on all Type C and D buses. It shall be driven by a 12-volt electric motor and have a minimum flow capacity of 12 gallons per minute with three feet at head measurement.

(m) Auxiliary fuel-fired heaters are optional. If used, they must conform to FMVSS 301, Standards for Fuel System Integrity.

(16) Identification

(a) The body shall bear the words "SCHOOL BUS" in black letters at least eight inches high, one inch line width, both front and rear of body. The lettering shall be located between the warning signal lamps as high as possible without impairment of its visibility. Lettering shall conform to "Series B" of Standard Alphabets for highway signs. There shall be no other lettering on the front or rear of the bus except for the emergency door identification.

(b) The name of the school district, independent school, or transportation company shall be placed on each side of the bus body. The name shall be in black letters, approximately six inches in height and proportionately spaced to achieve a balanced appearance.

(c) On bodies of school buses leased to a school board by private owners, the name of the owner followed by the word "OWNER" shall be in black letters, approximately six inches in height and proportionately spaced to achieve a balanced appearance.

(d) The manufacturer's rated pupil seating capacity shall be shown in two-inch letters, either painted on or in decal form, on the inside upper portion of the entrance door or inside the body above the right hand windshield.

(e) The numbering of individual buses for identification purposes is permissible. Numerals shall be black and six inches in height. The location of the numbers shall be:

(i) Right side--at district identification belt line aft service door.

(ii) Rear of the vehicle--curb side below tail light.

(iii) Driver panel--belt line on the left side.

(iv) One additional position that is optional with district.

(f) Lettering and numbering as described above are the only permissible permanent markings. Bumper stickers, decals, or commercial markings are not permitted.

(17) Inside Height

(a) Inside body height shall be 72 inches or more, measured metal to metal, at any point on longitudinal center line from front vertical bow to rear vertical bow.

(18) Insulation

(a) Ceiling and walls shall be insulated with proper material to deaden sound and to reduce vibration to a minimum.

(b) Thermal insulation is required and shall be of fire-resistant material approved by Underwriters Laboratories, Inc. The material shall be fiberglass batt type or equal with a minimum thickness of 1.5 inches. It shall be installed in the entire roof area, entire body sides, front and rear bulkheads, and rear area walls.

(c) Floor insulation is optional. If required, it must be five-ply at least one-half inch thick and/or it shall equal or exceed properties of exterior-type softwood plywood, CD grade as specified in standard issued by U.S. Department of Commerce.

(19) Interior

(a) Interior of bus shall be free of all unnecessary projections likely to cause injury. This standard requires inner

lining on ceilings and walls. If ceiling is constructed so as to contain lapped joints, forward panel shall be lapped by rear panel and exposed edges shall be beaded, hemmed, flanged, or otherwise treated to eliminate sharp edges.

(b) The driver's area forward of the foremost padded barriers will permit the mounting of required safety equipment and vehicle operating equipment.

(c) Every school bus shall be constructed so that the noise level taken at the ear of the occupant nearest to the primary vehicle noise source shall not exceed 85 dB(A).

(d) Interior side panels from the passenger side window line to the seat mounting ledge shall be mar-resist, aluminized steel, textured panels, stainless steel, or equal non-painted surface to minimize vandalism.

(e) Perforated acoustic interior ceiling panels are optional.

(20) Lamps and Signals

(a) Interior lamps shall be provided that adequately illuminate aisle and stepwell. Stepwell light shall be connected to the automatic door control switch for its operation.

(b) Body instrument panel lights shall be controlled by an independent rheostat switch or may be in combination with headlight rheostat switch.

(c) School Bus Alternately Flashing Signal Lamps.

(i) Definition: School bus red signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform others that such vehicle is stopped to take on or discharge school children.

(ii) School bus amber signal lamps are alternately flashing lamps mounted horizontally both front and rear, intended to identify a vehicle as a school bus and to inform others that such vehicle is about to stop to take on or discharge school children.

(A) Bus shall be equipped with two red lamps at rear of vehicle and two red lamps at front of vehicle.

(B) In addition to four red lamps described in A above, four amber lamps shall be installed as follows: One amber lamp shall be located near each red signal lamp, at same level, but closer to vertical centerline of bus. Red and amber signal lamps shall be wired so that amber lamps are activated manually, and red lamps are automatically activated (with amber lamps being automatically cancelled) when bus service door is opened.

(C) A master switch is required for the warning light system.

(D) The amber warning signal lamps shall be activated manually by a switch mounted on the driver control panel. The red warning signal lamps shall be automatically activated and the operation of the amber lamps cancelled when the bus door is opened. The red warning lamps shall be automatically activated any time the door is opened, irrespective of whether the amber warning lamps were activated immediately preceding the door opening.

(E) The alternately flashing warning signal lamp system shall include an amber and red pilot indicator lamps located within the easy view of the driver that will indicate when the amber or red flashing lamps are operating.

(F) The area around the lens of each alternately flashing signal lamp and extending outward approximately three inches shall be painted black. Where there is no flat vertical area of body immediately surrounding the entire lens of lamps, a circular or square band of black approximately three inches wide, immediately below and to both sides of lens, shall be painted on body or roof area to fit the shape of hoods/visors and roofcap. Individual hood/visor is required for each light and shall be painted totally black.

(G) A single visor/hood for each set of dual lamps or an individual visor/hood for each lamp shall be provided. The visor/hoods shall fit the shape of the lights and roofcaps, be a minimum depth of 5 inches, and be painted black.

(H) All flashers for alternately flashing red and amber signal lamps shall be enclosed in the body in a readily accessible location.

(I) A monitor light for the front and rear lamps of the school bus is optional. If used, the monitor shall be mounted in full view of the driver. If the full circuit current passes through the monitor, each circuit shall be protected by a fuse or circuit breaker protecting against any short circuit or intermittent current.

(d) Turn Signals.

(i) Bus body shall be equipped with two rear amber arrow-type turn signal lamps, each with a face of at least 38 square inches, and meet specifications of the Society of Automotive Engineers.

(ii) The bus body shall be equipped with two amber arrow turn signal lamps, each with a face of at least 38 square inches on the front of the bus body. These are required on Type B and D buses. They are also required on Type C buses in addition to fender mounted chassis directional lamps. Type A buses shall be manufacturers' standards.

(iii) Two side directional signal lights of 32 candlepower shall be located in the beltline near the front of the bus body. (Exception: Type A)

(iv) Two one-half inch directional pilot lights shall be provided that indicate to the driver that either the left or right directional flashers or the hazard warning flashers are activated. These pilots shall be green in color and bright enough that they can be seen in operation in bright sunlight. They shall be located on the dash or bulkhead above the driver.

(v) All directional signal lamps must be connected to the chassis hazard warning switch to cause simultaneous flashing of turn signal lamps when needed as vehicular traffic hazard warning.

(vi) Turn signal lamps are to be placed as wide apart as practical and in plain sight of traffic approaching from front or rear.

(e) Stop and Tail Lights.

(i) The bus shall be equipped with four combination stop and tail lamps mounted on the rear of the body. Two shall be a minimum diameter of seven inches and the other two shall be a minimum of four inches in diameter. The lens color shall be red. The light emitted from the lamps shall be plainly visible for the distance of 500 feet to the rear. The tail lights will be operated by the headlamp switch and the brake lights by the brake light switch. No lettering is permitted on these lamps except for manufacturers' markings.

(ii) The bottoms of the four-inch diameter stop/tail lights shall emit white light downward to illuminate the rear license plate and bus identification number from a distance of not less than 60 feet in periods of darkness.

(iii) Stop lights and tail lights shall be placed as wide apart as practical and in plain sight of traffic approaching from the rear.

(f) Back Up Lights.

(i) Two four-inch diameter back up lights shall be provided and shall be of sufficient intensity to inform vehicle operators and pedestrians that the school bus is in reverse. The back up lights shall be automatically illuminated when the ignition switch is "on" and the reverse gear is engaged. The chassis manufacturer shall provide the switch for operation of back up lights.

(g) Clearance Marker Lights.

(i) The bus body shall be equipped with clearance lights on each corner of the bus body, mounted as high as possible on the permanent structure of the bus in such a manner as to indicate the extreme width of the body, and a cluster of three identification lights on the top roof edge of both front and rear ends of the body located at the body's highest point. Side marker lights shall be installed midway between the front and rear clearance lights.

(ii) The lights on the front and sides shall be amber and the rear lights shall be red.

(h) Reflex Reflectors.

(i) The bus body shall be equipped with four side-mounted and two rear-mounted reflex reflectors. Light lenses do not suffice as reflectors.

(ii) Reflectors shall be mounted at a height of not less than 15 inches nor more than 60 inches above the ground.

(iii) The front side reflectors shall be amber. The right front side reflector shall be located immediately aft of the door, and the other front side reflector shall be located at a similar position on the left side.

(iv) The rear reflectors (side and rear) shall be red. The two on the sides (one on each side) shall be located as far to the rear as possible, and the two on the rear as far apart as practical.

(v) All buses shall be equipped with two additional amber reflectors which shall be located at or near the midpoint between the front and rear side reflectors.

(vi) Lights and reflectors at or below the bottom window line shall have rounded protective shields or shall be finished in such a manner that sharp edges do not protrude or snag clothing.

(i) Warning Device.

(i) Each school bus shall contain at least three reflectorized triangle road warning devices that comply with FMVSS 125, mounted in an accessible place in the driver's compartment in a container. The mounting location in Type A vehicles is optional.

(21) Metal Treatment

(a) All metal 12 gauge and thinner used in construction of bus body shall be zinc or aluminum coated or treated by equivalent process before bus is constructed. Included are such items as structural members, inside and outside panels, door panels, and floor sills. Excluded are such items as door handles, grab handles, interior decorative parts, and other interior plated parts.

(b) All metal parts that will be painted shall be (in addition to above requirements) chemically cleaned, etched, zinc/phosphate coated, and zinc/chromate or epoxy primed or conditioned by equivalent process.

(c) In providing for these requirements, particular attention shall be given lapped surfaces, welded connections of structural members, cut edges, punched or drilled hole areas in sheet metal, closed or box sections, unvented or undrained areas, and surfaces subjected to abrasion during vehicle operation.

(d) As evidence that above requirements have been met, samples of materials and sections used in construction of bus body, when subjected to 1000-hour salt spray test as provided for in latest revision of ASTM designation; 8-117 "Standard Method of Salt Spray (Fog) Testing," shall not lose more than ten percent of material by weight.

(22) Mirrors

(a) Interior Mirror: Interior mirror shall be either clear view laminated glass or clear view glass bonded to a backing that retains the glass in the event of breakage. Mirror shall have rounded corners and protected edges. Type A and Type B cutaway buses shall have a minimum of a 6 inch x 16 inch mirror and Type B, C, and D buses shall have a minimum of a 6 inch x 30 inch mirror.

(b) Exterior Mirrors: Each bus shall have a minimum of one exterior left side and one exterior right side rearview mirror that comply with FMVSS 111. Type A vehicles may be manufacturer's standard. All exterior rearview mirrors must be adjustable to allow any driver to have visibility aft of the rear wheels at ground level.

(c) Indirect Visibility: Each bus shall have a mirror system that will provide an unobstructed field of view of the area around the bus and that conforms with FMVSS 111 as amended December 2, 1993.

(23) Bus Body Mounting

(a) Chassis frame shall support rear body cross member. Bus body shall be attached to chassis frame at each main floor sill, except where chassis components interfere, in such manner as to prevent shifting or separation of body from chassis under severe operating conditions.

(b) Insulating material shall be placed at all contact points between body and chassis frame on Type B, C, and D buses, and shall be so attached to chassis frame or body that it will not move under severe operating conditions.

(24) Mud flaps

(a) All buses shall be provided with mud flaps or mud shields at all front and rear wheel positions to prevent mud, slush, and gravel from being thrown onto the lower sections of the bus and service entrance area. Mud flaps must be heavy duty construction.

(25) Rubber fenders

(a) Cove-style rubber fenders shall be furnished on Type D buses on both the front and rear wheelhousing rims to prevent mud, slush, and water from being thrown onto the sides of the bus. Cove-style rubber fenders shall be furnished on the rear wheelhousing rims on Type C buses. Rubber fenders are not required on Type A and B buses.

(26) Overall Length and Width

(a) Overall length of bus shall not exceed forty feet. Overall width of bus shall not exceed 102 inches excluding accessories.

(27) Rub Rails

(a) Both sides of the vehicle shall have four rubrails. They shall be located at the window line, seat line, floor line, and bottom of the body skirt.

(b) The window-line rubrail shall extend from the rear of the service door opening along the right side of the body, extending around the right rear corner to the emergency door, and on the left side from the point of beginning of the passenger compartment along the left side extending around the left rear corner to the emergency door.

(c) The seat-line rubrail shall cover the same longitudinal area as the window line rubrail.

(d) The floor-line rubrail shall cover the same longitudinal area as the window-line rubrail except at wheelhousings, extending around the radii of the right and left rear corners as far as possible.

(e) The skirt-line rubrail shall cover the same longitudinal area as the window-line rubrail, except that it shall terminate at the rear corners of the vehicle.

(f) The window-line, seat-line, and floor-line rubrails shall be attached to the outside of the body at each body post and to all other vertical structural members.

(g) The skirt-line rubrail shall be attached to the outside of the body panels and other structural members behind the body panels.

(h) All rubrails shall be four inches or more in width in their finished form and shall be of 16 gauge steel or suitable material of equivalent strength. They shall be constructed in corrugated or ribbed fashion.

(i) Pressed-in or snap-on rub rails are not acceptable.

(j) Exception: Rub rails will not extend around rear corners of buses using rear center luggage compartment or Type D buses with rear engine, and must accommodate side emergency doors.

(28) Seat Belt for Driver

(a) A Type 2 lap belt/shoulder harness restraint system shall be provided for the driver. The assembly shall be equipped with an emergency locking retractor (ELR) for the continuous-belt system. The lap portion of the belt shall be guided or anchored where practical to prevent the driver from sliding sideways under it.

(29) Driver's Seat

(a) The driver's seat must be a high-back, six (6) way

adjustable without the use of tools. It shall adjust forward and backward, be mounted to adjust upward and downward, with a tiltback that allows the back to tilt forward and rearward. (Exception: Type A and Type B Cutaway chassis manufacturers' standards.)

(b) Air-ride and lumbar-support are approved optional features.

(30) Seats and Crash Barriers

(a) All seats shall have minimum depth of 15 inches.

(b) In determining seating capacity of bus, allowable average rump width shall be:

(i) 13 inches where 3-3 seating plan is used.

(ii) 15 inches where 3-2 seating plan is used.

(c) Seat, seat back cushion, and crash barrier shall be covered with a material having 42-ounce finished weight, 54 inches width and finished vinyl coating of 1.06 broken twill, or other material with equal tensile strength, tear strength, seam strength, adhesion strength, resistance to abrasion, resistance to cold and flex separation.

(d) Each seat leg shall be secured to the floor by a minimum of two bolts, washers and nuts or flange-headed bolts.

(e) All seat frames shall be fastened to the seat rail with two bolts, washers and nuts or flange-headed bolts.

(f) Type A buses shall have crash barriers.

(31) Steering Wheel

(a) 18" or 20" steering wheel as specified in the 1994 purchase specification guidelines on file with the Utah State Board of Education.

(32) Steps

(a) The first step at service door shall be not less than 12 inches and not more than 16 inches from ground, based on standard chassis specifications.

(b) Service door entrance may be equipped with two-step or three-step stepwell. Risers in each case shall be approximately equal. When plywood floor is used on steel, differential may be increased by thickness of plywood used. Risers shall not exceed 10 inches.

(i) When three-step stepwell is specified, the first step at service door shall be approximately ten to fourteen inches from the ground when bus is empty, based on standard chassis specifications.

(ii) Type D vehicles shall have a three-step stepwell with the first step at service door twelve to sixteen inches from the ground.

(c) Steps shall be enclosed to prevent accumulation of ice and snow.

(d) Steps shall not protrude beyond side body line.

(e) Heated rubber steps are optional.

(33) Grab Handle

(a) A grab handle approximately 20 inches in length shall be provided in an unobstructed location inside doorway on both left and right sides. Base of grab handle attaching it to the bus body shall be designed in such a manner that clothing, draw strings, straps, or buttons cannot catch or hang up at the joint.

(34) Step Treads

(a) All steps, including floor line platform area, shall be covered with 3/16-inch rubber floor covering or other materials equal in wear resistance and abrasion resistance to top grade rubber.

(b) Metal back of tread, minimum 24-gauge cold rolled steel, shall be permanently bonded to ribbed rubber; grooved design shall be such that said grooves run at a 90-degree angle to long dimension of step tread.

(c) 3/16-inch ribbed step tread shall have a 1.5 inch white nosing as integral piece without any joint.

(d) Rubber portion of step treads shall have the following characteristics:

(i) Special compounding for good abrasion resistance and high coefficient of friction.

(ii) Flexibility so that it can be bent around a .5 inch mandrel at 130 degrees F. and at 20 degrees F. without breaking, cracking, or crazing.

(iii) Show a durometer hardness of 85 to 95.

(35) Stirrup Steps

(a) The shall be at least one folding stirrup step or recessed foothold and suitably located handles on each side of the front of the body for easy accessibility for cleaning the windshield and lamps except when windshield and lamps are easily accessible from the ground. Steps are permitted in or on the front bumper in lieu of the stirrup steps, if the windshield and lamps are easily accessible for cleaning from that position. (Exception: Type A and Type B cutaway.)

(36) Stop Signal Arm

(a) Stop signal arm shall meet the applicable requirements of FMVSS 131. The arm shall be of an octagonal shape with white letters and border on a red background, and shall be of a reflective material meeting U.S. Department of Transportation FHWA FP-85 Type 2A or Type 3A. Flashing strobe lights on stop arm shall be connected to the red alternately flashing signal lamp circuits. The stop signal shall be vacuum, electric, or air operated. Arm shall be automatically operated when red warning lights are activated.

(b) The stop signal arm shall be mounted outside the bus body near the driver on the left side immediately below the driver's window. One stop signal arm per bus is permitted.

(37) Storage Compartment (Optional)

(a) If tools, tire chains and/or tow chains are carried on the bus, a container of adequate strength and capacity may be provided. Such storage container may be located either inside or outside the passenger compartment. If located inside, it shall have a cover (seat cushion may not serve this purpose) capable of being securely latched and be fastened to the floor convenient to either the service or emergency door. Storage racks may not be installed inside the passenger compartment of the bus.

(38) Sun Shield

(a) An interior adjustable transparent sun shield not less than 6 inches x 30 inches for Type B, C, and D vehicles, and not less than 6 inches x 16 inches for Type A vehicles with a finished, padded edge shall be installed in a position convenient for use by driver. It shall be fully adjustable. Type A and Type B cutaway shall be manufacturers' standards.

