R23. Administrative Services, Facilities Construction and Management.
R23-3. Planning and Programming for Capital Projects.
R23-3-1. Purpose and Authority.

(1) This rule establishes policies and procedures for the authorization, funding, and development of programs for capital development and capital improvement projects and the use and administration of the Planning Fund.

(2) The Board's authority to administer the planning process for state facilities is contained in Section 63A-5-103.

(3) The statutes governing the Planning Fund are contained in Section 63A-5-211.

(4) The Board's authority to make rules for its duties and those of the Division is set forth in Subsection 63A-5-103(1).

R23-3-2. Definitions.

(1) "Agency" means each department, agency, institution, commission, board, or other administrative unit of the State of Utah.

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

(3) "Capital Development" is defined in Section 63A-5-104.

(4) "Capital Improvement" is defined in Section 63A-5-104.

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

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

(7) "Planning Fund" means the revolving fund created pursuant to Section 63A-5-211 for the purposes outlined therein.

(8) "Program" means a document containing a detailed description of the scope, the required areas and their relationships, and the estimated cost of a construction project.

(a) "Program" typically refers to an architectural program but, as used in this rule, the term "program" includes studies that approximate an architectural program in purpose and detail.

(b) "Program" does not mean feasibility studies, building evaluations, master plans, or general project descriptions prepared for purposes of soliciting funding through donations or grants.

R23-3-3. When Programs Are Required.

(1) For capital development projects, a program must be developed before the design may begin unless the Director determines that a program is not needed for that specific project. Examples of capital development projects that may not require a program include land purchases, building purchases requiring little or no remodeling, and projects repeating a previously used design.

(2) For capital improvement projects, the Director shall determine whether the nature of the project requires that a program be prepared.

R23-3-4. Authorization of Programs.

(1) The initiation of a program for a capital development project must be approved by the Legislature or the Board if it is anticipated that state funds will be requested for the design or construction of the project.

(2) When requesting Board approval, the agency shall justify the need for initiating the programming process at that point in time and also address the level of support for funding the project soon after the program will be completed.

R23-3-5. Funding of Programs.

Programs may be funded from one of the following sources.

(1) Funds appropriated for that purpose by the Legislature.

(2) Funds provided by the agency.

(a) This would typically be the funding source for the development of programs before the Legislature funds the project.

(b) Funds advanced by agencies for programming costs may be included in the project budget request but no assurance can be given that project funds will be available to reimburse the agency.

(c) Agencies that advance funds for programming that would otherwise lapse may not be reimbursed in a subsequent fiscal year.

(3) If an agency is able to demonstrate to the Board that there is no other funding source for programming for a project that is likely to be funded in the upcoming legislative session, it may request to borrow funds from the Planning Fund as provided for in Section R23-3-8.

R23-3-6. Administration of Programming.

(1) The development of programs shall be administered by the Division in cooperation with the requesting agency unless the Director authorizes the requesting agency to administer the programming.

(2) This Section R23-3-6 does not apply to projects that are exempt from the Division's administration pursuant to Subsection 63A-5-206(3).

R23-3-7. Restrictions of Programming Firm.

(1) Except as provided in Subsections 2 and 3, neither a firm that prepares a program for a project nor its subconsultants may be prohibited from being considered for selection as the lead design firm or a member of the design team for that project unless the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services contains such a restriction.

(2) In general, a firm that prepares a program for a project that is expected to be developed using the design-build method described in Section R23-1-45 may not be a member of the design-build team for that project. In order for this restriction to take effect, this restriction must be stated in the procurement documents for the selection of the firm for the programming services or the contract with the firm for the programming services. This restriction shall not apply to a subconsultant of the programming firm unless the procurement documents contain such a restriction.

(3) A restriction, as provided for in this Section may be waived if the Director makes a written determination that it is in the best interests of the State to waive this requirement.

R23-3-8. Use and Reimbursement of Planning Fund.

(1) The Planning Fund may be used for the purposes stated in Section 63A-5-211 including the development of:

(a) facility master plans;

(b) programs; and

(c) building evaluations or studies to determine the feasibility, scope and cost of capital development and capital improvement requests.

(2) Expenditures from the Planning Fund must be approved by the Director.

(3) Expenditures in excess of $25,000 for a single planning or programming purpose must also be approved in advance by the Board.

(4) The Planning Fund shall be reimbursed from the next funded or authorized project for that agency that is related to the purposes for which the expenditure was made from the Planning Fund.

(5) The Division shall report changes in the status of the Planning Fund to the Board.

R23-3-9. Development and Approval of Master Plans.

(1) For each major campus of state-owned buildings, the agency with primary responsibility for operations occurring at the campus shall, in cooperation with the Division, develop and maintain a master plan that reflects the current and projected development of the campus.

(2) The purpose of the master plan is to encourage long term planning and to guide future development.

(3) Master plans for campuses and facilities not covered by Subsection (1) may be developed upon the request of the Board or when the Division and the agency determine that a master plan is necessary or appropriate.

(4) The initial master plan for a campus, and any substantial modifications thereafter, shall be presented to the Board for approval.

KEY: planning, public buildings, design, procurement
March 15, 2005 63A-5-103
Notice of Continuation June 1, 2009 63A-5-211

R23. Administrative Services, Facilities Construction and Management.
R23-29. Across the Board Delegation.
R23-29-1. Purpose.
This rule provides the procedures for delegation of construction projects to the University of Utah and Utah State University.

R23-29-2. Authority.
This rule is authorized under Subsection 63A-5-103, which directs the Building Board to make rules necessary for the discharge of its duties and the duties of the Division of Facilities Construction and Management.

R23-29-3. Authority and Extent of Delegation.
(1) As permitted by subsection 63A-5-206(3)(a)(ii)(B), authority is delegated to the University of Utah and Utah State University, "the Institutions," to exercise direct supervision over the design and construction of all alterations, repairs, and improvements to existing facilities on their respective campuses up to the dollar amounts stated below.
(2) As permitted by subsection 63A-5-206(5)(c), the Board expresses its intent to authorize the delegation of the design and construction of new facilities on a project-by-project basis up to the dollar amounts stated below. New facilities means the addition of new space costing more than $100,000.
(3) This delegation is granted to Utah State University for projects having a total budget for design and construction of less than $2,000,000.
(4)(a) This delegation is granted to the University of Utah for the design and construction of all alteration, repair and improvement projects unless the Utah State Building Board, after consultation with the University of Utah, determines that the project should be managed by DFCM.
(b) For projects having a total budget for design and construction greater than $5,000,000, the University of Utah shall provide the following in writing to the Director of DFCM prior to initiating a project under this delegation:
(i) a notice of the University's desire to manage the project under this delegation authorization; and
(ii) a project management and staffing plan for the project.
(5) Projects may not be subdivided into multiple projects in order to arrive at projects which are small enough to meet the dollar limits for delegation.
(6) Substantial benefit and justification must be demonstrated before consideration will be given to any delegation requests from these institutions for projects larger than the above limits.
(7) When applicable, this delegation authority shall not take effect for a specific project until the following requirements are met:
(a) Legislative authorization for design and construction has been obtained for the construction of all new space costing more than $100,000.
(b) The requirements of section R23-29-17 regarding the completion of a DFCM administered architectural program have been satisfied.

R23-29-4. Fiduciary Control.
The Institutions shall assume fiduciary control over project finances and shall assume all responsibility for project budgets and expenditures. The Institutions shall be responsible for ensuring compliance with all applicable laws, rules, and building codes.

R23-29-5. Building Official.
Each Institution is designated as the Building Official for projects delegated. Institutions shall comply with all requirements of the Uniform Building Standards Act, Chapter 58-56. If an Institution does not have the internal staff to comply with this requirement, it must contract for the appropriate service.

R23-29-6. Procurement.
Each Institution shall comply with the state Procurement Code, Chapter 63-56, and its procurement rules. Any aspect of the Institution's rules for the procurement of architect/engineer services or construction which is less restrictive than the procurement rules adopted by the Building Board must be approved by the Board.

R23-29-7. Contract Documents.
The Institutions shall utilize substantially the same standard Contract Documents as used by DFCM. Any substantive differences must be approved by the Board.

R23-29-8. Transfer of State Funds.
(1) To the extent possible, all state funds appropriated to DFCM for projects delegated to the Institutions shall be transferred to the respective Institution immediately upon their receipt by DFCM.
(2) State funds provided from state issued bonds, or from other sources containing similar restrictions, shall be transferred to the Institutions on a reimbursement basis. Such reimbursements shall be made on a monthly basis upon receipt of a reimbursement request from the Institution detailing the expenditures made on each project.
(3) Upon completion of a project, any remaining statewide funds like roofing, paving) shall remain with the Institution to be used for a similar need on its campus. This activity shall be noted in the monthly report to the Building Board.

R23-29-9. Contingencies.
The Institutions shall be subject to the same laws and rules regarding contingency funds as is DFCM. The only difference is that contingency funds for delegated projects shall be segregated from the contingency funds held by DFCM for non-delegated projects.