(39) Tailpipe

(a) Exhaust pipe, muffler and tailpipe shall be outside bus body compartment and attached to chassis.

(b) Tailpipe shall be constructed of a corrosion-resistant tubing material at least equal in strength and durability to 16-gauge steel.

(c) Tailpipe may (1) extend beyond rear axle and extend at least five inches beyond chassis frame and be mounted outside of chassis frame rail at end point, or (2) extend to, but not beyond the body limits on the left side of the bus, behind the driver's compartment, outboard of chassis center line and shall terminate from chassis centerline as follows:

TABLE VI

Type A buses	Manufacturers' standards
Type B buses	42.5 inches
Type C and D buses	48.5 inches.

(i) Exception: The exhaust system on vehicles designed for the transportation of disabled pupils shall be routed to the left of the right frame rail to allow for the installation of a lift on the right side of the vehicle.

(d) Exhaust system on gasoline-powered buses shall be properly insulated from fuel tank connections by a securely attached metal shield at any point where it is 12 inches or less from fuel tank or tank connections.

(e) Muffler shall be constructed of corrosion-resistant material.

(40) Traction Assisting Devices (Optional)

(a) When used, sanders shall:

(i) Be of hopper cartridge-valve type.

(ii) Have metal hopper with all interior surfaces treated to prevent condensation.

(iii) Be of at least 100-pound (grit) capacity.

(iv) Have cover on filler opening of hopper that screws into place, sealing unit airtight. Filling to be accomplished from outside the bus body.

(v) Have discharge tubes extending under fender to front of each rear wheel.

(vi) Have no-clogging discharge tubes with slush-proof, non-freezing rubber nozzles.

(vii) Be operated by electric switch with pilot light mounted on instrument panel.

(viii) Be exclusively driver-controlled.

(ix) Have gauge to indicate hoppers need refilling when they are down to one-quarter full.

(b) Automatic traction chains may be installed.

(41) Tow Hooks

(a) Two front and two rear heavy-duty frame mounted tow hooks shall be furnished on all buses Type B, C, and D. Tow hooks must project beyond the front or rear bumpers. The front tow hooks shall be furnished by the chassis manufacturer, and the rear tow hooks furnished by the body manufacturer on Type C buses. Front and rear tow hooks shall be furnished by the body manufacturer on Type B and D buses.

(42) Undercoating

(a) Entire underside of bus body, including floor sections, cross member, and below floor line side panels, shall be coated with rust-proofing compound for which compound manufacturer has issued notarized certification of compliance to bus body builder that compound meets or exceeds all performance and qualitative requirements of Department of the Army Coating Compounds TT-C-520b, Paragraph 3.4 (1973), using modified test procedures* (*Test panels are to be prepared in accordance with paragraph 4 6.12 of TT-C-520b with modified procedure requiring that tests be made on a 48-hour air cured film at thickness recommended by compound manufacturer) for the following requirements:

(i) Salt spray resistance--pass test modified to five percent salt and 1,000 hours.

(ii) Abrasion resistance--pass.

(iii) Fire resistance--pass.

(b) Undercoating compound shall be applied with suitable airless or conventional spray equipment to recommended film thickness and shall show no evidence of voids in cured film.

(42) Ventilation

(a) Auxiliary Fans (Optional)

(i) Auxiliary fans shall be placed in locations where they can be adjusted to their maximum effectiveness.

(ii) These fans shall be approximately six inches in diameter and two-speed.

(iii) The blades of the fans shall be covered with a protective cage. Each of these fans shall be controlled by a separate switch.

(b) Body shall be equipped with suitable, controlled ventilating system of sufficient capacity to maintain proper quantity of air under operating conditions without opening of windows except in extremely warm weather.

(c) Static-type, non-closable exhaust ventilation shall be installed in low-pressure area of roof.

(d) Power Roof Vent Fans (Optional)

(i) If power roof vent fans are required they shall be two-speed electric type with a switch for each fan that is supplied. The roof fan ventilation opening shall be provided with an iris-type closing mechanism to provide for shutting off the air flow in inclement weather.

(43) Wheelhousing

(a) The wheelhousing opening shall allow for easy tire removal and service.

(b) The inside height of the wheelhousing above the floor line shall not exceed 12 inches. All wheelhousings shall be rubber covered.

(c) The wheelhousing shall provide clearance for installation and use of tire chains on dual power-driving wheels.

(d) No part of a raised wheelhousing shall extend into the emergency door opening.

(44) Windows

(a) Glass Quality and Dimensions

(i) The windshield shall be large enough to permit the driver to see the road clearly and shall be slanted or "swept back" to reduce glare. It shall be mounted between front corner posts that provide a minimal obstruction to the driver's view.

(ii) The glass used in the windshield shall be AS-1 standard. Side windows and all doors shall be at least AS-2 standard, and rear windows shall be at least AS-3 standard. All windows shall be mounted so the monogram is visible.

(iii) windshield glass shall be tinted or shaded with a horizontal gradient band gradually decreasing in light transmission to 35 percent or less at the top of the windshield.

(iv) The edges of all glass mounted in a fixed position shall be held in place by a rubber gasket of such type that broken glass can be easily removed and replaced.

(v) For ventilation purposes, the driver's window shall be adjustable and shall be equipped with a positive latch that is lockable from the inside. The driver's window shall be of a sliding type.

(A) Exception: Type A and Type B cutaway--manufacturers' standards.

(vi) The side window latches shall be easy to operate and capable of holding the sash securely in place in all positions.

(vii) The side windows shall be equipped with sash locks of such construction that spring tension shall push the latch into place and hold it securely in place.

(b) Each full side window shall provide unobstructed emergency opening not less than nine inches nor more than 12 inches high and 22 inches wide, obtained by lowering window. Side windows, except driver's window, may be tinted.

(c) Push-out type, split-sash windows may be used.

(46) Windshield Washers

(a) A windshield washer system shall be provided.

(47) Windshield Wipers

(a) A windshield wiping system, two-speed or more, shall be provided.

(b) The wipers shall be operated by one or more air or electric motors of sufficient power to operate wipers. If one motor is used the wiper shall work in tandem to give full sweep of windshield. If more than one motor is used, each motor shall have a separate switch.

(48) Wiring

(a) All wiring shall conform to current standards of the Society of Automotive Engineers.

(b) Circuits

(i) Wiring shall be arranged in circuits as required with each circuit protected by a fuse or circuit breaker. A system of color and number coding shall be used.

(ii) Wiring shall be arranged in at least six regular circuits, as follows:

(A) Head, tail, stop (brake), and instrument panel lamps.

(B) Clearance and step-well lamps (step-well lamp shall be actuated when service door is opened).

(C) Dome lamp.

(D) Ignition and emergency door signal.

(E) Turn signal lamps.

(F) Alternately flashing signal lamps.

(iii) Any of the above combination circuits may be subdivided into additional independent circuits.

(iv) Whenever heaters and defrosters are used, at least one additional circuit shall be installed.

(v) The bus body electrical system shall be equipped with a continuous duty solenoid switch operated by the ignition switch that cuts off the electrical power to most body circuits such as heaters, dome lights, etc. when the ignition switch is turned to the "off" position.

(vi) Whenever possible, all other electrical functions (such as sanders and electric-type windshield wipers) shall be provided with independent and properly protected circuits.

(vii) Each body circuit shall be coded by number or letter and color on a diagram of circuits and shall be attached to the body in readily accessible location.

(c) The entire electrical system of the body shall be designed for the same voltage as the chassis on which the body is mounted.

(d) All wiring shall have an amperage capacity equal to or exceeding the designed load. All wiring splices are to be done at accessible locations and noted as splices on wiring diagram.

(e) A body wiring diagram of easily readable size shall be furnished with each bus body or affixed in an area convenient to the electrical accessory control panel.

(f) Body power wire shall be attached to a special terminal on the chassis.

(g) All wires passing through metal openings shall be protected by a grommet or loom.

(h) Wires not enclosed within body shall be fastened securely at intervals of not more than 18 inches. All joints shall be soldered or joined by equally effective connectors.

(i) A main battery power disconnect switch is optional.

R909-3-7. Vehicles for Transporting Disabled Students.

(1) General Requirements

(a) The specifications in this section are intended to be supplementary to specifications in the chassis and body sections. In general, buses used for transporting disabled students should meet the requirements of all preceding sections plus those listed in this section. Since it is recognized by the entire industry that the field of transportation for students with disabilities is characterized by special needs for individual cases and by a rapidly changing technology for meeting these needs, a flexible, common-sense approach to the adoption and enforcement of specifications for these vehicles is prudent.

(b) School buses are defined as vehicles designed to carry more than ten persons. Vehicles with ten passenger positions (including the driver) cannot be certified as buses. For this reason, the classification "Multipurpose Passenger Vehicle" (MPV) must be used by manufacturers for these vehicles in lieu of the classification "school bus." In determining passenger capacity, wheelchair positions are counted as passenger positions.

(c) The following standards address modifications as they pertain to school buses that, with standard seating arrangements prior to modification, would accommodate more than ten persons. If by addition of a power lift, wheelchair positions, or other modifications, the capacity is reduced such that vehicles become MPVs, the intent of these standards is that these vehicles are required to meet the same standards required prior to such modifications and such MPVs are included in all references to school buses and school bus requirements.

(d) School buses designed for transporting children with special transportation needs shall comply with state Standards applicable to school buses and to Federal Motor Vehicle Safety Standards (FMVSS) for their Gross Vehicle Weight Rating (GVWR) category.

(e) Any school bus that is used for the transportation of children who are confined to a wheelchair and/or other mobile positioning device or who require life support equipment that prohibits their use of the regular service entrance, shall be equipped with a power lift unless a ramp is needed for unusual circumstances related to passenger needs.

(2) Aisles

(a) All school buses equipped with a power lift shall have aisles leading to the emergency door(s) from wheelchair area of sufficient width (minimum 30 inches) to permit passage of maximum size wheelchair.

(3) Communications

(a) All school buses should be equipped with an electronic two-way voice communication system.

(4) Fastening Devices

(a) Occupant securement systems must comply with the requirements of FMVSS 222.

(b) The following information shall be provided with each vehicle equipped with a securement system:

(i) Detailed installation instructions and parts list.

(ii) Detailed instructions and a diagram showing the proper placement and positioning of the system, including correct belt angles.

(5) Glass

(a) Tinted glass up to 30 percent light transmission may be installed wherever AS-3 glass is permitted.

(6) Heaters

(a) Additional heater(s) may be installed in the rear portion of the bus on or behind wheel wells.

(7) Power lift

(a) Lifting mechanism shall be able to lift minimum pay load of 800 pounds. A clear opening and platform to accommodate a 30-inch wide wheelchair shall be provided.

(b) When the platform is in the fully up position, it shall be locked in position mechanically to prevent the lift platform from falling while in operation due to a power failure.

(c) Controls shall be provided that enable the operator to activate the lift mechanism from either inside or outside of the bus. There shall be a means of preventing the lift platform from falling while in operation due to a power failure.

(d) Power lifts shall be so equipped that they may be manually raised in the event of power failure of the power lift mechanism.

(e) Lift travel shall allow the lift platform to rest securely on the ground.

(f) All edges of the platform shall be designed to restrain wheelchair and operator's feet from being entangled during the raising and lowering process.

(g) Platform shall be fitted on both sides and rear with full width shields that extend above the floor line of the lift platform.

(h) A restraining device shall be affixed to the outer edge (curb end) of the platform that will prohibit the wheelchair from rolling off the platform when the lift is in any position other than fully lowered to ground level.

(i) A self-adjusting, skid resistant plate shall be installed on the outer edge of the platform to minimize the incline from the lift platform to the ground level. This plate, if so designed, may also suffice as the restraining device described in Subsection 91.08 above. The lift platform must be skid resistant.

(j) A circuit breaker or fuse shall be installed between power source and lift motor if electrical power is used.

(k) The lift mechanism shall be equipped with adjustable limit switches or by-pass valves to prevent excessive pressure from building in the hydraulic system when the platform reaches the full up position or full down position.

(8) Ramps

(a) When a power system is not adequate to load and unload students having special and unique needs, a ramp device may be installed.

(b) If a ramp is used, it shall be of sufficient strength and rigidity to support the special device, occupant, and

attendant(s). It shall be equipped with a protective flange on each longitudinal side to keep the special device on the ramp.

(c) Floor of ramp shall be of non-skid construction.

(d) Ramp shall be of such weight that an average-sized female driver or attendant can lift it, and designed in such a way (including lifting handles or slots) that the driver or attendant can put it in place and return it to its storage place without undue stress.

(9) Regular Service Entrance

(a) In Type C and D buses, there shall be three step risers of equal height in the entrance well. The first step at the service door shall be not less than 10 inches and not more than 14 inches from the ground, based on standard chassis specifications. Service door of Type D buses shall be 12 to 16 inches from the ground.

(b) Step risers shall not exceed a height of 10 inches. When plywood is used on a steel floor or step, the riser height may be increased by the thickness of the plywood.

(c) On power lift-equipped vehicles, step shall be the full width of the stepwell, excluding the thickness of the doors in open position.

(d) Steps shall be enclosed to prevent accumulation of ice or snow.

(e) Steps shall not protrude beyond side body line.

(f) As an option, an additional fold-out step may be provided to reduce the distance from the first step to the ground.

(10) Restraining Devices

(a) Seat frames may be equipped with attachments or devices to which belts, restraining harnesses, or other devices may be attached. Optional seats with built-in anchors may be used.

(11) Seating Arrangements

(a) Flexibility in seat spacing to accommodate special devices shall be permitted due to constantly changing passenger requirements and shall be consistent with the student Individualized Education Plan (IEP).

(12) Special Lights

(a) Lights shall be placed inside the bus to sufficiently illuminate lift area and shall be activated from the lift door area. In addition an exterior light shall be provided in the skirt area to illuminate the outside area around the lift.

(13) Special Service Entrance

(a) Bus bodies may have a special service entrance constructed in the body to accommodate a wheelchair lift for the loading and unloading of passengers. If such an entrance is constructed in the bus body, it must conform to the placement restrictions set forth in FMVSS 217.

(b) The opening, to accommodate the special service entrance, shall be at any convenient point on the right (curb side) of the bus and far enough to the rear to prevent the door(s), when open, from obstructing the right front regular service door (excluding a regular front service door lift).

(c) The opening may extend below the floor through the bottom of the body skirt. If such an opening is used, reinforcements shall be installed at the front and rear of the floor opening to support the floor and provide the same strength as other floor openings.

(d) The opening, with doors open, shall be of sufficient width to allow the passage of wheelchairs. The minimum clear opening through the door and the lift mechanism shall be 30 inches in width.

(e) A drip molding shall be installed above the opening to effectively divert water from the entrance.

(f) The entrance shall be of sufficient width and depth to accommodate various mechanical lifts and related accessories as well as the lifting platform.

(g) Door posts and headers at the entrance shall be reinforced sufficiently to provide support and strength equivalent to the areas of the side of the bus not used for service doors.

(14) Special Service Entrance Doors

(a) A single door may be used if the width of the door opening does not exceed 42 inches. Three point bar lock is required.

(b) Two doors shall be used if a single door opening would have to exceed 42 inches.

(c) All doors shall open outwardly.

(d) All doors shall have positive fastening devices to hold doors in the open position.

(e) All doors shall be weather sealed. Double-door configurations shall be so constructed that a flange on the forward door overlaps the edge of the rear door when the doors are closed.

(f) If optional power doors are installed, the design shall permit release of the doors for opening and closing by the attendant from the platform inside the bus.

(g) When manually operated dual doors are installed, the rear door shall have at least one point fastening device connecting it to the header. The forward mounted door shall have at least three point fastening devices. One shall be to the header, one to the floor line of the body, and the other shall be into the rear door. These locking devices shall afford maximum safety when the doors are in the closed position. The door and hinge mechanism shall be of a strength that will provide for the same type of use as that of a standard entrance door.

(h) Lift door materials, panels, and structural strength shall be equivalent to the conventional service and emergency doors. Color, rub rails, paneling, lettering, and other exterior features shall match adjacent sections of the body.

(i) Each door shall have windows set in rubber compatible within one-inch of the lower line of adjacent sash.

(j) Door(s) shall be equipped with a device that will activate a flashing one-inch light located in the driver's compartment when door(s) is not securely closed and ignition is in "on" position.

(k) Special service entrance doors shall be equipped with padding at the top edge of the door opening. Pad shall be at least three inches wide and one inch thick and extend the full width of the door opening.

(l) A switch shall be installed to prevent the lifting mechanism from operating when the lift platform door is closed.

(m) Optional portable student support equipment or special accessories shall be secured at the mounting location to withstand a pulling force of five times the weight of the item or shall be retained in an enclosed, latched compartment. Such special items include:

(i) Belt cutter for use in emergencies. Belt cutter should be designed to eliminate the possibility of the operator or others getting cut during its use. It should be stored in a safe place such as in the first aid kit.

(ii) Crutches, walkers, canes and similar devices.

(iii) Medical support equipment such as oxygen tanks and ventilators.

R909-3-8. School Buses Equipped to Operate on Compressed Natural Gas.

(1) General Requirements.

(a) All compressed natural gas (CNG) installations shall meet all applicable federal and state laws, standards, and requirements, National Fire Protection Association (NFPA) standards, American Society of Mechanical Engineers (ASME) and American Society for Testing and Materials (ASTM) codes and industry safety requirements. In addition, CNG installations shall meet the requirements set forth in R714-400, "Compressed and Liquefied Gas Fuel Systems."

(b) All CNG installations shall be made in compliance with the standards contained in NFPA Pamphlet No. 52.

(c) All devices used in the CNG system that may be

subjected to container pressure shall be designed for the working pressure within a design safety factor of at least 4 and shall be plainly marked as such.

(d) A certified mechanic shall inspect all fittings and attachments at least quarterly for leaks, wear, tightness, or undue stress.

(e) CNG Tanks.

(i) All tanks shall be fabricated of steel, aluminum, or composite materials and be certified in accordance with U.S. Department of Transportation (DOT), Canadian Transport Commission (CTC), or ASME regulations to a service pressure of not less than 3,000 psi and a test burst pressure minimum of 5,000 psi and plainly marked with the words "CNG ONLY," and equipped with a DOT, CTC or ASME certified springload pressure relief valve plainly marked for discharge psi setting and discharge cfm capacity.

(ii) All tanks shall be directly secured to the main frame in such a manner as to prevent jarring loose, slipping or rotating, withstanding a static force of eight times the weight of a fully pressurized tank with a maximum displacement of .5 inch.

(f) CNG Fuel Lines and Installation

(i) Fuel lines shall be permanently secured at intervals of not more than two feet and shall be placed in such a manner as to minimize the possibility of damage due to vibration, strains, or wear.

(ii) Fuel lines passing through structural members shall be protected by rubber grommets or bulkhead fittings and follow the main frame channel wherever possible.