R23-29-10. Space Standards.
The Institutions shall comply with the space standards as adopted by the Building Board. Any significant deviations from these standards shall be reported to the Board.

R23-29-11. Design Criteria.
The Institutions shall utilize the Design Criteria adopted by the Building Board. These may be supplemented by special requirements that are unique to each Institution. Any significant departures from the Board approved Design Criteria shall be reported to the Board.

R23-29-12. Value Engineering.
The Institutions shall comply with state law and Rule R23-6 regarding the value engineering and life cycle costing of facilities. DFCM may assist each Institution as requested in the performance of these reviews.

R23-29-13. Record Drawings.
At the completion of each delegated project, each Institution shall submit a copy of all record drawings to DFCM.

R23-29-14. Statutory Requirements on DFCM Projects.
(1) In addition to those noted elsewhere in this rule, the Institutions shall comply with the following statutory requirements which have been placed on DFCM projects.
(a) Subsection 63A-5-205(3) relating to the investment of contractor's retention.
(b) Subsection 63A-5-206(3)(c)(ii) relating to the

notification to local governments regarding certain types of projects.

(c) The Percent-for-Art program as provided in Sections 63A-5-206 and 63A-5-209, and Title 9, Chapter 6, Part 4.

(d) Subsection 63A-5-206(7) relating to the reporting of completed projects to the Office of the Legislative Fiscal Analyst.

(e) Section 63A-5-208 relating to the listing and changing of subcontractors and the disclosure of subcontractor bids.

(2) The Institutions and DFCM shall strive to avoid any confusion which could result from inconsistent procedures and requirements being used by each entity.

R23-29-15. Reporting.

(1) Each Institution shall report monthly to the Building Board on the status of its delegated projects.

(2) The following reports shall be presented in a similar format and content as that presented by DFCM on projects and funds it is administering.

(a) Architect/Engineer Contracts Awarded

(b) Construction Contracts Awarded

(c) Contingency Funds

(d) Statewide Funds

(e) Status Report for Projects in Construction

(3) The above reports shall be submitted to DFCM at least ten calendar days prior to each Board meeting to be included in packet sent to the Building Board.

(4) A copy of the above reports shall be submitted to the Office of the Commissioner of Higher Education for distribution to the Board of Regents at the same time it is submitted to DFCM.

R23-29-16. Capital Budget Requests.

The Institutions shall continue to submit all capital budget requests to DFCM and the Building Board for review, prioritization, and recommendation to the Governor and the Legislature.

R23-29-17. Programming.

(1) For projects within the definition of "Capital Developments" as defined in subsection 63A-5-103(3)(a), which will be funded wholly or in part by state funds for either construction or operations and maintenance, a facility program shall be developed under the supervision of DFCM unless this requirement is waived by the Building Board.

(2) For projects which are within the delegation limits set forth in section R23-29-1 and which do not meet the requirements of subsection R23-29-17(1), the Institutions may determine the extent of programming or scope definition required and supervise the development of these documents. No DFCM review or approval will be required.

R23-29-18. Sharing of Resources.

DFCM and the Institutions shall strive to share personnel resources where resources exist at one entity and not at another. The Institutions and DFCM shall enter into a separate agreement to accomplish this sharing of resources.

R23-29-19. Staffing Levels.

(1) The Institutions have represented that they have adequate existing resources to assume the responsibilities given to them under this delegation.

(2) The Institutions shall not increase the staffing levels related to the administration of capital projects beyond the levels represented in seeking this delegation which was 32 full time staff at the University of Utah and 15 full time staff and 5 F.T.E. of student employees at Utah State University.

R23-29-20. Review of Delegated Projects.

Upon direction of the Building Board, DFCM staff may review the management of delegated projects and report its findings to the Board.

R23-29-21. Authority to Modify Delegation.

The Building Board may modify or repeal the authority delegated under this rule by amending or repealing this rule.

KEY: buildings, delegation*
October 29, 1998 **63A-5-206**
Notice of Continuation June 1, 2009

R28. Administrative Services, Fleet Operations, Surplus Property.
R28-2. Surplus Firearms.
R28-2-1. Purpose and Authority.

This rule sets forth policies and procedures for disposing of surplus firearms from state agencies and participating local agencies, as authorized in the Utah Code, Title 63A, Chapter 9, Part 8. This rule governs the destruction, sale, transfer, or donation of surplus firearms to any agency or to the general public.

R28-2-2. Definitions.

"Firearms" means all state owned firearms, including any confiscated or seized firearms over which the state has disposal authority, and any firearms declared surplus by local subdivisions.

"USASP" means Utah State Agency for Surplus Property.

"handgun" means pistols and revolvers.

"hunting and sporting rifles" means long barreled shotguns and rifles manufactured for hunting or sporting purposes.

"nonlicensee" means an individual or organization not licensed by the Federal Bureau of Alcohol, Tobacco and Firearms to buy or sell firearms.

R28-2-3. Procedures.

A. All state owned firearms shall be disposed of under the general provisions of Rule R28-1.

1. As an exception to the purchase priority listed in Section R28-1-5, the sale of firearms directly to the general public by the USASP is prohibited.

2. Hunting and sporting rifles meeting Federal Firearms regulations may be sold only to firearms dealers licensed by the Federal Bureau of Alcohol, Tobacco and Firearms. All sales will be accomplished by either auction or sealed bid.

3. Handguns may only be transferred to a firearms dealer through sale or exchange when:

a. There is a change in the standard handgun and;

b. An agency is replacing more than half of the agency's handguns.

4. Handguns not purchased by legally constituted state law enforcement agencies and all firearms not meeting Federal Firearms regulations will either be transferred to the Utah State Public Safety Crime Lab for use or be destroyed.

B. A peace officer retiring from state service and desiring to retain his service firearm, may purchase his assigned firearm at one-half of its current replacement cost.

1. Proof of intent to retire shall be sent to the USASP along with a completed standard form SP-1 and shall be signed by an authorized agent of the owning agency.

2. The replacement cost shall be determined by the most recent state purchase order or other documentation for the specified firearm(s) and a copy shall accompany the completed standard form SP-1.

C. All firearms retained by the USASP shall be in accordance with Federal Firearms regulations pursuant to Sections 921(a)(19) and 922(s) of Title 18, United States Code.

1. Written certification that surplus firearms meet federal firearms regulations shall be provided by the owning agency or a qualified armorer.

D. All firearms retained by the USASP shall be in good working condition.

a. Written certification specifying the condition of surplus firearms shall be provided by the owning agency or a qualified armorer.

KEY: firearms
May 11, 2009 **63A-9-801**
Notice of Continuation February 7, 2006

R51. Agriculture and Food, Administration. **Notice of Continuation September 2, 2005** **63G-4-503**

R51-1. Public Petitions for Declaratory Rulings.

R51-1-1. Authority.

This rule is promulgated under the authority of Section 63G-3-201, and Section 63G-4-503, and provides the procedures for submission, review, and disposition of petitions for agency declaratory rulings on the applicability of statutes, rules, and orders governing or issued by the Department of Agriculture and Food.

R51-1-2. Definitions.

A. Terms used in this rule are defined in Section 63G-3-102, except "Agency" means The Utah Department of Agriculture and Food.

B. In addition:

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

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.

R51-1-3. Petition Procedure.

A. Any person or agency may petition for a declaratory ruling.

B. The petition shall be addressed and delivered to the Commissioner of Agriculture and Food.

C. The Department of Agriculture and Food shall stamp the petition with the date of receipt.

R51-1-4. Petition Form.

The petition shall:

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

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

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

4. describe the reason or need for the applicability review;

5. include an address and telephone where the petitioner can be reached during regular working hours; and

6. be signed by the petitioner.

R51-1-5. Petition Review and Disposition.

A. The Commissioner or designee shall:

1. review and consider the petition;

2. prepare a declaratory ruling stating:

a. the applicability or non-applicability of the statute, rule, or order at issue;

b. the reason for the applicability or non-applicability of the statute, rule, or order; and

c. any requirements imposed on the agency, the petitioner, or any person as a result of the ruling.

B. The Department may:

1. interview the petitioner;

2. hold a public hearing on the petition;

3. consult with counsel or the Attorney General; or

4. take any action the agency, in its judgment, deems necessary to provide the petition adequate review and due consideration.

C. The Department of Agriculture and Food shall prepare the declaratory ruling without unnecessary delay and shall send the petitioner a copy of the ruling by certified mail, or shall send the petitioner notice of progress in preparing the ruling, within 30 days of receipt of the petition.

D. The Department of Agriculture and Food shall retain the petition and a copy of the declaratory ruling in its records.

KEY: administrative procedure

1987 **63G-3-201**

R51. Agriculture and Food, Administration.
R51-3. Government Records Access and Management Act.
R51-3-1. Purpose and Authority.

Under authority of the Government Records Access and Management Act, Section 63G-2-204, and Section 63A-12-104. This rule provides procedures for access and denial of access to government records.

R51-3-2. Duties of Divisions within the Department.

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

A. The duties set forth in Section 63A-12-103; and

B. Review and respond to requests for access to division records.

R51-3-3. Requests for Access.

A. All requests for access to records shall be in writing. Requests shall be directed to the attention of the records officer of the particular division which the requester believes generated or possesses the records.

B. The division is not required to respond to requests submitted to the wrong person or location within the time limits set by the Government Records Access and Management Act.

C. A fee will be charged for copies of records provided. Amounts charged for photocopying will be as authorized in Section 4-1-6 and Subsection 63G-2-203. Fees must be paid at the time of the request or before the records are provided to the requester.

R51-3-4. Requests to Amend a Record.

An individual may contest the accuracy or completeness of a document pertaining to that individual pursuant to Section 63G-2-603. The request shall be made in writing to the records officer of the particular division.

Adjudicative proceedings under the GRAMA Act shall be informal and will be carried out in accordance with Section 63G-2-401 et seq., with the exception of appeals.

R51-3-5. Appeals of Requests to Amend a Record.

Appeals of requests to amend a record shall be handled as informal hearings under the Utah Administrative Procedures Act.

R51-3-6. Forms.

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

KEY: government documents, freedom of information, public records
1992 63G-2-204
Notice of Continuation March 16, 2006

R51. Agriculture and Food, Administration.
R51-4. ADA Complaint Procedure.
R51-4-1. Authority and Purpose.

A. This rule is promulgated pursuant to Subsection 63G-3-201. The Department of Agriculture and Food adopts and defines complaint procedures to provide for prompt and equitable resolution of complaints filed in accordance with Title II of the Americans With Disabilities Act, pursuant to 28 CFR 35.107, July 1, 1992 Ed.

B. 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 this department, or be subjected to discrimination by this department.

R51-4-2. Definitions.

A. "The ADA Coordinator" means the Department of Agriculture and Food coordinator or his designee who has responsibility for investigating and providing prompt and equitable resolution of complaints filed by qualified individuals with disabilities in accordance with the Americans With Disabilities Act, or provisions of this rule.

B. "The ADA State Coordinating Committee" means that committee with representatives designated by the directors of the following agencies:

(1) Office of Planning and Budget;
(2) Department of Human Resource Management;
(3) Division of Risk Management;
(4) Division of Facilities Construction Management, and
(5) Office of the Attorney General.

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

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

E. "Individual with a disability" means a person who has a disability which limits one of the 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 Department of Agriculture and Food, or who would otherwise be an eligible applicant for vacant state positions, as well as those who are employees of the state.

R51-4-3. Filing of Complaints.

A. The complaint shall be filed in a timely manner to assure prompt, effective assessment and consideration of the facts, but no later than 180 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 department's ADA Coordinator in writing or in another acceptable 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 department's alleged discriminatory action in sufficient detail to inform the department of the nature and date of the alleged violation;
(4) describe the action and accommodation desired, and
(5) be signed by the individual or by a 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.

R51-4-4. 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 R51-4-3(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 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:

(1) an expenditure of funds which is not absorbable within the agency's budget and would require appropriation authority;
(2) facility modifications; or
(3) reclassification or reallocation in grade, the coordinator shall consult with the ADA State Coordinating Committee.

R51-4-5. Issuance of Decision.

A. Within 15 working days after receiving the complaint, the ADA Coordinator shall issue a decision outlining in writing or in another acceptable or 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.

R51-4-6. Appeals.

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

B. The appeal shall be filed in writing with the department's executive director or a designee other than the department's 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 department's 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 or designee shall review the factual findings of the investigation and the individual's statement regarding the inappropriateness of the coordinator's decision and arrive at an independent conclusion and recommendation. Additional investigations may be conducted if necessary to clarify questions of fact before arriving at an independent conclusion. Before making any decision that would involve:

(1) an expenditure of funds which is not absorbable and would require appropriation authority;
(2) facility modifications; or
(3) 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 acceptable or suitable format to the individual.

G. If the executive director or his designee is unable to reach a decision within the ten working day period, he shall notify the individual in writing or by another acceptable or suitable format why the decision is being delayed and the additional time needed to reach a decision.

R51-4-8. Relationship to Other Laws.

This rule does not prohibit or limit the use of remedies available to individuals under the Utah Anti-Discrimination Complaint Procedures Section 67-19-32; the Federal ADA

Complaint Procedures, 28 CFR Subpart F, beginning with Part 35.170, July 1, 1992 edition; or any other Utah State or federal law that provides equal or greater protection for the rights of individuals with disabilities.

KEY: developmentally disabled, discrimination, grievances
1992 63G-3-201
Notice of Continuation March 16, 2006

R68. Agriculture and Food, Plant Industry.
R68-19. Compliance Procedures.
R68-19-1. Authority.

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

R68-19-2. Definition of Terms.

(A) An Emergency Order means a written action by the division, which is issued to a person, as a result of information that is known by the division, which identifies an immediate and significant danger to the public's health, safety or welfare, and warrants prompt action pursuant to Section 63G-4-502.

Emergency orders include: "stop sale", "stop use", "removal-order", "quarantine ", "regulate-control order", and may be issued when division action is warranted to stop the sale of a product, or halt an immediate condition or service from occurring, pursuant to Sections 4-11-12, 4-12-7(2), 4-13-8(1), 4-14-8(2), 4-15-11(1), 4-16-8(1), and 4-17-3(8).

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

R68-19-3. Emergency Order.

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

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

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

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

(3) references to statutes or administrative rules violated,

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

(5) the signature of the agency representative, and

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

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

Pursuant to 4-11-11(3), 4-12-7(2), 4-13-8(2), 4-14-8(2), 4-15-8(2) and 4-17-8(2) the person subject to the written order may be required to pay the expense incurred by the department in connection with the withdrawal of the product, condition or service from the market.

R68-19-4. Citation.

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

The citation will include the following information:

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

(2) references to the statutes or rules violated,

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

(4) a penalty or fine amount

(5) the signature of the agency representative,

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

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

Fine or penalty amounts will be set by the department or the division, under the direction of the commissioner, for amounts up to $5,000 per violation, or if the citation involves a criminal proceeding, the person may be found guilty of a class B misdemeanor. In accordance with Section 4-2-15, fine or penalty amounts shall be determined according to the following: PENALTY AMOUNTS: Citation per violation up to, but not to exceed $500; if not paid within 15 days, 2 times citation amount; if not paid within 30 days, 4 times citation amount

R68-19-5. Request for Hearing.

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

KEY: agricultural law
April 15, 1998 **4-2-2(1)(j)**
Notice of Continuation January 29, 2007

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 the same 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 the same 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 the same 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 the same 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 the same 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 the same 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 the same 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 the same 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 the same 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	Warning 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	Warning 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.

(a) Examples of mitigating circumstances are:

(i) no prior violation history;

(ii) good faith effort to prevent a violation;

(iii) existence of written policies governing employee conduct;

(iv) 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; and

(v) there was no evidence that the investigation was based on complaints received or on observed misconduct of others, but was based solely on the investigating authority creating the opportunity for a violation.

(b) Examples of aggravating circumstances are:

(i) prior warnings about compliance problems;

(ii) prior violation history;

(iii) lack of written policies governing employee conduct;

(iv) multiple violations during the course of the investigation;

(v) efforts to conceal a violation;

(vi) intentional nature of the violation;

(vii) the violation involved more than one patron or

employee;

(viii) the violation involved a minor and, if so, the age of the minor; and

(ix) whether the violation resulted in injury or death.

(6) Violation Grid. Any proposed substantive change to the violation grid that would establish or adjust the degree of seriousness of a violation shall require rulemaking in compliance with title 63G-3, the Utah Administrative Rulemaking Act. 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" (2008 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(45) 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.

R81-1-28. Special Commission Meetings - Fees.

(1) Authority. This rule is pursuant to 32A-1-106(9) that gives the commission authority to hold special commission meetings; and 32A-1-107(1) that gives the commission authority to establish procedures for granting and denying permits and to prescribe fees payable for permits.

(2) Purpose. This rule authorizes the commission to assess an administrative fee in addition to the regular permit fee to cover the additional administrative costs of convening a special commission meeting to consider the application of an applicant for a single event permit or temporary special event beer permit who failed to timely submit the permit application to be considered at the commission's regularly scheduled monthly meeting.

(3) Application of Rule.

(a) If the commission agrees to convene a special commission meeting to accommodate an applicant described in Section (2), the commission shall assess an administrative fee of $350 in addition to the regular permit fee.

(b) The administrative fee in Section (3)(a) shall be used to offset the costs of convening the special meeting including, but not limited to:

(i) department costs associated with scheduling, arranging, and providing notice of the special meeting;

(ii) department costs associated with any emergency or electronic meeting held pursuant to R81-1-19 and -20;

(iii) payment of per diem and expenses to commissioners; and

(iv) any other costs incurred.