(iii) All fuel lines shall be approved stainless steel with a maximum working pressure of 3,000 psi, a minimum burst pressure of four times the working pressure, and shall be labeled as to the working pressure and CNG service.

(iv) An approved lock-off or solenoid valve, with filter, shall be provided in the fuel line at a point ahead of the inlet of the natural gas converter, designed to prevent the flow of fuel to the converter when the engine is not running. This may be accomplished by (a) an approved mechanical lock-off controlled by either the engine vacuum or oil pressure, or (b) an approved electric solenoid controlled by either a vacuum or oil pressure switch.

(g) CNG Valves, Appurtenances, and Connections

(i) All container valves, appurtenances and connections shall be protected to prevent damage due to accidental contact with stationary or loose objects, mud or ice and, to the extent possible, from damage due to vehicular accidents.

(ii) Relief valve discharge shall be directed so that any gas released will not impinge on the vehicle and so that the possibility of impingement on adjacent vehicles or persons is minimized. The vent hose shall be attached in such a manner that ice hanging on it will not detach it from its mounting.

(iii) Outlets shall be protected by caps, covers, or other means to keep water or dirt from collecting in the lines, thus restricting the flow of natural gas.

(iv) Each line and its connectors shall withstand the pressure caused by the discharge of vapor from a safety device in fully open position.

(h) Fuel Injection

(i) Gas mixers, fuel injectors and pressure regulators for CNG shall meet minimum design standards set forth in NFPA Pamphlet No. 52.

(i) Fueling CNG vehicles

(i) Fueling shall be done by personnel who have been trained and certified by the fuel supplier.

(ii) No passenger shall be on board during fueling.

(iii) Engine must be shut off during fueling.

(iv) No source of ignition shall be permitted within 10 feet of the vehicle being fueled.

(v) Filling level shall not exceed 125 percent of working pressure.

(vi) Instructions shall be conspicuously posted at the fueling site.

R909-3-9. Requirements for Used School Buses.

(1) General Requirements.

(a) This part of the Standards for Utah School Buses and Operations, 1994 Edition sets forth the requirements for used school buses to be used in Utah whether purchased or leased by the school district or private school. The modifications necessary to make a used bus comply with this section of the Standards can be made either by the seller or the buyer. The ultimate responsibility for assuring that a used bus complies with all federal and state standards before the bus is placed in service is the responsibility of the using district or school.

(b) Used school buses shall:

(i) comply with the version of the Standards for Utah School Buses and Operations in effect at the time of purchase of the bus, and

(ii) comply with the applicable sections of current state standards. This requirement shall be satisfied irrespective of whether the bus had previously been used in the State of Utah.

(c) If required, glass used in used school buses shall be replaced to make it comply with current state standards.

R909-3-10. New School Bus Requirements.

(1) Procurement and Inspection.

(a) New school bus procurement is outlined below:

(i) Procurement policies and vehicle specifications need to be established by local school districts and private schools.

(ii) Prepare procurement specifications. Mail one copy to State Office of Education, Pupil Transportation Specialist. Specification for bid shall include all applicable FMVSS and Utah standards.

(iii) Request for bids and specifications sent to qualified suppliers of school buses.

(iv) Bids received, evaluated, and selection made.

(v) District issues purchase order.

(vi) Successful bidder provides school bus or buses.

(vii) Before any new school bus is placed into service in a school district, it shall first be inspected and tested to verify compliance with the Standards for Utah School Buses and Operations, 1994 Edition.

(viii) Inspection shall be conducted by the Safety Inspection Office of the Utah Highway Patrol. On or before delivery of a new bus, the school district or private school shall notify the Safety Inspection Office and request a new vehicle inspection. Such inspection shall be carried out within 30 days of delivery.

(ix) Acceptance testing is conducted by local agency or with assistance from the Utah Department of Transportation and the Pupil Transportation Specialist, Utah State Office of Education, to insure that the school bus complies with all standards and specifications.

(b) The acceptance test shall include but not be limited to:

(i) An inventory of required safety features and equipment specified will be compared with the line ticket as issued by the manufacturer.

(ii) Functional tests of all lamps and signals, emergency braking system, horn and other operating systems.

(iii) Power tests.

(iv) Braking test.

R909-3-11. Exemption From or Modification of Requirements.

(1) General Requirements

(a) It is anticipated that to achieve the stated objectives of these standards, i.e., provide maximum safety consistent with the economic use of pupil transportation funds and available school bus technology, quality, reliability, conformity, and

serviceability, it shall be necessary to allow exemption from the requirements and periodically modify the requirements. This part of the Standards sets forth the procedures for obtaining exemptions and modifying the provisions of the Standards for Utah School Buses and Operations, 1994 Edition.

(b) An exemption from the requirements of the Standards may be initiated by a manufacturer or supplier of pupil transportation equipment or a local school district. The request shall be written, should include sufficient supporting data to justify the request for an exemption, and should be submitted to the Pupil Transportation Specialist, Utah State Office of Education.

(c) All requests for exemptions from the requirements of the Standards shall be reviewed by a committee consisting of at least one representative of the Utah State Department of Transportation, one representative of the Utah State Department of Public Safety, and such consultants as deemed appropriate. If necessary, the committee may require that the request be presented in person.

(d) All requests for exemption from the requirements of the Standards, together with the recommendations of the review committee, shall be submitted to the State Office of Education for its action and transmittal to the Utah Department of Transportation. Final authority for determining the disposition of a request is vested with the Utah Department of Transportation.

(e) Modification Procedures.

(i) An intent to modify the Standards shall be distributed to certified suppliers and other interested parties at least thirty (30) days prior to consideration of the modification by the Utah State Office of Education and the Utah Department of Transportation.

(ii) After approval of the proposed modification by the Utah State Office of Education and the Utah Department of Transportation, the modification shall become effective 90 days following distribution.

R909-3-12. Appendix 1.

(1) Colorado Racking Load Test

(a) A Racking Load Test (University of Colorado, Boulder, 1972) shall be performed to assure adequate shear stiffness and strength of the bus body. The racking load shall be applied along a line connecting the most distant points on a transverse cross section of the bus interior.

(b) The maximum jack load for the two-frame assembly is determined by the following formula:

TABLE V

j = 2P, where	j - maximum jack load for two-frame test assembly
p = DVW - N and	p - load/frame
DVW = DF x GVW	DVW - dynamic vehicle weight
	DF - dynamic factor, not less than 1.5
	GVW - gross vehicle weight
	N - total number of bus body frames

Thus for a DF = 1.5, a GVW = 22,000 lbf and N-11, the dynamic vehicle weight is DVW = 33,000 lbf, the 10ad/frame is P = 3000 lbf and the maximum jack load is j = 6000lbf.

(c) When a complete bus body is rack loaded, the total load DVW must be distributed uniformly along the bus body. This may be accomplished by mounting a series of hydraulic jacks along the length of the bus interior. Seats may be removed to facilitate jack mounting although removal is not recommended when upper seat frames are normally attached to the body structure. The rack load will be considered to be uniformly distributed when the variation in the hydraulic jack readings is less than 10%. At maximum load the sum of all jack readings shall equal DVW.

R909-3-13. Appendix 2.

(1) Power Test

(a) Performance Requirements: The bus shall be so powered and geared that the completed bus shall be capable of surmounting a 3.7 percent grade at a speed of twenty miles per hour with a full passenger load on a continuous pull.

(b) Recommended Procedure:

(i) Measure the weight of the vehicle. Wt = ... lbs.

(ii) Determine the time in seconds it takes to accelerate the bus from 15 to 25 mph on a level roadway. (T = ... seconds).

(iii) Perform the following calculations (Where n = maximum number of passengers):

(A) Wt_2 = Wt ..... + 300 =

(B) Wt_2 = Wt ..... + 150 + 120n =

(C) a = 0.455/T x Wt_1/Wt_2

(iv) If the "a" from step three is greater than or equal to 0.037, the bus is adequate. If it is less than .037, the bus is not adequate.

R909-3-14. Appendix 3.

(1) Braking Test

(a) Performance Requirement: The service braking system shall be designed and constructed such that by the application of a single control unit, the bus will achieve a deceleration of 14 feet per second from a speed of 20 mph with a pedal effort of not more than 75 pounds.

(b) Recommended Procedure:

(i) Determine the time it takes to stop the bus from 20 mph (where T = ... seconds

(ii) If "T" is less than or equal to 2.5 seconds, the bus is adequate. If it is greater than 2.5 seconds, the bus is not adequate.

(iii) Contact Pupil Transportation Specialist, State Office of Education, for use of a decelerometer instrument to measure braking efficiency.

KEY: school buses, safety
1994 **41-6-115**
Notice of Continuation January 5, 2009

R909. Transportation, Motor Carrier.
R909-19. Safety Regulations for Tow Truck Operations - Tow Truck Requirements for Equipment, Operation and Certification.
R909-19-1. Authority.

This rule is enacted under the authority of Sections 72-9-601, 72-9-602, 72-9-603, 72-9-604, 53-1-106, 41-6a-1405, Utah Code.

R909-19-2. Applicability.

All tow trucks motor carriers and employees must comply and observe all rules, regulations, traffic laws and guidelines as prescribed by State Law and 49 CFR Part 350 - 399, hereby incorporated by reference in accordance with Sections 41-6a-1404, 41-6a-1405, 41-6-104, 72-9-301, 72-9-303, 72-9-601, 72-9-602, 72-9-603, 72-9-604, 72-9-701, 72-9-702, 72-9-703, and 72-9-703, Utah Code.

R909-19-3. Definitions.

(1) "Consent Tow" means any tow truck service that is done at the vehicle, vessel, or outboard motor owner's, or it's legal operator's, knowledge and/or approved.

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

(3) "Division" means the Motor Carrier Division.

(4) "Gross Combination Weight Rating (GCWR)" means the value specified by the manufacturer as the loaded weight of a combination (articulated) motor vehicle. In the absence of a value specified by the manufacturer, GVCR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any load thereon.

(5) "Gross Vehicle Weight Rating (GVWR)" means the value specified by the manufacturer as the loaded weight of a single motor vehicle.

(6) "Non-Consent Police Generated Tow" means tow truck service that was ordered by a peace officer, or a person acting on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102.

(7) "Non-consent Non Police Generated Tow" means towing services performed without the prior consent of the owner of the vehicle or the person authorized by the owner to operate the vehicle from private property. The tow truck service must be from private property, at the request of the property landowner or agent for the landowner.

(8) "Personal Property" means articles associated with a person, as property having more or less intimate relation to person, including clothing, medicine, tools, home/family etc. Items not considered as personal property are considered to be the original manufactured equipment, and/or attached property to the vehicle, including tires, rims, vehicle-stereos, speakers, or CD changers and will remain in the vehicle.

(9) "Recovery Operation" means a towing service that may require charges in addition to the normal one-truck/one-driver towing service requirements. The additional charges may include charges for manpower, extra equipment, traffic control, and special recovery equipment and supplies.

(10) "Tow Truck" means a motor vehicle constructed, designed, altered, or equipped primarily for the purpose of towing or removing damaged, disabled, abandoned, seized, repossessed or impounded vehicles from highway or other place by means of a crane, hoist, tow bar, tow line, dolly tilt bed, or other similar means of vehicle transfer without its own power or control.

(11) "Tow Truck Certification Program" means a program to authorize and approve tow truck motor carrier owners, operators, and vehicles is the process by which the Department, acting under Section 72-9-602, Utah Code, shall verify compliance with the State and Federal Motor Carriers Safety Regulations.

(12) "Tow Truck Motor Carrier" means any company that provides for-hire, private, salvage, or repo towing services. It includes the company's agents, officers, and representatives as well as employees responsible for hiring, training, supervisory, assigning, or dispatching of drivers and employees concerned with the installation, inspection, and maintenance of equipment and/or accessories.

(13) "Tow Truck Service" means the functions and any ancillary operations associated with recovering, removing, and towing a vehicle and its load from a highway or other place by means of a tow truck.

(a) Tow Truck Service, with regards to authorized towing fees, is determined by the type and size of the towed vehicle, not the type and size of the tow truck performing the service.

(b) Tow Vehicle Classifications will be used when determining authorized fees. Information regarding the (GVWR) to determine classification category of towed vehicle can be found on the identification plate on the vehicle driver side doorframe. Towed vehicle classifications are as follows:

(1) "Light Duty" means any towed vehicle with a (GVWR) 10,000 pounds or less;

(2) "Medium Duty" means any towed vehicle with a (GVWR) between 10,001 and 26,000 pounds;

(3) "Heavy Duty" means any towed vehicle with a (GVWR) or (GCWR) 26,001 pounds and greater.

(14) "Tow Truck Motor Carrier Steering Committee" means a committee established by the Motor Carrier Division and will include enforcement personnel, industry representatives and other persons as deemed necessary.

R909-19-4. Duties - Enforcement - Compliance Audits, Inspections and Right of Entry.

The Department shall administer and in cooperation with the Department of Public Safety, Utah Highway Patrol Division as specified under Section 53-8-105, Utah Code, shall administer and enforce state and federal laws related to the operation of tow truck motor carriers within the state. In addition, a tow truck motor carrier shall submit its lands, property, buildings, equipment for inspection and examination and shall submit its accounts, books, records, or other documents for inspection and copying to verify compliance as authorized by Section 72-9-301.

R909-19-5. Insurance.

All tow trucks will be required to carry at least $750,000 of insurance minimum liability plus the MCS-90 endorsement for environmental restoration as required in 49 CFR Part 387 - Minimum Levels of Financial Responsibility for Motor Carriers. Evidence of required insurance will be maintained at the principal place of business and made available to the Department and/or investigator upon request and prior to tow truck carrier certification. The Tax Commission requires all Tow Yards to carry insurance on stored vehicles.

R909-19-6. Penalties and Fines.

(1) Any tow truck motor carrier that fails or neglects to comply with State or Federal Motor Carrier Safety Regulations, other statutes, any part of this rule, any term or condition of the permit or any materials that it incorporates either by reference or attachment, or a Departmental order, is subject to:

(a) a civil penalty as authorized by Section 72-9-701, and 72-9-703;

(b) issuance of a cease-and-desist order as authorized by section 72-9-303; and

(c) the revocation or suspension of registration by the Utah State Tax Commission pursuant to Section 72-9-303.

(2) The fact of non-compliance will be considered sufficient cause for the Department to revoke tow truck motor carrier, driver, and/or vehicle certification(s).

R909-19-7. Towing Notice Requirements.

(1) A tow truck motor carrier after performing a tow truck service, that was not ordered by a peace officer, or a person acting on behalf of a law enforcement agency or a highway authority, as defined in R909-19-3, without the vehicle, vessel, or outboard motor owner's knowledge shall immediately upon arriving at the place of storage or impound of the vehicle contact by radio or phone, the law enforcement agency having jurisdiction over the area where the vehicle, vessel, or outboard motor was picked up and notify the agency as per requirements set forth in 72-9-603.

Pursuant to the requirement to "immediately" ... "contact the law enforcement agency having jurisdiction" as required by Section 72-9-603, Utah Code, a tow-truck motor-carrier operator shall:

(a) Report the removal immediately upon arriving at the place of storage or impound of the vehicle, if removal was completed during posted office hours.

(b) Report the removal within 2 hours of the next business day if the removal occurred after normal posted office hours.

(c) For purposes of Section 72-9-603, the "contact" to the law enforcement agency shall be considered accomplished if made as authorized by 41-6a-1406.

(d) If reporting is not completed within the time frame, the Tow Truck Motor Carrier or operator will not be allowed to collect any fees or begin charging storage fees as authorized under Section 72-9-603.

R909-19-8. Requirement for Tow Truck Motor Carriers to input required information for Government and Public Notification.

All Tow Truck Motor Carriers must follow notification procedures as required by 72-9-603 and input required information in electronic form on the Department's website, at www.tow.utah.gov.

R909-19-9. Certification.

There are three (3) required certification requirements required by the Department, they are as follows:

(1) Tow Truck Driver Certification:

(a) Effective July 1, 2004 all tow truck drivers will be tested and certified in accordance with National Driver Certification Procedure (NDCP) standards. These standards of conduct and proficiency may be tested and certified through:

(i) Towing and Recovery Association of America (TRAA) Testing Program;

(ii) Wreckmaster Certification Program;

(iii) AAA Certification Program

(iv) Other driver testing certification programs may be approved by the Department to meet certification requirements however; the Tow Truck Motor Carrier must obtain prior approval in writing from the Motor Carrier Division Administrator or Division representative by calling (801) 965-4559.

(b) Information on the above mentioned certification programs may be obtained by contacting the Motor Carrier Division at (801) 965-4559.

(c) Tow Truck Motor Carriers shall ensure that all driver's are:

(i) Properly trained to operate tow truck equipment;

(ii) Licensed, as required under UCA 53-3-101,et al. Uniform Driver License Act; and

(iii) Property certified.

(2) Tow Truck Vehicle Certification:

(a) All tow trucks shall be inspected and certified biannually;

(b) All tow trucks must be equipped with required safety equipment. Safety Equipment List can be found at http://www.udot.utah.gov/index.php/m=c/tid=396 or by calling 801-965-3871.

(c) Upon certification of vehicle a UDOT safety sticker will be issued and shall be affixed on the driver's side rear window.

(d) Documentation of UDOT vehicles inspection certification shall be kept in the vehicle file and available upon request by Department personnel.

(3) Tow Truck Motor Carrier Certification:

(a) Tow Truck Motor Carriers shall be certified biannually to ensure compliance as required by the Federal Motor Carrier Safety Regulations, Utah Code Annotated, and local laws where applicable.

R909-19-10. Certification Fees.

The Department may charge Tow Truck Motor Carrier's a fee biannually as authorized by Section 72-9-603 to cover costs associated with driver, vehicle, and carrier certifications.

R909-19-11. Certification from a Qualified Training Facility.

Charges for services provided must be clearly reflected on a company receipt and a copy shall be provided to the customer. The receipt must include the following information:

(a) company name;
(b) address;
(c) phone number;
(d) transportation and storage fees charged;
(e) name of company driver;
(f) unit number;
(g) license plate of the towed vehicle;
(h) make, model, and year of the towed unit, and;
(i) start and end time for services provided.

R909-19-12. Maximum Towing Rates. Non-Consent Tows.

(1) $121 per hour, per unit, when towing a "Light Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(2) $200 per hour, per unit, when towing a "Medium Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(3) $250 per hour, per unit, when towing a "Heavy Duty" vehicle;

(a) An additional 15% per hour may be charged if the towed vehicle is used in the transport transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F and the tow truck operator is hazardous material certified as outlined in the Utah Regulations for Towing Operations and Certification Manual.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is

attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) As fuel increases .50 per gallon from the base rate of $2.00, a surcharge shall be allowed of 10% of the base rate. Conversely, if prices drop, they will decrease by the same amount.

TABLE

(a) Fuel Surcharge

Fuel Cost	Surcharge
$2	0%
$2.50	10%
$3	20%
$3.50	30%
$4	40%
$4.5	50%
$5	60%
etc.	

(6) Recovery charges, as defined by R909-19-3, shall be coordinated with the towed vehicle owner prior to initiating the additional charges relating the recovery operation. Coordination with the towed vehicle owner should result in an agreement between the tow vehicle owner and Tow Truck Motor Carrier.

(7) Pursuant to Utah Code Ann. Section 72-9-603 it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances. Tow Truck Lighting 41-6a-161. Strobe lights are not allowed on Tow Trucks. The acceptable light colors are orange and yellow.

R909-19-13. Maximum Non-Consent Impoundment Rates.

(1) The maximum rate for a "Light Duty" vehicle is $110.

(2) The maximum rate for a "Medium Duty" vehicles is $200.

(3) The maximum rate for a "Heavy Duty" vehicle is $250.

(4) If a tow truck apparatus is mechanically connected to a vehicle, the tow truck will therefore be in possession of the vehicle.

(a) If the owner, authorized operator, or authorized agent of the owner of a motor vehicle, which is in question, is attempting to retrieve said vehicle before the tow truck is mechanically connected, no fee(s) will be charged to the vehicle owner.

(b) If the owner, authorized operator, or authorized agent of the owner of the vehicle, which is in question, is attempting to retrieve said vehicle before the vehicle is removed from the property or scene, the maximum fee shall not exceed 50% of the posted rate schedule.

(5) Pursuant to Utah Code Ann. Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(6) Tow Truck Motor Carriers shall obey all local city and county laws, when applicable, pertaining to placement of signs, notification, and other towing related ordinances.

R909-19-14. Maximum Storage Rates. Non-Consent Tows.

(1) $15 Maximum per day, per unit, for outside storage of "Light Duty" vehicles;

(2) $20 Maximum per day, per unit may be charged for inside storage of "Light Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(3) $35 Maximum per day, per unit for outside storage of "Medium/Heavy Duty" vehicles;

(4) $70 Maximum per day, per unit may be charged for inside storage of "Medium/Heavy Duty" vehicles only at the owner's request, or at the order of a law enforcement agency or highway authority.

(5) $100 Maximum per day, per unit for outside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F.

(6) $150 Maximum per day, per unit may be charged for inside storage of vehicles used in the transportation of materials found to be hazardous for the purposes of the Hazardous Materials Transportation Act and which require the motor vehicle to be placarded under the Hazardous Materials Regulations, 49 CFR Part 172, subpart F, only at the owner's request, or at the order of a law enforcement agency or highway authority.

(7) Pursuant to Utah Code Ann. Section 72-9-603, it is illegal for a Tow Truck Motor Carrier to require the owner of an impounded vehicle to pay any money other than the appropriate amount listed in this rule. Any tow truck service charging more than the maximum approved rates may be assessed civil penalties determined by the Department, as authorized under Section 72-9-303.

(8) For the purpose of calculating storage rates, if the first six (6) hours of storage for a vehicle includes more than one day, the authorized storage fee is only the charge for one day.

R909-19-15. Towing and Storage Rates. Public Consent Tows.

Towing rates for public consent tows are the responsibility of the consumer and the tow truck motor carrier as contracted for services rendered and are not regulated by the Department.

R909-19-16. Rates and Storage Posting Requirements.

Pursuant to Section 72-9-603, a tow truck motor carrier or impound yard shall clearly and conspicuously post and disclose all its current non-consent fees and rates for towing and storage of a vehicle.

R909-19-17. Federal Motor Carrier Safety Requirements.

All tow truck motor carriers that meet the definition of a commercial motor carrier shall comply with all State and Federal Motor Carrier Safety Regulations, in addition to any other legal requirements established in statute, rule, or permit.

R909-19-18. Consumer Protection Information.

Pursuant to Section 72-9-602, the Department shall make consumer protection information available to the public that may use a tow truck motor carrier. To obtain such information, the public can call the Motor Carrier Division at (801) 965-4261.

R909-19-19. Establishment of Tow Truck Steering Committee and Work Group.

(1) The Administrator for the Motor Carrier Division will establish a Steering Committee to provide advisory information and input.

(2) The Motor Carrier Advisory Board, established by the

Governor, will serve as the steering body for regulatory guidance and the Department's certification process.

R909-19-20. Annual Review of Rates, Fees and Certification Process.

(1) During the regularly scheduled Motor Carrier Advisory Board meeting in August of each year, the board will review rates, fees, tow truck motor carrier procedures, and the certification process. The board is not required to review each of these items every year.

(2) This meeting will provide a forum for interested parties to provide evidence in support of any rate or fee increase or issued related to procedures regarding the certification process.

(3) All interested parties must notify the Department of these issues by August 1 of each year to ensure placement on the agenda.

(4) An annual report will be issued by the Department regarding any rate, fees, tow truck motor carrier procedures and certification process changes will be made available at the Motor Carrier Division office.

R909-19-21. Ability to Petition for Review.

Any Tow Truck Carrier who believes the Division has acted wrongfully in denying or suspending certification or in imposing a cease-and-desist order may petition the Department for review of that action pursuant to Utah Admin. Code R907-1, Appeal of Departmental Actions.

R909-19-22. Record Retention.

Tow Truck Motor Carriers shall retain records relating to rates charged for services for a period of six months after the service has been provided. However, if the Division or the vehicle owner have notified the carrier that it disputes its ability to charge a particular fee, the carrier shall retain the record until six months after the dispute has concluded or a court rule or order requires a longer retention period.

R909-19-23. Information to be Included on Company's Receipt.

Charges for services provided must be listed and itemized on a receipt and provided t the customer. The information on the receipt must include company name, address, phone number, transportation and storage fees charged, name of driver, unit number of towing vehicle or license plate, description of the vehicle that was towed, and the total breakdown of time and services rendered.

R909-19-24. Personal Property.

Property, which is deemed, as personal property shall be given to the property owners of the vehicle regardless of payment for rendered services.

KEY: safety regulations, trucks, towing, certifications
February 12, 2008 **41-6a-1404**
Notice of Continuation September 25, 2006 **41-6a-1405**
41-6-104
53-1-106
53-8-105
63J-1-303
72-9-601
72-9-602
72-9-603
72-9-604
72-9-301
72-9-303
72-9-701
72-9-702
72-9-703

R926. Transportation, Program Development.
R926-11. Rules for Permitting of Eligible Vehicles for a Clean Fuel Special Group License Plate On or After January 1, 2009.
R926-11-1. Purpose and Authority.

As authorized in Utah Code Ann. Section 41-6a-702 this establishes rules for regulating access to high occupancy vehicle lanes by vehicles with a clean fuel special group license plate regardless of the number of occupants.

Federal law authorizes states to allow the use of high occupancy vehicle (HOV) lanes by inherently low emission vehicles (ILEV) and low emission and energy-efficient vehicles with only a single occupant through September 30, 2009, unless federal authorization is extended. Federal law further requires a state to limit or discontinue the use of these single-occupant vehicles if the present of the vehicles has degraded the operation of the HOV facility.

R926-11-2. Definitions.

(1) "Hybrid" means a Low Emission and Energy Efficient vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code 166;

(2) "ILEV" means an Inherently Low Emission Vehicle as defined by the United States Environmental Protection Agency as authorized in 23 United States Code 166;

(3) "C Plate" means a clean fuel special group license plate issued by the DMV as authorized in Utah Code;

(4) "C Plate Permit" means a permit issued by the department to the owner of an eligible ILEV or Hybrid vehicle that enables the permit holder to obtain a C plate from the DMV;

(5) "department" means the Utah Department of Transportation;

(6) "DMV means the Division of Motor Vehicles of the Utah Tax Commission;

(7) "HOV" means a highway lane that has been designated for the use of high occupancy vehicles pursuant to Section 41-6a-702.

R926-11-3. Identification of Eligible C Plate Vehicles Prior to January 1, 2009.

(a) Vehicle owners with vehicles registered with a C plate issued prior to January 1, 2009, and for which the vehicle meets the definition for an ILEV or Hybrid as defined in this rule may retain the C plate or transfer the plate to a newly purchased eligible ILEV or hybrid vehicle under the processes defined under this rule.

(b) Vehicle owners with vehicles registered with a C plate issued prior to January 1, 2009, that do not meet the definition of an eligible ILEV or Hybrid vehicle are no longer eligible to retain the C plate and must surrender the plate:

(i) at the time of their next vehicle registration renewal, and;

(ii) upon receipt of a vehicle registration renewal received from the DMV containing notification that the vehicle is no longer eligible for a C plate.

(iii) As provided under Utah Code 41-1a-1211, a new plate will be issued by the DMV for the surrendered C plate at no charge.

(c) Upon receipt of a list of registered vehicles, provided by the DMV, for which a C plate has been issued prior to January 1, 2009, the department will determine which vehicles meet the definition of an ILEV or Hybrid vehicle as provided in this rule. From that list, the department will advise the DMV which vehicles do not meet the definition of an eligible ILEV or Hybrid vehicle and, therefore, are no longer eligible for a C plate in order for the DMV to provide notification to vehicle owners as provided under subparagraph (b)(ii).

(d) Vehicle owners for whom notification has been provided under subparagraph (b)(ii) may receive a C Plate Permit from the department if:

(ii) the vehicle owner submits an application as provided under R926-11-5(c), and;

(iii) provides sufficient proof to the department that the vehicle meets eligibility requirements for an ILEV or Hybrid vehicle as provided under this rule.

R926-11-4. Permitting of Eligible Vehicles after January 1, 2009.

(a) Owners of an eligible ILEV and Hybrid vehicle shall qualify for C plate upon application and receipt of a C Plate Permit from the department under permitting processes defined under this rule.

(b) The DMV shall issue a C Plate to the holder of a valid C Plate Permit issued by the department to the eligible vehicle being registered for a Clean Fuel Special Group License Plate.

(c) To transfer a C plate from one eligible vehicle to a new eligible vehicle, the vehicle owner of a vehicle registered with a Valid C plate must obtain a C Plate Permit from the department before the DMV will transfer the C plate to the new eligible vehicle being registered.

(d) The department shall maintain and publish a listing online of all ILEV and Hybrid vehicle makes and models eligible for a C Plate Permit.

R926-11-5. Issuance of C Plate Permits.

(a) The department may restrict use of the HOV facility by single-occupant C plate vehicles if the operation of the facility is degraded. For the purposes of this rule, an HOV facility may be considered degraded if vehicles operating on the facility are failing to maintain a minimum average operating speed of 45 miles per hour 90 percent of the time over a consecutive 180-day period during morning or evening weekday peak hour periods (or both).

(b) Not more frequently than once a year, the department may evaluate the operation of the HOV facility and determine whether the facility will continue to operate at an acceptable level of service. Based on that evaluation and if the department determines that additional single-occupant vehicles with a C plate may operate in the HOV lane without compromising operation of the facility, the department shall issue the appropriate number of C Plate Permits to eligible applicants as set forth under subparagraph (d).

(c) Vehicle owners with an eligible ILEV or Hybrid vehicle as defined by this rule must submit an application to the department for a C Plate Permit. The application, approved and issued by the department, shall contain the vehicle owner's name, the license plate number, the vehicle identification number, and the ILEV or Hybrid vehicle make and year model as a condition for obtaining a C Plate Permit.

(d) If more applications for a C Plate Permit are received than the total number of permits the department determines will be issued at any one time, C Plate Permits will be issued to randomly chosen applicants up to the number of permits that will be allowed based on the evaluation conducted under subparagraph (b).

(e) Vehicle owners with a C plate issued after January 1, 2009, may transfer the plate to a newly purchased eligible ILEV or Hybrid vehicle under the processes established under this rule.

KEY: hybrid vehicles, C plate, clean fuel
January 5, 2009 41-6a-702

R930. Transportation, Preconstruction.
R930-3. Highway Noise Abatement.
R930-3-0. Purpose.

The following is consistent with the Federal Highway Administration's Procedures for Abatement of Highway Traffic Noise, 23 CFR 772, which is hereby adopted and incorporated by reference, and in accordance with Utah Code Ann. Section 72-6-111. This rule is designed to allow UDOT to address highway noise impacts and to determine the conditions under which noise abatement may be approved.

R930-3-1. Definitions.

(1) "Existing Noise Level" means the noise level, Leq, resulting from the natural and mechanical sources and human activity, considered to be usually present in a particular area.

(2) "Design Noise Level" means the noise level, Leq, calculated for the worst traffic noise conditions likely to occur on a regular basis using a method approved by FHWA.

(3) "Type I Project" means a highway construction project that is related to an increase in traffic noise - construction of a highway on new location or the physical alteration of an existing highway which substantially changes the alignment or increases the number of through-traffic lanes.

(4) "Type II Project" means a proposed highway project strictly for noise abatement on an existing highway.

(5) "UDOT" means Utah Department of Transportation.

(6) "FHWA" means Federal Highway Administration.

(7) "dBA" means decibels of sound expressed or measured using the "A" weighting scale of a sound-pressure level meter.

(8) "AASHTO" means American Association of State Highway and Transportation Officials.

R930-3-2. Applicability.

(1) Type I Projects. Noise abatement shall be considered for Type I projects where noise impacts are identified. A new or proposed subdivision or other development must have a formal building permit before the issuance of the final environmental decision document.

(2) Type II Projects. UDOT does not provide a noise retrofit (Type II) program to construct noise abatement measures along existing state transportation facilities.

R930-3-3. Noise Impact Determination.

A traffic noise impact occurs, for purposes of this policy, when either of the following conditions exists at a sensitive land use:

(1) The design noise level is greater than or equal to the UDOT Noise Abatement Criterion (NAC) in Table 1 for each corresponding land use category.

(2) The design noise level substantially exceeds (ten dBA or more) the existing noise level.

R930-3-4. Noise Abatement Objective.

When noise abatement measures are being considered, every reasonable effort shall be made to obtain substantial noise reductions consistent with Department procedures.

R930-3-5. Noise Abatement Conditions.

In order to be considered for noise abatement, all of the following conditions must be met, if applicable:

(1) A noise abatement device shall not be installed where it will create a hazard or violate design standards. Specifically, noise abatement walls shall not be added within the highway clear zone as defined in the AASHTO Roadside Design Guide, unless a safety barrier already exists.

(2) At least five dBA of noise reduction must be achievable at typical impacted receivers nearest the highway.

(3) Residential Areas (Category B, Table 1):

(a) For residential areas, benefited receivers must be considered in determining a noise barrier's cost per receiver regardless of whether or not they were identified as impacted. A benefited receiver is any impacted or non-impacted receiver that gets a noise reduction of 5 dBA or more as a result of the noise barrier. The maximum cost used to determine reasonableness to provide noise abatement is listed in the Noise Abatement Procedures. This cost may be periodically reviewed by the Department for reasonableness and updating, as needed.

(b) In the event that the noise barrier cost effectiveness criteria listed in the Noise Abatement Procedures is exceeded, the cost will be considered to be reasonable only if it can be demonstrated that a "severe" noise impact will occur. Severe traffic noise impacts are defined as traffic noise levels by 30 dBA or more, or results in absolute exterior nose levels of 80 dBA or greater. Based on severity, abatement will be considered on a case-by-case basis.

(c) For non-residential areas (Category A, B, or C, Table 1): The cost of noise abatement measures for schools, parks, churches and other non-residential developments including commercial and industrial areas will depend on height of noise wall required and corresponding length of frontage this type of development has exposed to the transportation facility. In any case, a reasonable cost for mitigation for noise abatement will not exceed the cost effectiveness criteria listed in the Noise Abatement Procedures.

R930-3-6. Other Considerations.

Noise abatement benefits shall be consistent with overall social, economic, and environmental conditions on both sides of the highway. Aesthetics shall be considered where appropriate' including graffiti deterrence and surrounding landscape. Other factors may be considered.

R930-3-7. Declaration of Intent.

Environmental documents shall indicate those areas where mitigation is "likely." "Likely" does not mean a firm commitment. A final decision on the installation of the abatement measures shall be made upon completion of the project design and the public involvement process and based upon what the department believes is reasonable and feasible.

R930-3-8. Public Involvement.

(1) Department representatives shall contact the local government agency and impacted residents. This shall be done prior to completion of final design activities. The concerns of the impacted residents and local government agency shall be a major consideration in reaching a decision on the abatement measures to be provided.

(2) Noise abatement may not be planned after local government agency and impacted residents' involvement if the majority of them are in opposition or indifferent to noise mitigation.

(3) Balloting Process for Noise Abatement Measures

(a) As part of the final design phase of projects, the Department needs to know if residents/land owners are in favor of noise abatement measures. This public input along with other information including; local ordinances, the amount of noise reduction achieved, engineering considerations, cost and views of the impacted and benefited residents will be considered together to come to a decision on whether or not to construct noise abatement. This process involves sending ballots to residents/land owners so they can indicate their preference for or against noise abatement measures.

(b) Ballots sent by mail are deemed by the Department as "due Diligence" in notifying the affected residents of possible noise mitigation measures in their area. One ballot will be sent by regular mail to each resident/land owner of record and each will be given a deadline as to when the ballots need to be returned for counting. If ballots sent to the residents/land

owners are not returned by the deadline, a second ballot will be sent by registered mail, to those who have not returned a ballot.

Noise abatement will only be recommended if 75 percent of the following groups of residents/land owners vote, through balloting, in favor the abatement:

Front row (adjacent) receivers,

Receivers that would be impacted by the project and benefited by noise abatement.

(c) The denominator used to calculate this percentage will equal the total number of completed ballots returned. At least 50 percent of the total number of completed ballots must be returned to adequately assess if noise abatement measures are desired by residents/land owners. If less than 50 percent of completed ballots are returned, then noise abatement measures will not be considered reasonable.

R930-3-9. Coordination with Local Officials.

The Department shall coordinate in the local government review process with regard to aesthetics, height, and other design features of the proposed noise abatement measure. Effective control of highway traffic noise requires land uses near highways to be controlled, but land use planning and control belong to local government jurisdiction. UDOT shall, upon request, assist local agencies by giving information that shall help them to be aware of incompatible land uses near state highways.

Local governments may have ordinances in place that restrict the height of fences and walls along property lines. In addition, there is an increased potential for conflicts between noise barriers and overhead utilities in urban areas. As such, proposed noise barriers on non-limited access roadways in urban areas will not exceed 8 feet in height.

R930-3-10. Local Government Participation.

In instances where noise abatement has already been deemed feasible and reasonable, a third party such as a local municipality, may contribute funds to make functional or aesthetic enhancements to a noise abatement feature.

R930-3-11. Projects Funded From Other Sources.

The Utah Code authorizes the Department to construct and maintain noise abatement measures along state highways in cases where the cost for the noise abatement is provided by citizens, adjacent property owners, developers, or local governments, and meeting other established criteria. These cases may be treated as a special application of Paragraph R930-3-10, in which the Department may design, build, and maintain the abatement measure, and the local government agency shall pay the Department for all preliminary engineering and construction costs.