(c) The administrative fee in Section (3)(a) shall be paid prior to the convening of the special commission meeting.

(d) The administrative fee in Section (3)(a) is a non-refundable fee.

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32A-1-106(9)
32A-1-107
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)

R81. Alcoholic Beverage Control, Administration.
R81-2. State Stores.
R81-2-1. Special Orders of Liquor by Public.

(1) Purpose. A special order product is any product not listed on the department's product/price list. This rule outlines the procedures for accepting, processing, ordering and disbursing special orders.

(2) Application of Rule.

(a) Any state store may process special order requests.

(b) Any individual may place a special order at any state liquor store. Special orders may be placed by groups of individuals, organizations, or retail licensees either at a state liquor store or with the purchasing division of the department. A special order shall be processed as follows:

(i) A special order form must be filled out and signed by the customer for each special order product purchased. The state liquor store shall forward the form to the department's purchasing division.

(ii) Special orders may be ordered only by the case, not by the bottle. There is no handling fee on special orders.

(iii) Customers should be advised to allow at least two months between processing and delivery of a special order.

(iv) Special orders for beer will be subject to availability and according to the distributor's shipping criteria.

(v) If a group, organization, or retail licensee places a special order, they may designate a particular package agency or state store to which they want the special order items to be sent. They shall include the name and telephone number of the individual who will pick up and pay for the special order product at that location.

(vi) A special order must include the product name and distributor or shipper.

(vii) The department's special order buyer shall obtain a retail bottle price and call the customer and/or state liquor store for clearance to proceed with the order.

(viii) When the special order arrives, the package agency or state store to which the special order has been sent shall immediately notify the customer, and the customer shall pick up the order as soon as possible after notification. The customer shall pay for and pick up the entire special order. The package agency or state store is not allowed to warehouse special ordered products. All merchandise must be cleared from the system before a reorder on that special order item is allowed.

(ix) Special orders may only be placed by customers. State stores may not place a special order unrelated to a particular customer as a means to sell unlisted products to the general public.

(x) Special orders of beer, wine or spirits with lower prices than quoted to the department on products handled by or similar to products handled by the department will be allowed only on two conditions:

(A) the department has the opportunity to purchase the same product at the same price; or

(B) the individual, group of individuals, organization, or retail licensee name is part of the design of the front label found on the product.

R81-2-2. Liquor Returns, Refunds and Exchanges.

(1) Purpose. This rule establishes guidelines for accepting liquor returns, refunds and exchanges.

(2) Application of Rule.

(a) Unsaleable Product. Unsaleable product includes product that is spoiled, leaking, contains foreign matter, or is otherwise defective. The department will accept for refund or exchange liquor merchandise that is unsaleable subject to the following conditions and restrictions:

(i) Returns of unsaleable merchandise are subject to approval by the store manager to verify that the product is indeed defective.

(ii) The product must be returned within a reasonable time of the date of purchase. Discontinued products may not be returned. Vintages of wine that are not currently being retailed by the department may not be returned.

(iii) All returned product must have the state stamp attached to each bottle.

(iv) No refunds shall be given for wines returned due to spoilage such as corkiness, oxidation, and secondary fermentation, or due to the customer's unfamiliarity with the characteristics of the product. Such wines may only be exchanged for another bottle of the same product. Wine will not be accepted for refund or exchange if the return is a result of improper extraction of the cork.

(b) Saleable Product. Store managers are authorized to accept saleable returned merchandise from licensees, single event permit holders, convention groups, and individual customers, subject to the following conditions and restrictions:

(i) Returns of saleable merchandise are subject to approval by the store manager. The customer may receive a refund or exchange of product for the return. Large returns will be accepted from licensees, single event permittees, convention groups and other organizations only if prior arrangements have been made with the store manager.

(ii) Returns should be made within a reasonable amount of time from the date of purchase, and all returned merchandise must be in good condition with a state stamp attached to every bottle. Returns of $50.00 or more shall not be accepted without a receipt. Therefore, it is necessary for cashiers to print a receipt for all purchases of $50.00 or more. Signs should be posted at each cash register informing customers of this requirement. Merchandise shall be refunded at the price paid by the customer, or the current price, whichever is lower.

(iii) Wine and beer, due to their perishable nature and susceptibility to temperature changes, should be accepted back with caution. These products can only be returned if the store manager has personal knowledge of how they have been handled and stored.

(iv) If the total amount of the return is more than $500 the store manager shall fill out a AReturned Merchandise Acknowledgment Receipt@ (LQ-45), and submit a copy to the office. A refund check will be processed at the office and mailed to the customer. Customers need to be informed that it generally takes three to six weeks to process payment.

(v) If the total value of the returned merchandise is more than $1,000, a 10% restocking fee shall be charged on the total amount.

(c) Unreturnable Products. The following items may not be returned:

(i) All limited item wines - wines that are available in very limited quantities.

(ii) Any products that have been chilled, over-heated, or label-damaged.

(iii) Outdated (not listed on the department's product/price list) and discontinued products.

(iv) Merchandise purchased by catering services.

(d) A cash register return receipt shall be completed for each product return. The following information must be on the receipt: the customer's name, address, telephone number, driver's license number, and signature. The cashier must attach the receipt to the cash register closing report.

R81-2-3. Warning Sign.

All state stores shall display in a prominent place a "warning sign" as defined in R81-1-2.

R81-2-4. Identification Guidelines to Purchase Liquor.

The department accepts only four forms of identification to establish proof of age for the purchase of liquor by customers:

(1) A current valid driver's license that includes date of

birth and has a picture affixed and is issued in this state under Title 53, Chapter 3, Uniform Driver License Act, or in accordance with the laws of another state;

(2) A current valid identification card that includes date of birth and has a picture affixed issued by this state under Title 53, Chapter 3, Part 8, Identification Card Act, or issued by another state that is substantially similar to this state's identification card;

(3) A current valid military identification card that includes date of birth and has a picture affixed; or

(4) A current valid passport.

If a person's age is still in question after presenting proof of age, the department may require the person to also sign a "statement of age" form as provided in 32A-1-303. The form shall be filed alphabetically by the close of the business day, and shall be maintained on file for a period of three years.

R81-2-5. Advertising.

The advertising or promotion of liquor products within state stores is prohibited. An employee may inform the customer as to the characteristics of a particular brand or type of liquor, provided the information is linked to a comparison with other brands or types.

R81-2-6. Refusal of Service.

An employee of the store may refuse to sell liquor to any person whom the employee has reason to believe is purchasing or attempting to purchase liquor in violation of Utah Alcoholic Beverage Control laws. The employee may also detain the person and hold the person's form of identification in a reasonable manner and for a reasonable length of time for the purpose of informing a peace officer of a suspected violation.

R81-2-7. Minors on Premises.

No person under the age of 21 years may enter a state liquor store unless accompanied by a parent, legal guardian, or spouse that is 21 years of age or older. Signs notifying the public of this rule shall be posted in a prominent place on the doors or windows of the state liquor store.

R81-2-8. Accepting Checks as Payment for Liquor.

(1) A state liquor store may accept a check as payment for liquor from an individual customer only under the following conditions:

(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.

(b) The following must appear on the check:

(i) name (must be imprinted);

(ii) address (if post office box, the full address must be written in); and

(iii) telephone number (may be hand-written).

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(d) The check must be made out for the exact amount of the purchase.

(e) An acceptable form of identification is required for any check written over $50.00, and may be required at the discretion of the cashier or store manager for any check written under $50.00. Acceptable forms of identification include those listed in R81-2-4.

(2) A state liquor store may accept a check as payment for liquor from a licensee only under the following conditions:

(a) The check must be imprinted with the name of the licensee's business, its business address, and its telephone number.

(b) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(c) The check must be made out for the exact amount of the purchase.

(3) A state liquor store may accept a business or company check as payment for liquor only under the following conditions:

(a) The check may be drawn only on a United States, Canadian, Puerto Rican, or U.S. Virgin Islands financial institution.

(b) The check must be imprinted with the name of the business or company, its business address, and its telephone number.

(c) The check must be made out to the Department of Alcoholic Beverage Control, or D.A.B.C. (no two-party checks).

(d) The check must be made out for the exact amount of the purchase.

(e) Further identification is not required.

(f) The department may place a maximum limit on the total dollar amount in checks a business or company may tender to the department in a 24 hour period.

(4) A state liquor store may accept a traveler's check as payment for liquor under the following conditions:

(a) Traveler's checks shall be in "US Dollars".

(b) Each traveler's check shall have been previously signed by the holder of the check at the issuing bank or company. The check shall then be signed a second time in front of the DABC store employee that is handling the sale. The store employee shall compare the two signatures to verify that the signatures match, and shall otherwise examine the check to verify its validity.

(c) Traveler's checks shall be made out to the Department of Alcoholic Beverage Control or "D.A.B.C."