R930-3-12. Construction Off Right-of-Way.

Normally, noise barriers (walls or berms) built pursuant to this policy shall be constructed within Department right-of-way and owned and maintained by the Department. There are cases in which Department right-of-way is not the most prudent location for noise barriers, yet noise abatement can be very feasible and reasonable if built on adjacent property or adjacent public right-of-way. In these cases:

(1) The Department's cost is limited to normal cost for abatement on Department right-of-way.

(2) In no case shall the Department construct a noise barrier unless the adjacent property owners allow access and easements as necessary in order to construct and maintain the barrier.

(3) Maintenance of noise walls and associated landscaping on the side facing the highway shall normally be the Department's responsibility. The opposite side shall be maintained by the property owner.

(4) When landscaping is included off the Department right-of-way, the Department and landowner shall sign an irrigation agreement. The Department shall not pay for irrigation off the right-of-way.

TABLE I - UDOT NOISE ABATEMENT CRITERIA (NAC)

Land Use Activity Category	Leq(h), dba*	Description of Activity Category
A	56 (Exterior)	Lands on which serenity and quiet are of extraordinary significance and serve an important public need and where the preservation of those qualities is essential if the area is to continue to serve its intended purpose.
B	66 (Exterior)	Picnic areas, fixed recreation areas, active sports areas, parks, residences, motels, hotels, schools, churches, libraries, and hospitals.
C	71 (Exterior)	Cemeteries, commercial areas, industrial areas, exterior office buildings, and other developed lands, properties or activities not included in Categories A or B above.
D	No limit	Undeveloped lands.
E	51 (Interior)	Motels, hotels, public meeting rooms, schools churches, libraries, hospitals, and auditoriums. (The interior criterion only applies when there are no exterior activities affected by traffic noise.)

* Hourly A-weighed sound level in Decibels, Reflecting a zdBA "Approach" Value Below 23 CFR 772

KEY: transportation, barrier, traffic noise abatement, highways
January 12, 2009 72-1-201
Notice of Continuation November 29, 2006 72-7-101

R940. Transportation Commission, Administration.
R940-3. Procedures for Transportation Infrastructure Loan Fund Assistance.
R940-3-1. Purpose and Authority.

This rule is enacted under the provisions of Section 72-2-203. The purpose of this rule is to establish procedures and standards for making loans and assistance through the Transportation Infrastructure Loan Fund.

R940-3-2. Definitions.

(1) "Commission" means the Transportation Commission, which is created in Utah Code Ann. Section 72-1-301;

(2) "Department" means the Utah Department of Transportation, which is created in Utah Code Ann. Section 72-1-201;

(3) "Fund" means the Transportation Infrastructure Loan Fund, which is created in Utah Code Ann. Section 72-2-202;

(4) "Assistance" means infrastructure assistance defined in Utah Code Ann. 72-2-201;

(5) "Loan" means infrastructure loan defined in Utah Code Ann. 72-2-201;

(6) "Transportation project" has the same meaning as defined in Utah Code Ann. 72-2-201;

(7) "Qualified request" means any request submitted by a public entity for assistance or a loan:

(a) that has been received and reviewed by the department;

(b) that has been submitted by the department to the commission for review with a recommendation from the department to accept or reject the request;

(c) for a transportation project that is on the Statewide Transportation Improvement Program;

(8) "Public entity" has the same meaning as defined in Utah Code Ann. 72-2-201.

R940-3-3. Commission Responsibilities.

The commission shall:

(a) receive and review all qualified requests for assistance or loans through the fund;

(b) approve assistance or loans provided by the department through the fund;

(c) approve the terms of assistance or loans, including interest rates and repayment;

(d) prioritize requests for assistance or loans based on:

(i) the availability of monies in the fund;

(ii) the merits of each qualified request as determined by the commission including, but not limited to, the ability to repay the loan, management of the project, the need for the transportation project and the public benefit.

R940-3-4. Conditions for Assistance or Loans.

The commission shall approve or reject qualified requests submitted by the department during a commission meeting held under 72-1-302, including the terms for repayment. Any subsequent amendments or alterations made to the terms for repayment must be approved by the commission. Repayment of loans must be completed no more than 10 years from the time the loan is executed. If a transportation project is funded with federal funds, all federal regulations must be followed.

KEY: infrastructure assistance, Transportation Infrastructure Loan Fund
January 12, 2009 72-2-203

R982. Workforce Services, Administration.
R982-101. Americans with Disabilities Complaint Procedure.
R982-101-100. Authority and Purpose.

(1) The legal authority for these rules is found in U. C. A. Sections 35A-1-104 and 63G-3-201(3) and Title II of the Americans with Disabilities Act (ADA).

(2) No qualified individual with a disability, by reason of such disability, shall be excluded from participation in or be denied the benefits, services, programs, or activities of the Department, or be subjected to discrimination by the Department.

(3) The Department will provide prompt and equitable resolution of all complaints filed with, received by, or referred to the Department by qualified individuals with disabilities arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department.

R982-101-101. Definitions.

(1) "ADA coordinator" (coordinator) means the Department's coordinator or coordinators who have responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals alleging discrimination in the receipt of services or work accommodation due to disability.

(2) "Executive Director" (Director) means the chief administrative officer of the Department appointed by the governor pursuant to Utah Code Ann. 35A-1-201(1)(a) or the Director's designee.

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

(4) "Qualified individual with a disability" The Department adopts the definition in Title II of the ADA. The term generally means a person who has a disability which limits one or more major life activities and who meets the essential eligibility requirements for the receipt of services or the participation in programs or activities provided by the Department or who, with or without reasonable accommodation, can perform the essential functions of the position in the Department, or who would otherwise be an eligible applicant for vacant positions with the Department, as well as those who are employees of the Department.

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

R982-101-102. Classification of Records.

The record of each complaint and appeal, and all written records produced or received as part of the complaint procedure under this rule, shall be classified as protected as defined under Section 63G-2-305 until the coordinator, Director, or designee issues the decision, at which time any portions of the record which may pertain to the individual's medical condition shall remain classified as private as defined under Section 63G-2-302, or controlled as defined in Section 63G-2-304. All other information gathered as part of the complaint record shall be classified as private information. The written decision of the coordinator, Director or designee shall be classified as protected information.

R982-101-103. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the state Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA Complaint Procedures, 28 CFR 35.170, et seq.; or any other federal law, Utah law or the common law that provides equal or greater protection for the rights of individuals with disabilities.

R982-101-104. Appointment of ADA Coordinator.

The Director shall appoint one or more persons as the ADA coordinator to investigate and resolve complaints filed by qualified individuals with disabilities.

R982-101-200. Filing of Complaints by Department Employees or Applicants for a Vacant Position.

(1) A complaint shall be filed in a timely manner to assure prompt, effective investigation, but no later than 180 days from the date of the alleged act of discrimination.

(2) The complaint may be filed by a qualified individual with a disability with any Division, Office or Regional Office of the Department or directly with the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual. Complaints filed locally are to be forwarded immediately to the coordinator. If filed directly with the coordinator it should be delivered or mailed to:

ADA Coordinator
Department of Workforce Services
140 East 300 South
Salt Lake City, UT 84145-0249

(3) Each complaint shall be in writing or in another accessible format suitable to the individual and include:

(a) the individual's name and address;

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

(c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;

(d) a description of the action and accommodation desired; and,

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

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

(5) With or without exhausting Department procedures, individuals may also file complaints alleging discrimination in employment with:

Utah Anti-Discrimination and Labor Division
160 East 300 South
Salt Lake City, UT 84114
or,
Equal Employment Opportunity Commission
4520 North Central Avenue, Suite 300
Phoenix, AZ 85012-1848
Phone 602-640-2598

R982-101-201. Investigation and Resolution of Employee Complaints.

(1) The coordinator shall conduct an investigation of each complaint received.

(2) Within 15 working days after receiving the complaint, the coordinator shall either issue a decision in writing stating the action that will be taken on the complaint, that no action will be taken on the complaint, or notify the complainant in writing that the decision is being delayed and the amount of additional time needed to issue a decision.

(3) The party initiating the complaint and the Department may agree in writing to waive or extend the time limits set forth in the complaint process.

R982-101-202. Appeals of Employee Complaints.

(1) The complainant may appeal the decision of the coordinator by filing an appeal within five working days from the receipt of the decision. The appeal shall be in writing or in another accessible format suitable to the individual.

(2) The filing of an appeal shall be considered as

authorization by the complainant to allow review of all information, including information classified as other than public information, by the Director.

(3) The appeal shall describe in sufficient detail why the coordinator's decision is in error, is incomplete or ambiguous, is not supported by the evidence, or is otherwise improper.

(4) The Director shall review the coordinator's findings and decision and may conduct an additional investigation.

(5) The Director shall either issue a decision within ten working days of receipt of the appeal, or shall notify the complainant in writing or in another accessible format suitable to the individual that the decision is being delayed and the amount of additional time needed to issue a decision.

(6) Nothing in this rule relieves the complainant from complying with or assisting in the complaint process by providing information necessary to make a decision on the complaint.

(7) Nothing in this rule requires the Director to gather information or seek documentation to support the complaint.

(8) The decision issued by the Director shall constitute the final agency action.

(9) The Director may appoint a designee other than the coordinator to fulfill the Director's obligations under this rule.

R982-101-300. Filing of Complaints by Clients.

(1) The Department will resolve all written complaints filed by a qualified individual with a disability with the Department arising from exclusion from participation in, or denial of benefits or services, programs or activities, administered by the Department. Complaints shall be made on a form as developed by the Department.

(2) All client complaints shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 days from the date of the alleged act of discrimination.

(3) The complaint may be filed with any Division, Regional Office or Local Office of the Department or directly with the coordinator. Complaints filed locally are to be forwarded immediately to the coordinator. The complaint shall be in writing or in another accessible format suitable to the individual and delivered or mailed to:

ADA Coordinator
Department of Workforce Services
140 E 300 South
Salt Lake City, UT 84145-0249

(4) Each complaint shall include:

(a) the individual's name and address;

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

(c) the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and the date of the alleged violation;

(d) a description of the action and accommodation desired; and,

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

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

(6) With or without exhausting Department procedures, complainants may also file complaints alleging discrimination in the delivery of services with:

Director, Civil Rights Center
U.S. Department of Labor
200 Constitution Avenue, NW Room N4123
Washington, D.C. 20210; or
Office of Civil Rights
U.S. Department of Health and Human Services
Federal Office Building
1961 Stout Street
Denver, CO 80295-3538

Or, for employment related complaints based on disability:
Utah Anti-Discrimination and Labor Division
160 East 300 South
Salt Lake City, UT 84114; or
Equal Employment Opportunity Commission
4520 North Central Avenue, Suite 300
Phoenix, AZ 85012-1848
Phone 602-640-2598.

R982-101-301. Investigation of Client Complaints.

(1) The coordinator shall document the filing of the complaint and shall assemble all the necessary information to process the complaint.

(2) When conducting the investigation, the coordinator may seek assistance from the Attorney General or any Department employee or other person or agency in determining what action, if any, shall be taken on the complaint.

R982-101-302. Issuance of Decisions and Appeal Rights of Client Complaints.

The coordinator shall issue a decision in writing or other accessible format suitable to the individual within 90 days from the date the complaint was received by the Department. The decision shall inform the parties of their appeal rights and the procedure for filing an appeal. The decision shall outline what action was taken or will be taken, if any.

KEY: disabilities, complaints
January 1, 2003 35A-1-104
Notice of Continuation June 26, 2007

R982. Workforce Services, Administration.
R982-201. Government Records Access and Management Act.
R982-201-101. Request for Access to Department of Workforce Services Records.

1. Authority. As required by Subsection 63G-2-204(2)(d), this rule specifies where and to whom a request for access of Department of Workforce Services (DWS) records shall be directed.

2. Definition. Words used in R982-201 are defined in Section 63G-2-103.

3. Requests for Access.

a. All requests for records shall be submitted in accordance with Subsection 63G-2-204(1).

b. A person may submit a request for a record to any DWS office. If the record requested is one originated in that office, that office will respond to the request. If the record is unknown or not available in the office where the request is filed, the request will be sent immediately to the appropriate Employment Center or administrative office. If the office is unsure as to which office is the appropriate one, the request will be sent to the Department of Workforce Services, Records Manager.

4. News Media/Expedited Release. If a requester demonstrates that he is a member of the news media or that expedited release of the record benefits the public rather than an individual, the request shall be submitted to the Department of Workforce Services, Records Manager, or Public Information Officer.

R982-201-102. Fee Schedule for Records Copies.

1. Authority. Pursuant to Section 63G-2-203, the Department will charge fees for the copying and compiling of records, and may waive fees as specified in this rule.

2. Fee Rates. For records which are reproducible in their current form the fee charged for making copies shall be established by the Executive Director in accordance with Section 63G-2-203(1).

3. Payment Waiver.

a. The right to waive payment of fees for copying records shall reside with the staff in the Employment Center or administrative office. No fees shall be charged for reviewing a record or inspecting a record according to Subsections 63G-2-203(4)(a) and (b).

b. Fees shall not be waived where records are provided to professionals providing services for a fee to individuals who would otherwise have access to records under Sections 63G-2-301 through 63G-2-305.

R982-201-103. Appellate Requests, Research Requests and Intellectual Property Access Requests.

1. Authority. As required by Subsection 63G-2-401(9), this rule specifies where and to whom appeals on records access denials may be directed and Subsection 63G-2-201(10) to whom and where requests regarding duplication and distribution of materials for which the agency owns the intellectual property rights, Subsection 63G-2-202(8) regarding requests for access for research purposes may be submitted.

2. Appeals and Special Requests.

a. All first level appeals shall be directed to the individual(s) designated by the Executive Director of the Department of Workforce Services.

b. Special requests including requests for access to records for research purposes, and duplication and distribution of materials for which the agency owns the intellectual property rights shall be submitted to the individuals designated by the Executive Director for the respective Division, Office, Institution, or Bureau of the Department of Workforce Services.

3. Discretionary Access Authority. Not withstanding Section 35A-4-312 of the Employment Security Act and other state or Federal statute or Federal rules and as specified in Subsection 63G-2-201(5)(b) decisions regarding discretionary access to records that are private, or protected under Sections 63G-2-302 and 63G-2-305 where the public interest to know exceeds the right of privacy shall be determined by the Executive Director or designee of the Executive Director.

R982-201-104. Records Modification and Clarification.

1. Authority. Section 63G-2-603 Governmental Records Access and Management Act and Section 63G-4-202 Utah Administrative Procedures Act designate the option of either formal or informal hearings governing modification of records in dispute.

2. Hearings. Hearings on disputed records accuracy shall be conducted informally.

KEY: records
November 6, 1997 35A-1-104
Notice of Continuation June 26, 2007

R986. Workforce Services, Employment Development.
R986-100. Employment Support Programs.
R986-100-101. Authority.

(1) The legal authority for these rules and for the Department of Workforce Services to carry out its responsibilities is found in Sections 35A-1-104 and 35A-3-103.

(2) If any applicable federal law or regulation conflicts with these rules, the federal law or regulation is controlling.

R986-100-102. Scope.

(1) These rules establish standards for the administration of the following programs, for the collection of overpayments as defined in 35A-3-602(7) and/or disqualifications from any public assistance program provided under a state or federally funded benefit program;

(a) Food Stamps
(b) Family Employment Program (FEP)
(c) Family Employment Program Two Parent (FEPTP)
(d) Refugee Resettlement Program (RRP)
(e) Working Toward Employment (WTE)
(f) General Assistance (GA)
(g) Child Care Assistance (CC)
(h) Emergency Assistance Program (EA)
(i) Adoption Assistance Program (AA)
(j) Activities funded with TANF monies

(2) The rules in the 100 section (R986-100 et seq.) apply to all programs listed above. Additional rules which apply to each specific program can be found in the section number assigned for that program. Nothing in R986 et seq. is intended to apply to Unemployment Insurance.

R986-100-103. Acronyms.

The following acronyms are used throughout these rules:

(1) "AA" Adoption Assistance Program
(2) "ALJ" Administrative Law Judge
(3) "CC" Child Care Assistance
(4) "CFR" Code of Federal Regulations
(5) "DCFS" Division of Children and Family Services
(6) "DWS" Department of Workforce Services
(7) "EA" Emergency Assistance Program
(8) "FEP" Family Employment Program
(9) "FEPTP" Family Employment Program Two Parent
(10) "GA" General Assistance
(11) "INA" Immigration and Nationality Act
(12) "IPV" intentional program violation
(13) "ORS" Office of Recovery Service, Utah State Department of Human Services
(14) "PRWORA" the Personal Responsibility and Work Opportunity Reconciliation Act of 1996
(15) "RRP" Refugee Resettlement Program
(16) "SNB" Standard Needs Budget
(17) "SSA" Social Security Administration
(18) "SSDI" Social Security Disability Insurance
(19) "SSI" Supplemental Security Insurance
(20) "SSN" Social Security Number
(21) "TANF" Temporary Assistance for Needy Families
(22) "UCA" Utah Code Annotated
(23) "UI" Unemployment Compensation Insurance
(24) "USCIS" United States Citizenship and Immigration Services.
(25) "VA" US Department of Veteran Affairs
(26) "WTE" Working Toward Employment Program
(27) "WIA" Workforce Investment Act
(28) "WSL" Work Site Learning

R986-100-104. Definitions of Terms Used in These Rules.

In addition to the definitions of terms found in 35A Chapter 3, the following definitions apply to programs listed in R986-100-102:

(1) "Applicant" means any person requesting assistance under any program in Section 102 above.

(2) "Assistance" means "public assistance."

(3) "Certification period" is the period of time for which public assistance is presumptively approved. At the end of the certification period, the client must cooperate with the Department in providing any additional information needed to continue assistance for another certification period. The length of the certification period may vary between clients and programs depending on circumstances.

(4) "Client" means an applicant for, or recipient of, public assistance services or payments, administered by the Department.

(5) "Confidential information" means information that has limited access as provided under the provisions of UCA 63G-2-201 or 7 CFR 272.1. The name of a person who has disclosed information about the household without the household's knowledge is confidential and cannot be released. If the person disclosing the information states in writing that his or her name and the information may be disclosed, it is no longer considered confidential.

(6) "Department" means the Department of Workforce Services.

(7) "Education or training" means:

(a) basic remedial education;
(b) adult education;
(c) high school education;
(d) education to obtain the equivalent of a high school diploma;
(e) education to learn English as a second language;
(f) applied technology training;
(g) employment skills training;
(h) WSL; or
(i) post high school education.

(8) "Employment plan" consists of two parts, a participation agreement and an employment plan. Together they constitute a written agreement between the Department and a client that describes the requirements for continued eligibility and the result if an obligation is not fulfilled.

(9) "Executive Director" means the Executive Director of the Department of Workforce Services.