(d) When accepting a traveler's check for $50.00 or more, the store employee shall:

(i) call the issuing bank or company and receive an authorization, and authorization number; and

(ii) check the identification of the customer. Acceptable forms of identification include those listed in R81-2-4.

(e) On the upper, left hand corner of a traveler's check for $50.00 or more, the employee shall write:

(i) the authorization number from the issuing bank or company;

(ii) the type of identification used including expiration date and individual's identification number; and

(iii) the store employee's initials.

R81-2-9. Accepting Credit Cards as Payment for Liquor.

(1) Purpose. This rule explains the procedures to be followed by state liquor store employees in accepting credit cards for the purchase of alcoholic beverages.

(2) Application of Rule.

(a) The owner of the credit card must furnish the cashier with their actual credit card. No sale may be based on the customer merely furnishing a credit card number, or another person's credit card, including that of their spouse.

(b) The cashier shall examine the security features on the card such as signature, account number, expiration date, and hologram before accepting the card.

(c) The card must be signed by the card holder.

(d) If for any reason the credit card cannot be scanned, the cashier shall hand-key the credit card number into the cash register keyboard. If the transaction is approved, the cashier shall imprint a copy of the credit card, and have the card holder sign it.

(e) After the cashier scans or hand-keys a credit card, the credit card company may approve or reject the transaction. A rejection may indicate that the card has been stolen, the customer's account is over-drawn, the card has expired, or some other problem. The cashier may receive several messages from the credit card company.

(i) If the message is "decline" or "card not accepted", the

cashier should return the card to the customer, suggest another form of payment, and suggest that the customer contact the issuer of the card.

(ii) If the message is "call" or "call hold", the store employee should hold the card and either phone the credit card company's voice authorization center for more information, or enter a "code 10" request. The voice authorization center may instruct that the card be confiscated. The card should then be obtained only if it can be done by peaceful means, and if the card holder voluntarily agrees to surrender the card. The "code 10" request will result in the credit card company researching the status of the card and approving the transaction with a "yes" or rejecting the transaction with a "no" prompt. At no time should store employees put themselves at risk by confiscating a credit card against the desires of the cardholder. If the card can be willingly surrendered and confiscated, the store employee should destroy the card by cutting it in half lengthwise shortly after leaving the customer's presence. The card pieces should then be sent to the card owner's bank with a completed ABC Department LQ-55 form having been filled out by a store employee.

(f) Credit card receipts contain confidential information that must be safeguarded. Cashiers should not throw the receipts in the trash. State store managers and their employees should consult their regional manager concerning proper storage and disposal of receipts.

(g) Refunds, or exchanges of products of unequal value that were purchased with a credit card, shall be handled by crediting the customer's credit card account. The cash register must be balanced by doing a return at the register.

(h) Licensee purchases may not be paid by credit card. Licensee purchases may be only in cash or by check.

R81-2-10. State Store Hours.

(1) Sale or delivery of liquor may not be made on the premises of any state store, nor may any state store be kept open for the sale of liquor:

(a) on any day prohibited by 32A-2-103(5);

(b) on any other day before 10 a.m. or later than 10 p.m.

(2) Subject to the restrictions of subsection (1), the department may adjust the sales hours for each state store based on such factors as the locality of the store, tourist traffic, demographics, population to be served, and customer demand in the area.

R81-2-11. Industry Members in State Stores.

An industry member, as defined in 32A-12-601, shall be limited to the customer areas of a state store except as follows:

(1) An industry member may be allowed in the storage area of a state store with the approval of the store manager for the limited purpose of stocking the industry member's own products; and

(2) An industry member may be allowed in the office or other suitable area of a state store with the approval of the store manager for the purpose of discussing the industry member's products.

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R81. Alcoholic Beverage Control, Administration.
R81-4A. Restaurant Liquor Licenses.
R81-4A-1. Licensing.

(1) Restaurant liquor licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-102(3), 32A-4-103, and 32A-4-106(25).

(2) A restaurant liquor licensee that wishes to operate the same licensed premises under the operational restrictions of an on-premise beer retailer during certain designated periods of the day or night, must apply for and be issued a separate on-premise beer retailer license subject to the following:

(a) The same restaurant licensee must separately apply for a state on-premise beer retailer license pursuant to the requirements of Sections 32A-10-202, -203, and -205.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) Restaurant liquor licensees holding a separate on-premise beer retailer license must operate in accordance with 32A-10-206 and R81-10 during the hours the on-premise beer retailer license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

R81-4A-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a restaurant license when the requirements of Sections 32A-4-102, -103, and -105 have been met, a completed application has been received by the department, and the restaurant premises have been inspected by the department.

R81-4A-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-105, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-102(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4A-5. Restaurant Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when a restaurant liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4A-6. Restaurant Liquor Licensee Operating Hours.

Allowable hours of liquor sales shall be in accordance with Section 32A-4-106(9). However, the licensee may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4A-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including light beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32A-4-106(26), shall be commenced upon the patron's first purchase and shall be maintained by the restaurant during the course of the patron's stay at the restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32A-4-106(23).

(a) The restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, liquor, wine, set-ups, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately suspended by the commission. Any suspension shall remain in effect until the licensee is able to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within three months of the date the license was suspended, shall result in the revocation of the license.

(3) Liquor dispensing shall be in accordance with Section

32A-4-106; Section R81-1-9 (Liquor Dispensing Systems), and Section R81-1-11 (Multiple Licensed Facility Storage and Service) of these rules.

R81-4A-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the restaurant as approved by the department.

R81-4A-9. Alcoholic Product Flavoring.

Restaurant liquor licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the restaurant liquor license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4A-10. Table Service.

A wine service may be performed by the server at the patron's table for wine either purchased at the restaurant or carried in by a patron, provided the wine has an official state label affixed. The wine may be opened and poured by the server.

R81-4A-11. Consumption at Patron's Table.

(1) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department, but may not be located at the site where alcoholic beverages are dispensed to the server or stored.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

(3) All liquor consumed in a licensed restaurant must come from a container or package having an official state label affixed.

R81-4A-12. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4A-13. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4A-14. Brownbagging.

When private social functions or privately hosted events, as defined in 32A-1-105(47), are held on the premises of a licensed restaurant, the proprietor may, in his or her discretion, allow members of the private group to bring onto the restaurant premises, their own alcoholic beverages under the following circumstances:

(1) When the entire restaurant is closed to the general public for the private function or event, or

(2) When an entire room or area within the restaurant such as a private banquet room is closed to the general public for the private function or event, and members of the private group are restricted to that area, and are not allowed to co-mingle with public patrons of the restaurant.

KEY: alcoholic beverages
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R81. Alcoholic Beverage Control, Administration.
R81-4B. Airport Lounges.
R81-4B-1. Licensing.

Airport lounge liquor licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-202(3), 32A-4-203 and 32A-4-206(21).

R81-4B-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an airport lounge license when the requirements of Sections 32A-4-202, -203, and -205 have been met, a completed application has been received by the department, and the airport lounge premises have been inspected by the department.

R81-4B-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-205 may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4B-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-202(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4B-5. Airport Lounge Liquor Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an airport lounge liquor licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4B-6. Airport Lounge Liquor Licensee Operating Hours.

Liquor sales shall be in accordance with Section 32A-4-206(9). However, licensees may open the liquor storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4B-7. Sale and Purchase of Alcoholic Beverages.

A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32A-4-206(22), shall be commenced upon the patron's first purchase and shall be maintained by the airport lounge during the course of the patron's stay at the airport lounge regardless of where the patron orders and consumes an alcoholic beverage. Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

R81-4B-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the airport lounge as approved by the department.

R81-4B-9. Alcoholic Product Flavoring.

Airport lounge licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the airport lounge license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No airport lounge employee under the age of 21 years may handle alcoholic product flavorings.

R81-4B-10. Price Lists.

(1) Each licensee shall have available for its patrons a printed price list containing current prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and the list is readily available to the patron.

(3) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4B-11. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or

similar identification number.

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R81. Alcoholic Beverage Control, Administration.
R81-4C. Limited Restaurant Licenses.
R81-4C-1. Licensing.

Limited restaurant licenses are issued to persons as defined in Section 32A-1-105(44). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-303(3), 32A-4-304, and 32A-4-307(25).

R81-4C-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of a limited restaurant license when the requirements of Sections 32A-4-303, -304, and -306 have been met, a completed application has been received by the department, and the limited restaurant premises have been inspected by the department.

R81-4C-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-306, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4C-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-303(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4C-5. Limited Restaurant Licensee Wine and Heavy Beer Order and Return Procedures.

The following procedures shall be followed when a limited restaurant licensee orders wine or heavy beer from or returns wine or heavy beer to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4C-6. Limited Restaurant Licensee Operating Hours.

Allowable hours of wine and heavy beer sales shall be in accordance with Section 32A-4-307(9)(a). However, the licensee may open the wine and heavy beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4C-7. Sale and Purchase of Alcoholic Beverages.

(1) Alcoholic beverages (including beer) must be sold in connection with an order for food placed and paid for by a patron. An order for food may not include food items gratuitously provided by the limited restaurant to patrons. A patron may pay for an alcoholic beverage at the time of purchase, or, at the discretion of both the licensee and the patron, the price charged may be added to the patron's tab, provided that a written beverage tab, as provided in Section 32A-4-307(26), shall be commenced upon the patron's first purchase and shall be maintained by the limited restaurant during the course of the patron's stay at the limited restaurant regardless of where the patron orders and consumes an alcoholic beverage.

(2) The limited restaurant shall maintain at least 70% of its total business from the sale of food pursuant to Section 32A-4-307(23).

(a) The limited restaurant shall maintain records separately showing quarterly expenditures and sales for beer, heavy beer, wine, and food. These shall be available for inspection and audit by representatives of the department, and maintained for a period of three years.

(b) If any inspection or audit discloses that the sales of food are less than 70% for any quarterly period, an order to show cause shall be issued by the department to determine why the license should not be immediately suspended by the commission. Any suspension shall remain in effect until the licensee is able to prove to the satisfaction of the commission that in the future, the sales of food will meet or exceed 70%. Failure of the licensee to provide satisfactory proof of the required food percentage within three months of the date the license was suspended, shall result in the revocation of the license.

(3) Wine dispensing shall be in accordance with Section 32A-4-307; and R81-1-11 (Multiple-Licensed Facility Storage and Service) of these rules.

R81-4C-8. Alcoholic Product Flavoring.

(1) Limited restaurant licensees may use alcoholic product flavorings including spirituous liquor products in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No limited restaurant employee under the age of 21 years may handle alcoholic product flavorings.

R81-4C-9. Table Service.

A wine service may be performed by the server at the patron's table for wine either purchased at the limited restaurant or carried in by a patron, provided the wine has an official state label affixed. The wine may be opened and poured by the server.

R81-4C-10. Consumption at Patron's Table.

(1) A patron's table may be located in waiting, patio, garden and dining areas previously approved by the department, but may not be located at the site where alcoholic beverages are dispensed to the server or stored.

(2) Consumption of any alcoholic beverage must be within a reasonable proximity of a patron's table so as to ensure that the server can maintain a written beverage tab on the amount of alcoholic beverages consumed.

(3) All wine and heavy beer consumed in a limited restaurant must come from a container or package having an official state label affixed.

R81-4C-11. Menus; Price Lists.

(1) Contents of Alcoholic Beverage Menu.

(a) Each limited restaurant licensee shall have readily available for its patrons a printed alcoholic beverage price list, or menu containing current prices of all wine, heavy beer, and beer. This list shall include any charges for the service of packaged wines or heavy beer.

(b) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(c) Customers shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(d) A licensee or his employee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4C-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

KEY: alcoholic beverages
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R81. Alcoholic Beverage Control, Administration.
R81-4D. On-Premise Banquet License.
R81-4D-1. Licensing.

(1) An on-premise banquet license may be issued only to a hotel, resort facility, sports center or convention center as defined in this rule.

(a) "Hotel" is a commercial lodging establishment:

(i) that offers temporary sleeping accommodations for compensation;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the hotel to provide complete meals; and

(iv) that has at least 1000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 75 people, provided that in cities of the third, fourth or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(b) "Resort facility" is a publicly or privately owned or operated commercial recreational facility or area:

(i) that is designed primarily to attract and accommodate people to a recreational or sporting environment;

(ii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iii) that has adequate kitchen or culinary facilities on the premises of the resort to provide complete meals; and

(iv) that has at least 1500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(c) "Sports center" is a publicly or privately owned or operated facility:

(i) that is designed primarily to attract people to and accommodate people at sporting events;

(ii) that has a fixed seating capacity for more than 2,000 persons;

(iii) that is capable of hosting conventions, conferences, and food and beverage functions under a banquet contract;

(iv) that has adequate kitchen or culinary facilities on the premises of the sports center to provide complete meals; and

(v) that has at least 2500 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated areas of a county, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(d) "Convention center" is a publicly or privately owned or operated facility:

(i) the primary business or function of which is to host conventions, conferences, and food and beverage functions under a banquet contract;

(ii) that has adequate kitchen or culinary facilities on the premises of the convention center to provide complete meals; and

(iii) that has at least 3000 square feet of function space consisting of meeting and/or dining rooms that can be reserved for private use under a banquet contract that can accommodate a minimum of 100 people, provided that in cities of the third, fourth, or fifth class, unincorporated counties, and towns, the commission shall have the authority to waive the minimum function space size requirements.

(2)(a) A "banquet contract" as used in this rule means an agreement between an on-premise banquet licensee and a host of a banquet to provide alcoholic beverage services at a meal, reception, or other private banquet function at a defined location on a specific date and time for a pre-arranged, guaranteed number of attendees at a negotiated price.

(b) Each "banquet contract" shall:

(i) clearly define the location of the private banquet function;

(ii) require that the private banquet function be separate from other areas of the facility that are open to the general public; and

(iii) require signage at or near the entrance to the private banquet function to indicate that the location has been reserved for a specific group.

(3) On-premise banquet licenses are issued to persons as defined in Section 32A-1-105(41). Any contemplated action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued must be submitted to the department for approval prior to consummation of any such action to ensure there is no violation of Sections 32A-4-402(4), 32A-4-403, and 32A-4-406(24).

R81-4D-2. Application.

(1) A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise banquet license when the requirements of Sections 32A-4-402, -403, and -405 have been met, a completed application has been received by the department, and the on-premise banquet premises have been inspected by the department.

(2)(a) The application shall include a floor plan showing the locations of function space in or on the applicant's business premises that may be reserved for private banquet functions where alcoholic beverages may be stored, sold or served, and consumed. Hotels shall also indicate the number of sleeping rooms where room service will be provided and include a sample floor plan of a guest room level. No application will be accepted that merely designates the entire hotel, resort, sports center or convention center facility as the proposed licensed premises.

(b) Pursuant to 32A-4-402(2) and 32A-4-406(4) after an on-premise banquet license has been issued, the licensee may apply to the department for approval of additional locations in or on the premises of the hotel, resort, sports center or convention center that were not included in the licensee's original application. The additional locations must:

(i) be clearly defined;

(ii) be configured to ensure separation between any private banquet function and other areas of the facility that are open to the general public; and

(iii) be configured to ensure compliance with all operational restrictions with respect to the sale, storage, and consumption of alcoholic beverages required by 32A-4-406.

R81-4D-3. Bonds.

No part of any corporate or cash bond required by Section 32A-4-405, may be withdrawn during the time the license is in effect. If the licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-4D-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-4-402(1)(a)(ix) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-4D-5. On-Premise Banquet Licensee Liquor Order and Return Procedures.

The following procedures shall be followed when an on-premise banquet licensee orders liquor from or returns liquor to any state liquor store, package agency, or department satellite warehouse:

(1) The licensee must place the order in advance to allow department personnel sufficient time to assemble the order. The licensee or employees of the licensee may not pick merchandise directly off the shelves of a state store or package agency to fill the licensee=s order. The order shall include the business name of the licensee, department licensee number, and list the products ordered specifying each product by code number and quantity.

(2) The licensee shall allow at least four hours for department personnel to assemble the order for pick-up. When the order is complete, the licensee will be notified by phone and given the total cost of the order. The licensee may pay for the product in cash, company check or cashier=s check.

(3) The licensee or the licensee=s designee shall examine and sign for the order before it leaves the store, agency or satellite warehouse to verify that the product has been received.

(4) Merchandise shall be supplied to the licensee on request when it is available on a first come first serve basis. Discounted items and limited items may, at the discretion of the department, be provided to a licensee on an allocated basis.

(5)(a) Spirituous liquor may be returned by the licensee for the original purchase price only under the following conditions:

(i) the bottle has not been opened;

(ii) the seal remains intact;

(iii) the label remains intact; and

(iv) upon a showing of the original cash register receipt.

(b) A restocking fee of 10% shall be assessed on the entire amount on any returned spirituous liquor order that exceeds $1,000. All spirituous liquor returned that is based on a single purchase on a single cash register receipt must be returned at the same time at a single store, package agency, or satellite warehouse location.

(b) Wine and beer may not be returned by the licensee for the original purchase price except upon a showing that the product was spoiled or non-consumable.

R81-4D-6. On-Premise Banquet Licensee Operating Hours.

Allowable hours of alcoholic beverage sales shall be in accordance with Section 32A-4-406(7). However, the licensee may open the alcoholic beverage storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-4D-7. Sale and Purchase of Alcoholic Beverages.

Liquor dispensing shall be in accordance with Section 32A-4-406; and Section R81-1-9 (Liquor Dispensing Systems) of these rules.

R81-4D-8. Liquor Storage.

Liquor bottles kept for sale in use with a dispensing system, liquor flavorings in properly labeled unsealed containers, and unsealed containers of wines poured by the glass may be stored in the same storage area of the on-premise banquet licensee as approved by the department.