(10) "Financial assistance" means payments, other than for food stamps, child care or medical care, to an eligible individual or household under FEP, FEPTP, RRP, GA, or WTE and which is intended to provide for the individual's or household's basic needs.

(11) "Full-time education or training" means education or training attended on a full-time basis as defined by the institution attended.

(12) "Group Home." The Department uses the definition of group home as defined by the state Department of Human Services.

(13) "Household assistance unit" means a group of individuals who are living together or who are considered to be living together, and for whom assistance is requested or issued. For all programs except food stamps and CC, the individuals included in the household assistance unit must be related to each other as described in R986-200-205.

(14) "Income match" means accessing information about an applicant's or client's income from a source authorized by law. This includes state and federal sources.

(15) "Local office" means the Employment Center which serves the geographical area in which the client resides.

(16) "Material change" means anything that might affect household eligibility, participation levels or the level of any assistance payment including a change in household composition, eligibility, assets and/or income.

(17) "Minor child" is a child under the age of 18, or under 19 years of age and in school full time and expected to complete

his or her educational program prior to turning 19, and who has not been emancipated either by a lawful marriage or court order.

(18) "Parent" means all natural, adoptive, and stepparents.

(19) "Public assistance" means:

(a) services or benefits provided under UCA 35A Chapter 3, Employment Support Act;

(b) medical assistance provided under Title 26, Chapter 18, Medical Assistance Act;

(c) foster care maintenance payments provided with the General Fund or under Title IV-E of the Social Security Act;

(d) food stamps; and

(e) any other public funds expended for the benefit of a person in need of financial, medical, food, housing, or related assistance.

(20) "Recipient" means any individual receiving assistance under any of the programs listed in Section 102.

(21) Review or recertification. Client's who are found eligible for assistance or certain exceptions under R986-200-218 are given a date for review or recertification at which point continuing eligibility is determined.

(22) "Standard needs budget" is determined by the Department based on a survey of basic living expenses.

(23) "Work Site Learning" or "WSL" means work experience or training program.

R986-100-105. Availability of Program Manuals.

(1) Program manuals for all programs are available for examination on the Department's Internet site. If an interested party cannot obtain a copy from the Internet site, a copy will be provided by the Department upon request. Reasonable costs of copying may be assessed if more than ten pages are requested.

(2) For the Food Stamp Program, copies of additional information available to the public, including records, regulations, plans, policy memos, and procedures, are available for examination upon request by members of the public, during office hours, at the Department's administrative offices, as provided in 7 CFR 272.1(d)(1) (1999).

R986-100-106. Residency Requirements.

(1) To be eligible for assistance for any program listed in R986-100-102, a client must be living in Utah voluntarily and not for a temporary purpose. There is no requirement that the client have a fixed place of residence. An individual is not eligible for public assistance in Utah if they are receiving public assistance in another state.

(2) The Department may require that a household live in the area served by the local office in which they apply.

(3) Individuals are not eligible if they are:

(a) in the custody of the criminal justice system;

(b) residents of a facility administered by the criminal justice system;

(c) residents of a nursing home;

(d) hospitalized; or

(e) residents in an institution.

(4) Individuals who reside in a temporary shelter, including shelters for battered women and children, for a limited period of time are eligible for public assistance if they meet the other eligibility requirements.

(5) Residents of a substance abuse or mental health facility may be eligible if they meet all other eligibility requirements. To be eligible for food stamps, the substance abuse or mental health facility must be an approved facility. Approval is given by the Department. Approved facilities must notify the Department and give a "change report form" to a client when the client leaves the facility and tell the client to return it to the local office. The change report form serves to notify the Department that the client no longer lives in the approved facility.

(6) Residents of a group home may be eligible for food stamps provided the group home is an approved facility. The state Department of Human Services provides approval for group homes.

R986-100-107. Client Rights.

(1) A client may apply or reapply at any time for any program listed in R986-100-102 by completing and signing an application and turning it in, in person or by mail, at the local office.

(2) If a client needs help to apply, help will be given by the local office staff.

(3) No individual will be discriminated against because of race, color, national origin, sex, age, religion or disability.

(4) A client's home will not be entered without permission.

(5) Advance notice will be given if the client must be visited at home outside Department working hours.

(6) A client may request an agency conference to reconcile any dispute which may exist with the Department.

(7) Information about a client obtained by the Department will be safeguarded.

(8) If the client is physically or mentally incapable or has demonstrated an inability to manage funds, the Department may make payment to a protective payee.

R986-100-108. Safeguarding and Release of Information.

(1) All information obtained on specific clients, whether kept in the case file, in the computer system, maintained by the Department, the state, or somewhere else, is safeguarded in accordance with the provisions of Sections 63G-2-101 through 63G-2-901 and 7 CFR 272.1(c) and 7 CFR 272.8 and PRWORA (1996) Title VIII, Section 837.

(2) General statistical information may be released if it does not identify a specific client. This includes information obtained by the Department from another source. Information obtained from the federal government for purposes of income match can never be released.

R986-100-109. Release of Information to the Client or the Client's Representative.

(1) Information obtained by the Department from any source, which would identify the individual, will not be released without the individual's consent or, if the individual is a minor, the consent of his or her parent or guardian.

(2) A client may request, review and/or be provided with copies of anything in the case record unless it is confidential. This includes any records kept on the computer, in the file, or somewhere else.

(3) Information that may be released to the client may be released to persons other than the client with written permission from the client. All such requests must include:

(a) the date the request is made;

(b) the name of the person who will receive the information;

(c) a description of the specific information requested including the time period covered by the request; and

(d) the signature of the client.

(4) The client is entitled to a copy of his or her file at no cost. Duplicate requests may result in an appropriate fee for the copies in accordance with Department policy which will not be more than the cost to the Department for making copies.

(5) The original case file will only be removed from the office as provided in R986-100-110(6) and cannot be given to the client.

(6) Information that is not released to the client because it is confidential, cannot be used at a hearing or to close, deny or reduce assistance.

(7) Requests for information intended to be used for a commercial or political reason will be denied.

R986-100-110. Release of Information Other Than at the

Request of the Client.

(1) Information obtained from or about a client will not be published or open to public inspection in any manner which would reveal the client's identity except:

(a) unless there has been a criminal conviction against the client for fraud in obtaining public assistance. In that instance, the Department will only provide information available in the public record on the criminal charge; or

(b) if an abstract has been docketed in the district court on an overpayment, the Department can provide information that is a matter of public record in the abstract.

(2) Any information obtained by the Department pursuant to an application for or payment of public assistance may not be used in any court or admitted into evidence in an action or proceeding, except:

(a) in an action or proceeding arising out of the client's receipt of public assistance, including fraudulently obtaining or retaining public assistance, or any attempt to fraudulently obtain public assistance; or

(b) where obtained pursuant to a court order.

(3) If the case file, or any information about a client in the possession of the Department, is subpoenaed by an outside source, legal counsel for the Department will ask the court to quash the subpoena or take such action as legal counsel deems appropriate.

(4) Information obtained by the Department from the client or any other source, except information obtained from an income match, may be disclosed to:

(a) an employee of the Department in the performance of the employee's duties unless prohibited by law;

(b) an employee of a governmental agency that is specifically identified and authorized by federal or state law to receive the information;

(c) an employee of a governmental agency to the extent the information will aid in the detection or avoidance of duplicate, inconsistent, or fraudulent claims against public assistance programs, or the recovery of overpayments of public assistance funds;

(d) an employee of a law enforcement agency to the extent the disclosure is necessary to avoid a significant risk to public safety or to aid a felony criminal investigation except no information regarding a client receiving food stamps can be provided under this paragraph;

(e) to a law enforcement officer when the client is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation or when the client has information which will assist a law enforcement officer in locating or apprehending an individual who is fleeing to avoid prosecution, custody or confinement for a felony or is in violation of a condition of parole or probation and the officer is acting in his official capacity. The only information under this paragraph which can be released on a client receiving food stamps is the client's address, SSN and photographic identification;

(f) to a law enforcement official, upon written request, for the purpose of investigating an alleged violation of the Food Stamp Act 7 USCA 2011 or any regulation promulgated pursuant to the act. The written request shall include the identity of the individual requesting the information and his/her authority to do so, the violation being investigated, and the identity of the person being investigated. Under this paragraph, the Department can release to the law enforcement official, more than just the client's address, SSN and photo identification;

(g) an educational institution, or other governmental entity engaged in programs providing financial assistance or federal needs-based assistance, job training, child welfare or protective services, foster care or adoption assistance programs, and to individuals or other agencies or organizations who, at the request of the Department, are coordinating services and evaluating the effectiveness of those services;

(h) to certify receipt of assistance for an employer to get a tax credit; or

(i) information necessary to complete any audit or review of expenditures in connection with a Department public assistance program. Any information provided under this part will be safeguarded by the individual or agency receiving the information and will only be used for the purpose expressed in its release.

(5) Any information released under paragraph (4) above can only be released if the Department receives assurances that:

(a) the information being released will only be used for the purposes stated when authorizing the release; and

(b) the agency making the request has rules for safeguarding the information which are at least as restrictive as the rules followed by the Department and that those rules will be adhered to.

(6) Case records or files will not be removed from the local office except by court order, at the request of authorized Department employees, the Department's Information Disclosure Officer, the Department's Quality Control office or ORS.

(7) In an emergency, as determined to exist by the Department's Information Disclosure Officer, information may be released to persons other than the client before permission is obtained.

(8) For clients receiving CC, the Department may provide limited additional information to the child care provider identified by the client as the provider as provided in R986-700-703.

(9) Taxpayer requests to view public assistance payrolls will be denied.

R986-100-111. How to Apply For Assistance.

(1) To be eligible for assistance, a client must complete and sign an application for assistance.

(2) The application is not complete until the applicant has provided complete and correct information and verification as requested by the Department so eligibility can be determined or re-established at the time of review at the end of the certification period. The client must agree to provide correct and complete information to the Department at all times to remain eligible. This includes:

(a) property or other assets owned by all individuals included in the household unit;

(b) insurance owned by any member of the immediate family;

(c) income available to all individuals included in the household unit;

(d) a verified SSN for each household member receiving assistance. If any household member does not have a SSN, the client must provide proof that the number has been applied for. If a client fails to provide a SSN without good cause, or if the application for a SSN is denied for a reason that would be disqualifying, assistance will not be provided for that household member. Good cause in this paragraph means the client has made every effort to comply. Good cause does not mean illness, lack of transportation or temporary absence because the SSA makes provisions for mail-in applications in lieu of applying in person. Good cause must be established each month for continued benefits;

(e) the identity of all individuals who are living in the household regardless of whether they are considered to be in the household assistance unit or not;

(f) proof of relationship for all dependent children in the household. Proof of relationship is not needed for food stamps or child care; and

(g) a release of information, if requested, which would allow the Department to obtain information from otherwise

protected sources when the information requested is necessary to establish eligibility or compliance with program requirements.

(3) All clients, including those not required to participate in an employment plan, will be provided with information about applicable program opportunities and supportive services.

R986-100-112. Assistance Cannot Be Paid for Periods Prior to Date of Application.

(1) Assistance payments for any program listed in Section 102 above cannot be made for any time period prior to the day on which the application for assistance was received by the Department.

(2) If an application for assistance is received after the first day of the month, and the client is eligible to receive assistance, payment for the first month is prorated from the date of the application.

(3) If additional verifying information is needed to complete an application, it must be provided within 30 days of the date the application was received. If the client is at fault in not providing the information within 30 days, the first day the client can be eligible is the day on which the verification was received by the Department.

(4) If the verification is not received within 60 days of the date the application was received by the Department, a new application is required and assistance payments cannot be made for periods prior to the date the new application is received.

(5) If an application for assistance was denied and no appeal taken within 90 days, or a decision unfavorable to the client was issued on appeal, assistance cannot be claimed, requested, or paid for that time period.

R986-100-113. A Client Must Inform the Department of All Material Changes.

(1) A material change is any change which might affect eligibility.

(2) Households receiving assistance must report all material changes to the Department as follows:

(a) households receiving food stamps in which all household members are elderly or disabled as defined by food stamp regulations, and the household has no earned income, must report the following material changes to the local office within ten days of the day the change becomes known by a household member:

(i) change in income source, both unearned and earned;

(ii) change of more than $50 in gross monthly unearned income;

(iii) change in employment status including a change from full time to part time or from part time to full time and/or a change in wage rate, salary or income from employment;

(iv) change in household size or marital status;

(v) change in residence and resulting change in shelter costs;

(vi) gain of a licensed vehicle;

(vii) change in available assets including an unlicensed vehicle. A household under this subsection need only report a change in cash on hand, stocks, bonds, and money in a bank account or savings institution which reach or exceed a total of $3,000;

(viii) change in the legal obligation to pay child support; and

(b) households receiving food stamps that do not meet the requirements of paragraph (2)(a) of this section must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 130% of federal poverty level;

(ii) a change of address; and

(iii) if an ABAWD's work hours fall below 20 hours per week.

(c) households receiving GA, WTE, FEP, FEPTP, AA and RRP that do not meet the requirements of paragraph (2)(a) must report the following changes within ten days of the change occurring:

(i) if the household's gross income exceeds 185% of the adjusted standard needs budget;

(ii) a change of address; and

(iii) if the only eligible child leaves the household and the household receives FEP, FEPTP or AA.

(3) Households that do not meet the requirements of paragraph (2)(a) of this section will be assigned a review month. In addition to the ten-day reporting requirements listed in paragraphs (2)(b) and (c) of this section, the household must report, by the last day of the review month, all material changes that have occurred since the last review, or the date of application if it is the first review. The household is also required to accurately complete all review forms and reports as requested by the Department.

(4) Most changes which result in an increase of assistance will become effective the month following the month in which the report of the change was made. If verification is necessary, verification and changes will be made in the month following the month in which verification was received. If the change is to add a person to the household, the person will be added effective on the date reported, provided necessary verification is received within 30 days of the change. If verification is received after 30 days, the increase will be made effective the date verification was received.

R986-100-114. A Client's Continuing Obligation to Provide Verification and Information.

(1) A client who is eligible for assistance must provide additional verification and information, which may affect household eligibility or ongoing eligibility, after the application is approved if requested by the Department.

(2) The client must provide information to determine if eligibility was appropriately established and if payments made under these rules were appropriate. This information may be requested by an employee of the Department or a person authorized to obtain the information under contract with the Department such as an employee of ORS.

R986-100-114a. Determining When a Document is Considered Received by the Department.

(1) The date of receipt of a document filed with the Department is the date the document is actually received by the Department and not the post mark date. Any document received after 5 p.m., including documents received by Fax or email, will be considered received the next day Department offices are open.

(2) If a document has a due date and that due date falls on a Saturday, Sunday, or legal holiday, the time permitted for filing the document will be extended to 5 p.m. on the next day Department offices are open.

(3) "Document" as used in this section means application for assistance, verification, report, form and written notification of any kind.

(4) A verbal report or notification will be considered received on the date the client talks to a Department representative. A voice message received after 5 p.m. will be considered received the next day Department offices are open.

R986-100-115. Underpayment Due to an Error on the Part of the Department.

(1) If it is determined that a client was entitled to assistance but, due to an error on the part of the Department, assistance was not paid, the Department will correct its error and make retroactive payment.

(2) If a client receives assistance payments and it is later discovered that due to Department error the assistance payment

should have been made at a higher level than the client actually received, retroactive payment will be made to correct the Department's error.

(3) If the client's public assistance was terminated due to the error, the client will be notified and assistance, plus any retroactive payments, will commence immediately.

(4) An underpayment found to have been made within the last 12 calendar months will be corrected and issued to the client. Errors which resulted in an underpayment which were made more than 12 months prior to the date of the discovery of the error are not subject to a retroactive payment.

(5) Retroactive payment under this section cannot be made for any month prior to the date on which the application for assistance was completed.

(6) The client must not have been at fault in the creation of the error.

R986-100-116. Overpayments.

(1) A client is responsible for repaying any overpayment for any program listed in R986-100-102 regardless of who was at fault in creating the overpayment.

(2) Underpayments may be used to offset an overpayment for the same program.

(3) If a change is not reported as required by R986-100-113 it may result in an overpayment.

(4) The Department will collect overpayments for all programs listed in R986-100-102 as provided by federal regulation for food stamps unless otherwise noted in this rule or inconsistent with federal regulations specific to those other programs.

(5) This rule will apply to overpayments determined under contract with the Department of Health.

(6) If an obligor has more than one overpayment account and does not tell the Department which account to credit, the Department will make that determination.

R986-100-117. Disqualification For Fraud (Intentional Program Violations or IPVs).

(1) Any person who is at fault in obtaining or attempting to obtain, an overpayment of assistance, as defined in Section 35A-3-602 from any of the programs listed in R986-100-102 or otherwise intentionally breaches any program rule either personally or through a representative is guilty of an intentional program violation (IPV). Acts which constitute an IPV include but are not limited to:

(a) knowingly making false or misleading statements;

(b) misrepresenting, concealing, or withholding facts or information;

(c) posing as someone else;

(d) not reporting the receipt of a public assistance payment the individual knew or should have known they were not eligible to receive;

(e) not reporting a material change as required by and in accordance with these rules; and

(f) committing an act intended to mislead, misrepresent, conceal or withhold facts or propound a falsity.

(2) An IPV occurs when a person commits any of the above acts in an attempt to obtain, maintain, increase or prevent the decrease or termination of any public assistance payment(s).

(3) When the Department determines or receives notice from a court that fraud or an IPV has occurred, the client is disqualified from receiving assistance of the same type for the time period as set forth in rule, statute or federal regulation.

(4) Disqualifications run concurrently.

(5) All income and assets of a person who has been disqualified from assistance for an IPV continue to be counted and affect the eligibility and assistance amount of the household assistance unit in which the person resides.

(6) If an individual has been disqualified in another state, the disqualification period for the IPV in that state will apply in Utah provided the act which resulted in the disqualification would have resulted in a disqualification had it occurred in Utah. If the individual has been disqualified in another state for an act which would have led to disqualification had it occurred in Utah and is found to have committed an IPV in Utah, the prior periods of disqualification in any other state count toward determining the length of disqualification in Utah.

(7) The client will be notified that a disqualification period has been determined. The disqualification period shall begin no later than the second month which follows the date the client receives written notice of the disqualification and continues in consecutive months until the disqualification period has expired.

(8) Nothing in these rules is intended to limit or prevent a criminal prosecution for fraud based on the same facts used to determine the IPV.

R986-100-118. Additional Penalty for a Client Who Intentionally Misrepresents Residence.

A person who has been convicted in federal or state court of having made a fraudulent statement or representation with respect to the place of residence in order to receive assistance simultaneously from two or more states is disqualified from receiving assistance for any and all programs listed in R986-100-102 above, for a period of 10 years. This applies even if Utah was not one of the states involved in the original fraudulent misrepresentation.