R81-4D-9. Alcoholic Product Flavoring.

On-premise banquet licensees may use alcoholic products as flavoring subject to the following guidelines:

(1) Alcoholic product flavoring may be utilized in beverages only during the authorized selling hours under the on-premise banquet license. Alcoholic product flavoring may be used in the preparation of food items and desserts at any time if plainly and conspicuously labeled "cooking flavoring".

(2) No on-premise banquet licensee employee under the age of 21 years may handle alcoholic product flavorings.

R81-4D-10. State Label.

All liquor consumed on the premises of an on-premise banquet license must come from a container or package having an official state label affixed.

R81-4D-11. Menus; Price Lists.

(1) An on-premise banquet licensee shall have readily available for any host of a contracted banquet a printed alcoholic beverage price list, or menu containing prices of all mixed drinks, wine, beer, and heavy beer. This list shall include any charges for the service of packaged wines or heavy beer.

(2) Any printed menu, master beverage price list or other printed list is sufficient as long as the prices are current and it meets the requirements of this rule.

(3) Any host of a contracted banquet shall be notified of the price charged for any packaged wine or heavy beer and any service charges for the supply of glasses, chilling, or wine service.

(4) The on-premise banquet licensee or an employee of the licensee may not misrepresent the price of any alcoholic beverage that is sold or offered for sale on the licensed premises.

R81-4D-12. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-4D-13. On-Premise Banquet License Room Service - Mini-Bottle/187 ml Wine Sales.

(1) Purpose. Pursuant to 32A-1-116, the department may not purchase or stock alcoholic beverages in containers smaller than 200 milliliters. except as otherwise allowed by the commission. The commission hereby allows the limited use of 50 milliliter "mini-bottles" of distilled spirits and 187 milliliter bottles of wine for room service sales by on-premise banquet licensees located in hotels and resorts. The following conditions are imposed to ensure that these smaller bottle sales are limited to patrons of sleeping rooms, and are not offered to the general public.

(2) Application of Rule.

(a) The department will not maintain a regular inventory of distilled spirits and wine in the smaller bottle sizes, but will accept special orders for these products from an on-premise banquet licensee. Special orders may be placed with the department=s purchasing division, any state store, or any Type 2 or 3 package agency.

(b) The on-premise banquet licensee must order in full case lots, and all sales are final.

(c) Sale and use of alcohol in the smaller bottle sizes is restricted to providing room service to guests in sleeping rooms in the hotel/resort, and may not be used for other banquet catering services, or be sold to the general public.

(d) Failure of the on-premise banquet licensee to strictly adhere to the provisions of this rule is grounds for the department to take disciplinary action against the on-premise banquet licensee.

R81-4D-14. Reporting Requirement.

(1) Authority. This rule is pursuant to the commission's powers and duties under 32A-1-107 to act as a general policymaking body on the subject of alcoholic beverage control and to set policy by written rules that prescribe the conduct and management of any premises upon which alcoholic beverages may be sold, consumed, served, or stored, and pursuant to 32A-4-406(21).

(2) Purpose. This rule implements the requirement of 32A-4-406(21) that requires the commission to provide by rule procedures for on-premise banquet licensees to report scheduled banquet events to the department to allow random inspections of banquets by authorized representatives of the commission, the department, or by law enforcement officers to monitor compliance with the alcoholic beverage control laws.

(3) Application of the Rule.

(a) An on-premise banquet licensee shall file with the department at the beginning of each quarter a report containing advance notice of events or functions that have been scheduled as of the reporting date for that quarter to be held under a banquet contract as defined in R81-4D-1.

(b) The quarterly reports are due on or before January 1, April 1, July 1, and October 1 of each year and may be hand-delivered or submitted by mail or electronically.

(c) Each report shall include the name and specific location of each event.

(d) The department shall make copies of the reports available to a commissioner, authorized representative of the department, and any law enforcement officer upon request to be used for the purpose stated in Section (2).

(e) The department shall retain a copy of each report until the end of each reporting quarter.

(f) Because any report filed under this rule contains commercial information, the disclosure of which could reasonably be expected to result in unfair competitive injury to the licensee submitting the information, and the licensee submitting the information has a greater interest in prohibiting access than the public in obtaining access to the report:

(i) any report filed shall be deemed to include a claim of business confidentiality, and a request that the report be classified as protected pursuant to 63G-2-305 and -309;

(ii) any report filed shall be classified by the department as protected pursuant to 63G-2-305; and

(iii) any report filed shall be used by the department and law enforcement only for the purposes stated in this rule.

(g) Failure of an on-premise banquet licensee to timely file the quarterly reports may result in disciplinary action pursuant to 32A-1-119, 32A-4-406, and R81-1-6 and -7.

KEY: alcoholic beverages
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R81. Alcoholic Beverage Control, Administration.
R81-10A. On-Premise Beer Retailer Licenses.
R81-10A-1. Licensing.

(1) On-premise beer retailer licenses are issued to persons as defined in Section 32A-1-105(44). The department must be immediately notified of any action or transaction that may alter the organizational structure or ownership interest of the person to whom the license is issued to ensure there is no violation of Sections 32A-10-202 (3), 32A-10-203, and 32A-10-206(17).

(2) An on-premise beer retailer licensee that wishes to operate the same licensed premises under the operational restrictions of a restaurant liquor license during certain designated periods of the day or night, must apply for and be issued a separate restaurant liquor license subject to the following:

(a) The same on-premise beer retailer licensee must separately apply for a state restaurant liquor license pursuant to the requirements of Sections 32A-4-102, -103, and -105.

(b) Licensees applying for dually licensed premises must notify the department of the time periods under which each license will be operational at the time application is made. Changes must be requested in writing and approved in advance by the department. Licensees may operate sequentially under either license, but not concurrently.

(c) On-premise beer retailer licensees holding a separate restaurant liquor license must operate in accordance with 32A-4-106 and R81-4A during the hours the restaurant liquor license is active.

(d) Liquor storage areas on the restaurant premises shall be deemed to remain on the floor plan of the restaurant premises and shall be kept locked during the hours the on-premise beer retailer license is active.

R81-10A-2. Application.

A license application shall be included in the agenda of the monthly commission meeting for consideration for issuance of an on-premise beer retailer license when the requirements of Sections 32A-10-202, -203, and -205 have been met, and a completed application has been received by the department and the beer retailer premises have been inspected by the department.

R81-10A-3. Bonds.

No part of any corporate or cash bond required by Section 32A-10-205 may be withdrawn during the time the license is in effect. If the on-premise beer licensee fails to maintain a valid corporate or cash bond, the license shall be immediately suspended until a valid bond is obtained. Failure to obtain a bond within 30 days of notification by the department of the delinquency shall result in the automatic revocation of the license.

R81-10A-4. Insurance.

Public liability and dram shop insurance coverage required in Section 32A-10-202(1)(h) and (i) must remain in force during the time the license is in effect. Failure of the licensee to maintain the required insurance coverage may result in a suspension or revocation of the license by the commission.

R81-10A-5. On-premise Beer Licensee Operating Hours.

Beer sales shall be in accordance with Section 32A-10-206(4). However, on-premise beer licensees may open their beer storage area during hours otherwise prohibited for the limited purpose of inventory, restocking, repair, and cleaning.

R81-10A-6. Identification Badge.

Each employee of the licensee who sells, dispenses or provides alcoholic beverages shall wear a unique identification badge visible above the waist, bearing the employee's first name, initials, or a unique number in letters or numbers not less than 3/8 inch high. The identification badge must be worn on the front portion of the employee's body. The licensee shall maintain a record of all employee badges assigned, which shall be available for inspection by any peace officer, or representative of the department. The record shall include the employee's full name and address and a driver's license or similar identification number.

R81-10A-7. Draft Beer Sales/Minors on Premises.

A state on-premise beer license, restaurant liquor license, airport lounge license, limited restaurant license, on-premise banquet license or private club license authorizes the licensee to sell beer on draft regardless of the nature of the business (e.g. cafe, restaurant, pizza parlor, bowling alley, golf course clubhouse, club, tavern, etc.). Minors may not be precluded from establishments based upon whether draft beer is sold. However, minors may not be employed by or be on the premises of any establishment or portion of an establishment which is a "tavern" as defined in Section 32A-1-105(67). This does not preclude local authorities and licensees from excluding minors from premises or portions of premises which have the atmosphere or appearance of a "tavern" as so defined.

KEY: alcoholic beverages
August 1, 2003 **32A-1-107**
Notice of Continuation December 6, 2005

R137. Career Service Review Board, Administration.
R137-1. Grievance Procedure Rules.
R137-1-1. Authority and Purpose of Rule for Grievance Procedures.

(1) The authority for the rule on these grievance procedures is found at Section 67-19a-203.

(2) This rule establishes official procedures and standardized practices for administering these grievance procedures.

R137-1-2. Definitions.