R986-100-119. Reporting Possible Child Abuse or Neglect.

When a Department employee has reason to believe that a child has been subjected to abuse or neglect, it shall be reported under the provisions of Section 62A-4a-401 et seq.

R986-100-120. Discrimination Complaints.

(1) Complaints of discrimination can be made in person, by phone, or in writing to the local office, the Office of the Executive Director or the Director's designee, the Department's Equal Opportunity Officer, or the appropriate Federal agency.

(2) Complaints shall be resolved and responded to as quickly as possible.

(3) A record of complaints will be maintained by the local office including the response to the complaint.

(4) If a complaint is made to the local office, a copy of the complaint together with a copy of the written response will be sent to the Office of the Executive Director or the Director's designee.

(5) Discrimination complaints pertaining to the Food Stamp Program will also be sent to the Secretary of Agriculture or the Administrator of Food and Nutrition Service, Washington, D.C., 20250 in accordance with the provisions of 7 CFR 272.6 (1999).

R986-100-121. Agency Conferences.

(1) Agency conferences are used to resolve disputes between the client and Department staff.

(2) Clients or Department staff may request an agency conference at any time to resolve a dispute regarding a denial or reduction of assistance.

(3) Clients may have an authorized representative attend the agency conference.

(4) An agency conference will be attended by the client's employment counselor and the counselor's supervisor unless the client or the supervisor request that the employment counselor not attend the conference.

(5) If an agency conference has previously been held on the same dispute, the Department may decline to hold the requested conference if, in the judgment of the employment counselor's supervisor, it will not result in the resolution of the dispute.

(6) If the Department requests the agency conference and the client fails to respond, attend or otherwise cooperate in this process, documentation in the case file of attempts by the staff to follow these steps will be considered as compliance with the requirement to attempt to resolve the dispute.

(7) An agency conference may be held after a client has made a request for hearing in an effort to resolve the dispute. If so, the client must be notified that failure to participate or failure to resolve the dispute at the agency conference will not affect the client's right to proceed with the hearing.

R986-100-122. Advance Notice of Department Action.

(1) Except as provided in (2) below, clients will be notified in writing when a decision concerning eligibility, amount of assistance payment or action on the part of the Department which affects the client's eligibility or amount of assistance has been made. Notice will be sent prior to the effective date of any action to reduce or terminate assistance payments. The Department will send advance notice of its intent to collect overpayments or to disqualify a household member.

(2) Except for overpayments, advance notice is not required when:

(a) the client requests in writing that the case be closed;

(b) the client has been admitted to an institution under governmental administrative supervision;

(c) the client has been placed in skilled nursing care, intermediate care, or long-term hospitalization;

(d) the client's whereabouts are unknown and mail sent to the client has been returned by the post office with no forwarding address;

(e) it has been determined the client is receiving public assistance in another state;

(f) a child in the household has been removed from the home by court order or by voluntary relinquishment;

(g) a special allowance provided for a specific period is ended and the client was informed in writing at the time the allowance began that it would terminate at the end of the specified period;

(h) a household member has been disqualified for an IPV in accordance with 7 CFR 273.16, or the benefits of the remaining household members are reduced or terminated to reflect the disqualification of that household member;

(i) the Department has received factual information confirming the death of a client or payee if there is no other relative able to serve as a new payee;

(j) the client's certification period has expired;

(k) the action to terminate assistance is based on the expiration of the time limits imposed by the program;

(l) the client has provided information to the Department, or the Department has information obtained from another reliable source, that the client is not eligible or that payment should be reduced or terminated;

(m) the Department determines that the client willfully withheld information or;

(n) when payment of financial assistance is made after performance under R986-200-215 and R986-400-454 no advance notice is needed when performance requirements are not met.

(3) For food stamp recipients and recipients of assistance under R986-300, no action will be taken until ten days after notice was sent unless one of the exceptions in (2)(a) through (k) above apply.

(4) Notice is complete if sent to the client's last known address. If notice is sent to the client's last known address and the notice is returned by the post office with no forwarding address, the notice will be considered to have been properly served.

R986-100-123. The Right To a Hearing and How to Request a Hearing.

(1) A client has the right to a review of an adverse Department action by requesting a hearing.

(2) In cases where the Department sends notice of its intent to take action to collect an alleged overpayment but there is no alleged overpayment of food stamps, the client must request a hearing in writing or orally within 30 days of the date of notice of agency action. In all other cases, the client must request a hearing in writing or orally within 90 days of the date of the notice of agency action with which the client disagrees.

(3) Only a clear expression by the client to the effect that the client wants an opportunity to present his or her case is required.

(4) The request for a hearing can be made at the local office or the Division of Adjudication.

(5) If the client disagrees with the level of food stamp benefits paid or payable, the client can request a hearing within the certification period, even if that is longer than 90 days.

(6) If a request for restoration of lost food stamp benefits is made within one year of the loss of benefits a client may request a hearing within 90 days of the date of the denial of restoration.

(7) In the case of an overpayment and/or IPV the obligor may contact the presiding officer and attempt to resolve the dispute. If the dispute cannot be resolved, the obligor may still request a hearing provided it is filed within the time limit provided in the notice of agency action.

R986-100-124. How Hearings Are Conducted.

(1) Hearings are held at the state level and not at the local level.

(2) Where not inconsistent with federal law or regulation governing hearing procedure, the Department will follow the Utah Administrative Procedures Act.

(3) Hearings for all programs listed in R986-100-102 and overpayments and IPVs in Section 35A-3-601 et seq. are declared to be informal.

(4) Hearings are conducted by an ALJ or a Hearing Officer in the Division of Adjudication. A Hearing Officer has all of the same rights, duties, powers and responsibilities as an ALJ under these rules and the terms are interchangeable.

(5) Hearings are usually scheduled as telephone hearings.

(6) If the client prefers an in-person hearing the client must contact the ALJ assigned to hear the case in advance of the hearing and request that the hearing be converted to an in-person hearing. An in-person hearing is conducted in one of the following ways, at the option of the client:

(a) the client can request that the hearing be conducted in the office of the ALJ and appear personally before the ALJ, but the Department representative and Department witnesses will be allowed to participate by telephone; or

(b) the client can participate from the local Employment Center with the witnesses and Department employees who work in that particular Employment Center. The ALJ and any Department employees or witnesses who are in another location will participate from that location or locations by telephone.

(7) the Department is not responsible for any travel costs incurred by the client in attending an in-person hearing.

(8) the Division of Adjudication will permit collect calls from parties and their witnesses participating in telephone hearings.

R986-100-125. When a Client Needs an Interpreter at the Hearing.

(1) If a client notifies the Department that an interpreter is needed at the time the request for hearing is made, the Department will arrange for an interpreter at no cost to the client.

(2) If an interpreter is needed at the hearing by a client or the client's witness(es), the client may arrange for an interpreter to be present at the hearing who is an adult with fluent ability to understand and speak English and the language of the person testifying, or notify the Division of Adjudication at the time the appeal is filed that assistance is required in arranging for an interpreter.

R986-100-126. Procedure For Use of an Interpreter.

(1) The ALJ will be assured that the interpreter:

(a) understands the English language; and

(b) understands the language of the client or witness for whom the interpreter will interpret.

(2) The ALJ will instruct the interpreter to interpret, word for word, and not summarize, add, change, or delete any of the testimony or questions.

(3) The interpreter will be sworn to truthfully and accurately translate all statements made, all questions asked, and all answers given.

(4) The interpreter will be instructed to translate to the client the explanation of the hearing procedures as provided by the ALJ.

R986-100-127. Notice of Hearing.

(1) All interested parties will be notified by mail at least 10 days prior to the hearing.

(2) Advance written notice of the hearing can be waived if the client and Department agree.

(3) The notice shall contain:

(a) the time, date, and place, or conditions of the hearing. If the hearing is to be by telephone, the notice will provide the number for the client to call and a notice that the client can call the number collect;

(b) the legal issues or reason for the hearing;

(c) the consequences of not appearing;

(d) the procedures and limitations for requesting rescheduling; and

(e) notification that the client can examine the case file prior to the hearing.

(4) If a client has designated a person or professional organization as the client's agent, notice of the hearing will be sent to that agent. It will be considered that the client has been given notice when notice is sent to the agent.

(5) When a new issue arises during the hearing or under other unusual circumstances, advance written notice may be waived, if the Department and the client agree, after a full verbal explanation of the issues and potential results.

(6) The client must notify any representatives, including counsel and witnesses, of the time and place of the hearing and make necessary arrangements for their participation.

(7) The notice of hearing will be translated, either in writing or verbally, for certain clients participating in the RRP program in accordance with RRP regulations.

R986-100-128. Hearing Procedure.

(1) Hearings are not open to the public.

(2) A client may be represented at the hearing. The client may also invite friends or relatives to attend as space permits.

(3) Representatives from the Department or other state agencies may be present.

(4) All hearings will be conducted informally and in such manner as to protect the rights of the parties. The hearing may be recorded.

(5) All issues relevant to the appeal will be considered and decided upon.

(6) The decision of the ALJ will be based solely on the testimony and evidence presented at the hearing.

(7) All parties may testify, present evidence or comment on the issues.

(8) All testimony of the parties and witnesses will be given under oath or affirmation.

(9) Any party to an appeal will be given an adequate opportunity to be heard and present any pertinent evidence of probative value and to know and rebut by cross-examination or otherwise any other evidence submitted.

(10) The ALJ will direct the order of testimony and rule on the admissibility of evidence.

(11) Oral or written evidence of any nature, whether or not conforming to the legal rules of evidence including hearsay, may be accepted and will be given its proper weight.

(12) Official records of the Department, including reports submitted in connection with any program administered by the Department or other State agency may be included in the record.

(13) The ALJ may request the presentation of and may take such additional evidence as the ALJ deems necessary.

(14) The parties, with consent of the ALJ, may stipulate to the facts involved. The ALJ may decide the issues on the basis of such facts or may set the matter for hearing and take such further evidence as deemed necessary to determine the issues.

(15) The ALJ may require portions of the evidence be transcribed as necessary for rendering a decision.

(16) Unless the client requests a continuance, the decision of the ALJ will be issued within 60 days of the date on which the client requests a hearing.

(17) A decision of the ALJ which results in a reversal of the Department decision shall be complied with within 10 days of the issuance of the decision.

R986-100-129. Rescheduling or Continuance of Hearing.

(1) The ALJ may adjourn, reschedule, continue or reopen a hearing on the ALJ's own motion or on the motion of the client or the Department.

(2) If a party knows in advance of the hearing that they will be unable to proceed with or participate in the hearing on the date or time scheduled, the party must request that the hearing be rescheduled or continued to another day or time.

(a) The request must be received prior to the hearing.

(b) The request must be made orally or in writing to the ALJ who is scheduled to hear the case. If the request is not received prior to the hearing, the party must show cause for failing to make a timely request.

(c) The party making the request must show cause for the request.

(d) Normally, a party will not be granted more than one request for a continuance.

(3) The rescheduled hearing must be held within 30 days of the original hearing date.

R986-100-130. Default Order for Failure to Participate.

(1) The Department will issue a default order if an obligor in an overpayment and/or IPV case fails to participate in the administrative process. Participation for an obligor means:

(a) signing and returning to the Department an approved stipulation for repayment and making all of the payments as agreed,

(b) requesting and participating in a hearing, or

(c) paying the overpayment in full.

(2) If a hearing has been scheduled at the request of a client or an obligor and the client or obligor fails to appear at or participate in the hearing, either in person or through a representative, the ALJ will, unless a continuance or rescheduling has been requested, issue a default order.

(3) A default order will be based on the record and best evidence available at the time of the order.

R986-100-131. Setting Aside A Default and/or Reopening the Hearing After the Hearing Has Been Concluded.

(1) Any party who fails to participate personally or by

authorized representative as defined in R986-100-130 may request that the default order be set aside and a hearing or a new hearing be scheduled. If a party failed to participate in a hearing but no decision has yet been issued, the party may request that the hearing be reopened.

(2) The request must be in writing, must set forth the reason for the request and must be mailed, faxed or delivered to the ALJ or presiding officer who issued the default order within ten days of the issuance of the default. If the request is made after the expiration of the ten-day time limit, the party requesting reopening must show good cause for not making the request within ten days.

(3) The ALJ has the discretion to schedule a hearing to determine if a party requesting that a default order be set aside or a reopening satisfied the requirements of this rule or may grant or deny the request on the basis of the record in the case.

(4) If a presiding officer issued the default, the officer shall forward the request to the Division of Adjudication. The request will be assigned to an ALJ who will then determine if the party requesting that the default be set aside or that the hearing be reopened has satisfied the requirements of this rule.

(5) The ALJ may, on his or her own motion, reschedule, continue or reopen a case if it appears necessary to take continuing jurisdiction based on a mistake as to facts or if the denial of a hearing would be an affront to fairness. A presiding officer may, on his or her own motion, set aside a default on the same grounds.

(6) If a request to set aside the default or a request for reopening is not granted, the ALJ will issue a decision denying the request to reopen. A copy of the decision will be given or mailed to each party, with a clear statement of the right of appeal or judicial review. A defaulted party may appeal a denial of a request to set aside a default by following the procedure in R986-100-135. The appeal can only contest the denial of the request to set aside the default and not the underlying merits of the case. If the default is set aside on appeal, the Executive Director or designee may rule on the merits or remand the case to an ALJ for a ruling on the merits on an additional hearing if necessary.

R986-100-132. What Constitutes Grounds to Set Aside a Default.

(1) A request to reopen or set aside for failure to participate:

(a) will be granted if the party was prevented from participating and/or appearing at the hearing due to circumstances beyond the party's control;

(b) may be granted upon such terms as are just for any of the following reasons: mistake, inadvertence, surprise, excusable neglect or any other reason justifying relief from the operation of the decision. The determination of what sorts of neglect will be considered excusable is an equitable one, taking into account all of the relevant circumstances including:

(i) the danger that the party not requesting reopening will be harmed by reopening,

(ii) the length of the delay caused by the party's failure to participate including the length of time to request reopening,

(iii) the reason for the request including whether it was within the reasonable control of the party requesting reopening,

(iv) whether the party requesting reopening acted in good faith, and

(v) whether the party was represented by another at the time of the hearing. Because they are required to know and understand Department rules, attorneys and professional representatives are held to a higher standard, and

(vi) whether based on the evidence of record and the parties arguments or statements, setting aside the default and taking additional evidence might effect the outcome of the case.

(2) Requests to reopen or set aside are remedial in nature and thus must be liberally construed in favor of providing parties with an opportunity to be heard and present their case. Any doubt must be resolved in favor of granting reopening.

R986-100-133. Canceling an Appeal and Hearing.

When a client notifies the Division of Adjudication or the ALJ that the client wants to cancel the hearing and not proceed with the appeal, a decision dismissing the appeal will be issued. This decision will have the effect of upholding the Department decision. The client will have 30 days in which to reinstate the appeal by filing a written request for reinstatement with the Division of Adjudication.

R986-100-134. Payments of Assistance Pending the Hearing.

(1) A client is entitled to receive continued assistance pending a hearing contesting a Department decision to reduce or terminate food stamps, RRP, FEPTP, or FEP financial assistance if the client's request for a hearing is received no later than 10 days after the date of the notice of the reduction, or termination. The assistance will continue unless the certification period expires until a decision is issued by the ALJ. If the certification period expires while the hearing or decision is pending, assistance will be terminated. If a client becomes ineligible or the assistance amount is reduced for another reason pending a hearing, assistance will be terminated or reduced for the new reason unless a hearing is requested on the new action.

(2) If the client can show good cause for not requesting the hearing within 10 days of the notice, assistance may be continued if the client can show good cause for failing to file in a timely fashion. Good cause in this paragraph means that the delay in filing was due to circumstances beyond the client's control or for circumstances which were compelling and reasonable. Because the Department allows a client to request a hearing by telephone or mail, good cause does not mean illness, lack of transportation or temporary absence.

(3) A client can request that payment of assistance not be continued pending a hearing but the request must be in writing.

(4) If payments are continued pending a hearing, the client is responsible for any overpayment in the event of an adverse decision.

(5) If the decision of the ALJ is adverse to the client, the client is not eligible for continued assistance pending any appeal of that decision.

(6) If a decision favorable to the client is rendered after a hearing, and payments were not made pending the decision, retroactive payment will be paid back to the date of the adverse action if the client is otherwise eligible.

(7) Financial assistance payments under GA or WTE, and CC subsidies will not continue during the hearing process regardless of when the appeal is filed.

(8) Financial assistance under the RRP will not extend for longer than the eight-month time limit for that program under any circumstances.

(9) Clients receiving financial assistance under the FEPTP program must continue to participate to receive financial assistance during the hearing process.

(10) Financial assistance under the FEPTP program will not extend for longer than the seven-month time limit for that program under any circumstance.

(11) Assistance is not allowed pending a hearing from a denial of an application for assistance.

R986-100-135. Further Appeal From the Decision of the ALJ or Presiding Officer.

Either party has the option of appealing the decision of the ALJ or presiding officer to either the Executive Director or person designated by the Executive Director or to the District Court. The appeal must be filed, in writing, within 30 days of the issuance of the decision of the ALJ or presiding officer.

KEY: employment support procedures
June 14, 2007 **35A-3-101 et seq.**
Notice of Continuation September 13, 2003 **35A-3-301 et seq.**
35A-3-401 et seq.

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 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 determinated 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 unforseen 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 or who are eligible for TANF non-FEP training under R986-200-245 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. The payments may continue until the client completes the HS/GED Pilot Program even if the client is no longer receiving FEP.

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
January 6, 2009 35A-3-301 et seq.
Notice of Continuation September 14, 2005

R986. Workforce Services, Employment Development.
R986-500. Adoption Assistance.
R986-500-501. Authority for Adoption Assistance (AA) and Other Applicable Rules.

(1) The Department administers AA pursuant to the authority granted in Section 35A-3-308.

(2) The provisions of R986-100 apply to AA.

(3) The provisions of R986-200 apply to AA, except as noted in this rule.

R986-500-502. General Provisions.

(1) AA may be provided to a birth parent who was or would have been the caretaker of a child relinquished for adoption.

(2) The relinquishment must have been voluntary. Birth parents who have had their parental rights terminated are not eligible for AA.

(3) The adoption must have met the requirements of Section 78B-6-120.

(4) AA financial assistance can be provided to a woman who is in her third trimester of pregnancy if she is planning to relinquish custody of the child for the purpose of adoption and if she is otherwise eligible.

(5) A parent must apply for AA no later than the end of the second month after the month of relinquishment. Proof of relinquishment is required.

(6) Relinquishment can be made for any minor child, however a child age 12 or older must agree to the relinquishment.

(7) The Department will coordinate services to assist the client in:

(a) receiving appropriate educational and occupational assessment and planning, including enrolling in appropriate education or training programs, which includes high school completion and adult education programs;

(b) enrolling in programs that provide assistance with job readiness, employment counseling, finding employment, and work skills;

(c) finding suitable housing;

(d) receiving medical assistance, under Title 26, Chapter 18, Medical Assistance Act, if the client is otherwise eligible; and

(e) receiving counseling and other mental health services.

(8) If a birth parent relinquishes custody of a child, and before the adoption is finalized, takes back custody of the child, the parent is no longer eligible for AA.

(9) The rule regarding minor parents found at R986-200-213 applies if the parent seeking AA is a minor.

(10) If the minor parent seeking AA is living with her parent(s), or the parent(s) of the father of the child being relinquished, the FEP rule for counting the income of the household found in R986-200-242 applies.

R986-500-503. Services Available to All Pregnant Clients.

(1) The Department will publish and make available to all pregnant clients an easy-to-understand adoption information packet which:

(a) contains information about the public and private organizations that provide adoption assistance specific to the geographical location of the client;

(b) lists the names, addresses, and telephone numbers of licensed child placement agencies and licensed attorneys who place children for adoption;

(c) explains that private adoption is legal and that the law permits adoptive parents to reimburse the costs of prenatal care, childbirth, neonatal care, and other expenses related to pregnancy; and

(d) describes the services and supports available to the client from the Department and other state agencies.

(2) The Department will refer the client for appropriate prenatal medical care, including maternal health services provided under Title 26, Chapter 10, Family Health Services.

(3) The Department will inform the client of free counseling about adoption from licensed child placement agencies and licensed attorneys.

R986-500-504. AA Financial Assistance Eligibility and Amount.

(1) Eligibility and participation are determined by R986-200 except:

(a) the employment plan must contain the requirement that the client enroll in high school or an alternative to high school, if the client does not have a high school diploma;

(b) the child support enforcement provisions do not apply for the child being relinquished; and

(c) one vehicle with a maximum of $8,000 equity value is not counted. The entire equity value of one vehicle equipped to transport a disabled individual is exempt from the asset limit even if the vehicle has a value in excess of $8,000. Beginning October 1, 2007 all motorized vehicles will be exempt.

(2) If there are other eligible children living in the household assistance unit, the household will receive a monthly supplemental financial AA payment equal to the additional amount the household would have received had the parent(s) not relinquished the child.

(3) If there are no eligible children living in the household, financial AA will be provided equal to a household size of one even if both birth parents are living in the household.

R986-500-505. Time Limits for AA.

(1) Financial AA can be provided up to a maximum of 12 consecutive months from the date of relinquishment.

(2) Payment of financial assistance for part of a month counts as a whole month when calculating the 12 month time limit.

(3) No extensions or exceptions to the time limit will be allowed.

(4) A birth parent who is determined eligible for adoption assistance and becomes ineligible during the 12 month payment period may reestablish eligibility up to the twelfth month if the parent reapplies during the 12 month period.

(5) Months during which no payment of financial assistance was made due to ineligibility or disqualification count toward the 12 month time limit.

(6) There is no limit to the number of times a parent can apply for or be found eligible for AA, however months during which a client receives AA prior to relinquishment count toward the 36 month time limit for FEP and FEPTP found in R986-200-217. Months when a client receives AA after relinquishment count toward the 36 month time limit if the client is otherwise eligible to receive FEP or FEPTP because there are eligible children in the home.

R986-500-506. Safeguarding Records.

Records pertaining to the adoption will not be kept in the client's case file but will be sent to the Department of Adoption Assistance Specialist and kept private. This includes verification of relinquishment and anything that would identify any agency, organization, or individual assisting with the adoption.

KEY: adoption assistance
September 29, 2008 **35A-3-114**
Notice of Continuation September 14, 2005

R994. Workforce Services, Unemployment Insurance.
R994-204. Covered Employment.
R994-204-201. Localization of Services.

Employment is covered under the Act if all of a worker's service is performed within Utah. Workers who perform services for one employer in more than one state are covered in Utah under certain circumstances.

(1) Service Localized in this State.

The service is considered to be localized in Utah if it is performed entirely within Utah. The service is also considered to be localized in Utah if performed both inside and outside of Utah, but the service outside of Utah consists of isolated transactions or is otherwise incidental or transitory to the service in Utah. Some of the factors which might indicate that the service is incidental or transitory are:

(a) the employer and the worker intend the service outside of Utah to be an isolated transaction, and not a regular part of the worker's duties;

(b) the worker intends to return to Utah upon completion of the work assignment, rather than move to the other state;

(c) the service performed outside the state is different in nature from the service performed within Utah;

(d) it is anticipated that the worker will be performing services outside the state for 12 months or less however this length of time is intended only as a yardstick and other variables, such as the terms of the contract of hire, whether written or oral, will be considered.

(2) Service Is Not Localized in Any State But Some Service is Performed in Utah.

If the service is not localized in any state but some of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

(a) The Base of Operations is in Utah.

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and to which he or she customarily returns for instructions from the employer, communications from customers, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive direction and instructions.

(b) The Place from Where Service is Controlled or Directed is in Utah.

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if any service is performed in the state from which the service is controlled or directed. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(c) The Place of Residence is in Utah.

If the conditions in paragraphs (a) or (b) of this subsection do not apply, it is necessary to apply the test of residence. Under this test, the service is covered in Utah if the worker lives in Utah and performs some of his or her services in Utah.

(3) Service Is Not Localized in Any State and No Service is Performed in Utah.

If the service is not localized in any state and none of the service is performed by the worker in Utah, the entire service is covered in Utah if one of the following conditions apply:

(a) The Base of Operations is in Utah.

The worker's base of operations is in Utah. The "base of operations" is the place from which the worker starts work and customarily returns for instructions from the employer, to replenish stocks or materials, to repair equipment or to perform any other function necessary in the worker's trade or profession. The base of operations may be the worker's business office, which may be located at his or her residence, or the contract of employment may specify a particular place at which the worker is to receive his or her direction and instructions.

(b) The Place from Where the Service is Controlled or Directed is in Utah.

If the worker has no base of operations or does not perform any service in the state in which the base of operations is located, it is necessary to determine if the worker is controlled and directed from Utah. The place from which the service is controlled or directed is the place at which the basic authority exists rather than the place at which a manager or foreman supervises the service.

(4) Reciprocal Coverage.

If after applying all of the above tests to a given set of circumstances, the worker's service is found not to be subject to any one state, the employer may elect to cover all of the worker's service in one state. This election must be made under the provisions for reciprocal coverage arrangements found in Section 35A-4-106. The Department will approve reciprocal coverage and allow an employer to cover a worker's entire service in Utah if:

(a) the employer petitions for coverage;

(b) part of the worker's service is in Utah, the worker lives in Utah, or the worker maintains a place of business in Utah; and

(c) the other state or states approve the election

R994-204-202. Outside Commissioned Salespersons in Covered Employment.

Outside commissioned salespersons are excluded from the Act under the outside commissioned salesperson exclusion contained in Section 35A-4-205(1)(t) unless all of the following "traveling or city salesperson" conditions apply:

(1) The Salesperson is Engaged on a Full-Time Basis.

Full-time under this section means the salesperson devotes at least 80% of his or her working time in any quarter to the solicitation of orders for one employer. This is true even if the salesperson works for the employer less than 40 hours per week. For example, a salesperson who works only 20 hours a week and spends 80 percent or more of that time working for one principal is engaged on a full-time basis.

(2) The Salesperson Solicits Orders From Wholesalers, Retailers, Contractors or Operators of Hotels and Restaurants.

The salesperson must solicit orders from certain types of customers. Generally, the following types of customers are not included: manufacturers, schools, hospitals, churches, institutions, municipalities and state and federal governments. However, a clearly identifiable and separate business carried on through such a customer, such as a bookstore or gift shop would be included as a "retailer." The salesperson must solicit orders from the following types of customers:

(a) Wholesalers who buy merchandise in comparatively large quantities and sell such merchandise in smaller quantities to jobbers and retailers for the purpose of resale.

(b) Retailers who sell merchandise to the ultimate consumers.

(c) Contractors who, for a fixed price, undertake the performance of work on an independent basis, such as construction contractors and certain service organizations. These include, among others, electrical, plumbing, painting, building, window washing and delivery service contractors.

(d) Operators of hotels, restaurants or other similar establishments. The phrase "other similar establishments" refers solely to establishments similar to hotels and restaurants and usually is limited to establishments whose primary function is the furnishing of food, lodging, or both food and lodging.

(3) The Salesperson Takes Orders for Merchandise for Resale or Supplies Used in Business.

(a) Merchandise for resale includes goods, wares and

commodities that ordinarily are the objects of trade and commerce and that are purchased for resale. This term refers specifically to tangible materials that do not lose their identities between the time of purchase and the time of resale.

(b) Supplies for use in the customer's business operations means articles consumed in conducting or promoting the customers' businesses. Generally the term "supplies" includes all tangible items that are not "merchandise for resale" or capital items. Services such as radio time and advertising space, are intangible items and not within the definition. However, calendars, advertising novelties, etc., used by the advertiser in his business constitute "supplies."

(4) The contract of service contemplates that substantially all of the services are to be performed personally by the worker. This means that the services to which the contract relates will not be delegated to any other person by the worker who undertakes under the contract to perform such services; and

(5) The worker does not have a substantial investment in facilities used in connection with the performance of his or her services. The facilities include equipment and premises available for the work but does not include such tools and equipment or clothing as are commonly provided by employees; and

(6) The services are part of a continuing relationship with the person for whom the services are performed.

R994-204-203. Domestic Service Included in Covered Employment.

Subsection 35A-4-204(2)(k) defines when domestic services, that are exempt under Subsection 35A-4-205(1)(f), become covered employment.

(1) $1000 in a Calendar Quarter.

Domestic services performed in a private home, local college club or local chapter of a college fraternity or sorority are exempt unless the employer pays cash remuneration of $1000 or more in one or more calendar quarter in the current calendar year or the preceding calendar year. Cash wages include wages paid by cash, check, or money order. Cash wages do not include the value of food, lodging, clothing, and other non-cash items. However, cash given to an employee in lieu of these items is considered to be cash wages.

(2) Services That Are Domestic Services.

Domestic services include services of a household nature in or about any of the places listed in subsection (1) of this section. Domestic services include work done by:

(a) baby-sitters
(b) cleaning people
(c) drivers
(d) housekeepers
(e) nannies
(f) health aids
(g) maids
(h) caretakers
(i) yard workers
(j) cooks
(k) butlers

(3) Services That are Not Domestic Services.

Services that are not of a household nature such as secretarial services performed in a private home or services related to remodeling or building a private home, local college club or local chapter of a college fraternity or sorority are not domestic services.

(4) Private Home.

A private home is a fixed place of abode of an individual or family. This may include a dwelling unit in an apartment building or hotel.

(5) Local College Club or Local Chapter of a College Fraternity or Sorority Does Not Include an Alumni Club or Chapter.

(6) All Remuneration is Reportable.

Once the $1000 cash threshold is met, all payments including cash and non-cash payments are reportable as wages.

R994-204-301. Independent Contractor Services.

(1) An independent contractor is a worker who is customarily engaged in an independently established trade, occupation, profession, or business of the same nature as the services performed, and the individual providing the services must be free from the employer's control and direction while performing services for the employer. A worker must clearly establish his or her status as an independent contractor by taking steps that demonstrate independence indicating an informed business decision has been made.

(2) Payments to or through another entity for personal services performed by a worker is exempt from employment if the personal services meet the provisions of Subsection 35A-4-204(3).

R994-204-302. Independent Contractor Determination.

(1) The Department will determine the status of a worker based upon information provided by the employer, the worker, and any other available source.

(2) If a worker files a claim for benefits and the Department, as the result of an audit, investigation, or declaratory ruling, has made a determination that the worker is an independent contractor and his or her services for an employer are exempt from coverage, any earnings from those services for that employer will be excluded from the claimant's monetary determination. The claimant may protest the monetary determination by filing an appeal as provided in Section R994-204-402.

R994-204-303. Factors for Determining Independent Contractor Status.

Services will be excluded under Section 35A-4-204 if the service meets the requirements of this rule. Special scrutiny of the facts is required to assure that the form of a service relationship does not obscure its substance, that is, whether the worker is independently established in a like trade, occupation, profession or business and is free from control and direction. The factors listed in Subsections R994-204-303(1)(b) and R994-204-303(2)(b) of this section are intended only as aids in the analysis of the facts of each case. The degree of importance of each factor varies depending on the service and the factual context in which it is performed. Additionally, some factors do not apply to certain services and, therefore, should not be considered.

(1) Independently Established.

(a) An individual will be considered customarily engaged in an independently established trade, occupation, profession, or business if the individual is, at the time the service is performed, regularly engaged in a trade, occupation, profession, or business of the same nature as the service performed, and the trade, occupation, profession, or business is established independently of the alleged employer. In other words, an independently established trade, occupation, profession, or business is created and exists apart from a relationship with a particular employer and does not depend on a relationship with any one employer for its continued existence.

(b) The following factors, if applicable, will determine whether a worker is customarily engaged in an independently established trade or business:

(i) Separate Place of Business. The worker has a place of business separate from that of the employer.

(ii) Tools and Equipment. The worker has a substantial investment in the tools, equipment, or facilities customarily required to perform the services. However, "tools of the trade" used by certain trades or crafts do not necessarily demonstrate

independence.

(iii) Other Clients. The worker regularly performs services of the same nature for other customers or clients and is not required to work exclusively for one employer.

(iv) Profit or Loss. The worker can realize a profit or risks a loss from expenses and debts incurred through an independently established business activity.

(v) Advertising. The worker advertises services in telephone directories, newspapers, magazines, the Internet, or by other methods clearly demonstrating an effort to generate business.

(vi) Licenses. The worker has obtained any required and customary business, trade, or professional licenses.

(vii) Business Records and Tax Forms. The worker maintains records or documents that validate expenses, business asset valuation or income earned so he or she may file self-employment and other business tax forms with the Internal Revenue Service and other agencies.

(c) If an employer proves to the satisfaction of the Department that the worker is customarily engaged in an independently established trade, occupation, profession or business of the same nature as the service in question, there will be a rebuttable presumption that the employer did not have the right of or exercise direction or control over the service.

(2) Control and Direction.

(a) When an employer retains the right to control and direct the performance of a service, or actually exercises control and direction over the worker who performs the service, not only as to the result to be accomplished by the work but also as to the manner and means by which that result is to be accomplished, the worker is an employee of the employer for the purposes of the Act.

(b) The following factors, if applicable, will be used as aids in determining whether an employer has the right of or exercises control and direction over the service of a worker:

(i) Instructions. A worker who is required to comply with other persons' instructions about how the service is to be performed is ordinarily an employee. This factor is present if the employer for whom the service is performed has the right to require compliance with the instructions.

(ii) Training. Training a worker by requiring or expecting an experienced person to work with the worker, by corresponding with the worker, by requiring the worker to attend meetings, or by using other methods, indicates that the employer for whom the service is performed expects the service to be performed in a particular method or manner.

(iii) Pace or Sequence. A requirement that the service must be provided at a pace or ordered sequence of duties imposed by the employer indicates control or direction. The coordinating and scheduling of the services of more than one worker does not indicate control and direction.

(iv) Work on Employer's Premises. A requirement that the service be performed on the employer's premises indicates that the employer for whom the service is performed has retained a right to supervise and oversee the manner in which the service is performed, especially if the service could be performed elsewhere.

(v) Personal Service. A requirement that the service must be performed personally and may not be assigned to others indicates the right to control or direct the manner in which the work is performed.

(vi) Continuous Relationship. A continuous service relationship between the worker and the employer indicates that an employer-employee relationship exists. A continuous relationship may exist where work is performed regularly or at frequently recurring although irregular intervals. A continuous relationship does not exist where the worker is contracted to complete specifically identified projects, even though the service relationship may extend over a significant period of time.

(vii) Set Hours of Work. The establishment of set hours or a specific number of hours of work by the employer indicates control.

(viii) Method of Payment. Payment by the hour, week, or month points to an employer-employee relationship, provided that this method of payment is not just a convenient way of paying progress billings as part of a fixed price agreed upon as the cost of a job. Control may also exist when the employer determines the method of payment.

R994-204-401. Safe Haven Created by Independent Contractor Determinations.

The "safe haven" provision of 35A-4-204(4) allows an employer to rely on a declaratory order, ruling, or final determination by the Department that determines the independent contractor status of a worker or class of workers. A determination can be made at the request of an employer or by the Department as the result of an audit or status investigation. The final determination will only determine whether the employer is liable to pay contributions on payments made to the workers in question and does not affect the worker's right to challenge the determination at a more appropriate time like when the work relationship has ended and a claim for benefits has been filed. The worker, or class of workers, are not bound by the determination in the event a worker later files a claim for unemployment benefits.

R994-204-402. Procedure for Issuing a Safe Haven Determination.

(1) If the issue of the status of a worker or class of workers arises out of an audit or request for declaratory order and there is no claim for benefits pending at the time, the Department will determine the status on the basis of the best information available at the time. A request for a declaratory order will be denied if there is a pending claim for benefits by a worker who would be affected by the order.

(2) A worker whose status is determined as a result of an audit or declaratory order is not required to file a written consent to the determination pursuant to Subsection 63G-4-503(3)(b). Any consent given by the worker is invalid and will be considered to be in violation of Subsection 35A-4-103(1)(c)(ii).

(3) If the issue of a worker's status arises out of a claim for benefits and there has been a prior audit determination or declaratory order determining the status of the worker or a class of workers to which the individual belonged, the Department will issue a notice as part of the monetary determination, denying use of the worker's independent contractor earnings as wage credits for the base period on the basis of the prior status determination. The worker may protest the determination by filing an appeal within 15 days of the date of the notice. Upon receipt of a protest the Department will review the status of the worker. On the basis of its review, the Department will issue a new determination which will either affirm, reverse, or revise the original determination. The new determination will be mailed to the parties and can be appealed by the employer or the worker as though it were an "initial Department determination" as provided in rule Sections R994-508-101 through R994-508-104.

R994-204-403. Employer Reliance on Official Determination.

If a declaratory order or final audit finding has been issued concluding that a worker or class of workers are independent contractors, the employer will have no liability to pay unemployment contributions on payments made to the worker or workers, except as provided in Section R994-204-404.

R994-204-404. Effect of New Determination on Employer.

If a new determination by the Department, an administrative law judge, or the Workforce Appeals Board holds that the status of a worker or class of workers to which the individual belonged is that of employee for purposes of the Act, the employer is liable to pay unemployment contributions on all wages paid to workers in the class to which the individual belonged, from the beginning of the calendar quarter in which the new determination is made. In addition, the employer shall also be liable to pay contributions on any wages used by a claimant for purposes of establishing any claim for benefits affected by the new determination.

KEY: unemployment compensation, employment tests, independent contractor
July 1, 2007 35A-4-204
Notice of Continuation April 1, 2005