Terms defined in Section 63G-4-103 of the Utah Administrative Procedures Act (UAPA) are incorporated by reference within this rule. In addition, other terms which are used in this rule are defined below:

"Abandonment of Grievance" means either the voluntary withdrawal of a grievance or the failure by an employee to properly pursue a grievance through these grievance procedures.

"Administrative Review of the File" means an informal adjudicative proceeding according to Subsection 67-19a-403(2)(b)(ii).

"Administrator" means the incumbent in the position defined at Section 67-19a-101(1).

"Affidavit" means a signed and sworn statement offered for consideration in connection with a grievance proceeding.

"Appeal" means a formal request to a higher level of review of an unacceptable lower level decision.

"Appellant" means the party that is advancing an evidentiary level grievance decision to the appellate level before the board at Step 6.

"Appointing Authority" means the officer, board, commission, person or group of persons authorized to make appointments on personnel/human resource management matters in their respective agency.

"Board" means the entity defined at Section 67-19a-101(2), and refers to the five-member, gubernatorial-appointed entity at Sections 67-19a-201 and 67-19a-202.

"Burden of Moving Forward" means a party's obligation to present evidence on a particular issue at a particular time. The burden of moving forward may shift back and forth between the parties based on certain legal principles.

"Burden of Proof" means the obligation to prove affirmatively a fact or set of facts at issue between two parties. If proven, the opposing party then has a burden of proving any affirmative defense.

"CSRB" and "CSRB Office" mean the agency of state government that statutorily administers these grievance procedures according to Sections 67-19a-101 through 67-19a-408.

"Closing Statement" means a party's final summation of evidence and argument, which is presented at the conclusion of the hearing.

"Consolidation" means the combining of two or more grievances involving the same controversy for purposes of holding a joint hearing, proceeding, or administrative review.

"Continuance" means an authorized postponement or adjournment of a hearing until a later date, whether the date is specified or not.

"Declaratory Order" means a ruling that is explanatory in purpose; it is designed to clarify what before was uncertain or doubtful. A declaratory order constitutes a declaration of rights between parties to a dispute and is binding as to both present and future rights. It is an administrative interpretation or explanation of a right, statute, order or other legal matter under a statute, rule, or an order.

"Default" means an omission of or untimely failure to take or perform a required act in the processing of a grievance. It is the failure to discharge an obligation which results in a forfeiture.

"Deposition" means a form of discovery in which testimony of a witness is given under oath, subject to cross-examination, and recorded in writing, prior to the hearing.

"Discovery" means the prehearing process whereby one party may obtain from the opposing party, or from other individuals or entities, information regarding the witnesses to be called, the documents and exhibits to be used at the hearing, and the facts and information about the case.

"Evidentiary Hearing" means a proceeding of relative formality, though much less formal than a trial, in which witnesses are heard and evidence is presented and considered. Specific issues of fact and of law are tried. Afterwards, ultimate conclusions of fact and of law are set forth in a written decision or order.

"Excusable Neglect" means the exercise of due diligence by a reasonably prudent person and constitutes a failure to take proper steps at the proper time, not in consequence of the person's own carelessness, inattention, or willful disregard in the processing of a grievance, but in consequence of some unexpected or unavoidable hindrance or accident.

"File" means to submit a document, grievance, petition, or other paper to the CSRB Office as prescribed by these rules. The term "file" includes faxing and E-mailing.

"Filing Date" means the day that a document, grievance, petition, or other paper is recorded as having been received by the CSRB Office.

"Grievance Procedures" mean the grievance and appeal procedures codified at Sections 67-19a-101 through 67-19a-408 and promulgated through this rule.

"Grievant" means the person or party advancing one or more issues as a petitioner through these grievance procedures to the evidentiary/step 5 level. However, at the appellate/step 6 level one party is designated as the appellant, the other as respondent.

"Group Grievance" means a grievance submitted and signed by two or more aggrieved employees. The term does not include "class action."

"Hearing" means the opportunity to be heard in an administrative proceeding.

"Hearing Officer" means an impartial trier of facts appointed by the CSRB administrator and assigned to hear a particular grievance case at the evidentiary/step 5 level.

"Hearsay Evidence" means evidence not based upon a witness's personal knowledge as a direct observer of an event. Rather, hearsay evidence stems from the repetition of what a witness heard another person say. Hearsay's value rests upon the credibility of the declarant. Hearsay is a statement made outside of the hearing that is offered as evidence of the truth of matters asserted in the hearing.

"Issuance" means the date on which a decision, order or ruling is signed and dated; it is not the date of mailing, or the date of the mailing certificate, nor the postal date. Date of issuance is the date specified according to Subsection 63G-4-401, of the UAPA.

"Joint Hearing" means the uniting of two or more grievances involving the same, similar, or related circumstances or issues to conduct a single hearing; also see "Consolidation."

"Jurisdiction" means the legal right and authority to hear and decide issues and controversies.

"Jurisdictional Hearing" means a hearing conducted by the administrator (or hearing officer who sits by designation to represent the administrator in these hearings) to determine timeliness, standing, jurisdiction, direct harm, and eligibility to advance a grievance issue to the evidentiary/step 5 level.

"Management Representative" means a person of managerial or supervisory status who is not subject to exclusion. Legal counsel is not included within the meaning of the term.

"Motion" means a request offered verbally or in writing for a ruling or to take some action.

"Notice" and "Notification" mean a proper written notice to the parties involved in a grievance procedural hearing or conference, setting forth date, time, location, and the issue to be considered.

"Pleadings" mean the formal written allegations of the parties that set forth their respective claims and defenses.

"Pro Se" means in one's own behalf. A person is represented pro se in an administrative proceeding when acting without legal counsel or other representation.

"Quash" means to cancel, annul, or vacate a subpoena.

"Relevant" means directly applying to the matter in question; pertinent, germane. It is evidence that tends to make the existence of any facts more probable or certain than they would be without the evidence; and tending to prove the precise fact at issue.

"Remand" means to send back, as for further deliberation and judgment, to the presiding official or other tribunal from which a case was appealed.

"Respondent" means the party against whom an appeal is made at the appellate/step 6 level.

"Standard of Proof" means the evidentiary standard, which in CSRB adjudications is the substantial evidence standard.

"Stay" means a temporary suspension of a case or of some designated proceeding within the case.

"Submit" means to commit to the discretion of another; to present for determination.

"Subpoena" means a formal legal document issued under authority to compel the appearance of a witness at an administrative proceeding, the disobedience of which may be punishable as a contempt of court.

"Subpoena Duces Tecum" means a formal legal document issued under authority to compel specific documents, books, writings, papers, or other items.

"Substantial Evidence" means evidence possessing something of substance and relevant consequence, and which furnishes substantial basis of fact from which issues tendered can be reasonable resolved. It is evidence that a reasonable mind might accept as adequate to support a conclusion, but is less than a preponderance.

"Summary Judgment" means a ruling made upon motion by a party or the presiding official when there is no dispute as to either material fact or inferences to be drawn from undisputed facts, or if only a question of law is involved. The motion may be directed toward all or part of a claim or defense.

"Transcript" means an official verbatim written record of an adjudicative proceeding or any part thereof, which has been recorded and subsequently transcribed by a certified court reporter.

"UAPA" means the Utah Administrative Procedures Act found at Sections 63G-4-102 through 63G-4-601.

"Withdraw" means to recall or retract a grievance from further consideration under these grievance procedures.

"Witness Fee" means an appearance fee and may also include a mileage rate established by statutory provision pursuant to Section 78B-1-119.

"Working Days" means for purposes of the time periods for filing a grievance, advancing an appeal or responding to an employee's grievance or appeal, all days except Fridays, Saturdays, Sundays and recognized State holidays.

R137-1-3. Classification Jurisdiction.

The CSRB and the CSRB hearing officers have no jurisdiction over classification and reclassification grievances, appeals, and complaints nor over position schedule assignments, according to Section 67-19-31 and Subsections 67-19a-202(1)(a) and 67-19a-302(1), and Section R477-3-5.

R137-1-4. Complaints From Applicants.

(1) A public applicant for a position with the state's work force has no standing to submit a grievance and is precluded from using these grievance procedures, according to Subsection 67-19-16(6).

(2) A public applicant who alleges a violation of a legally prohibited practice based upon race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, is directed to Section R137-1-5 of these grievance procedures.

R137-1-5. Discrimination: Legally Prohibited Practices.

(1) Discrimination Claims. Claims alleged to be based upon a legally prohibited practice as set forth in Section 34A-5-106, including employment discrimination on the basis of race, color, sex, pregnancy, childbirth, or pregnancy-related conditions, age, if the individual is 40 years of age or older, religion, national origin, or disability, are not admissible under these grievance procedures. The CSRB and CSRB hearing officers have no jurisdiction over the preceding claims.

(2) Processing Discrimination Complaints. A public applicant, a probationary employee, a career service employee, or an exempt employee who alleges a violation of a legally prohibited practice pursuant to Section 34A-5-106, may file a timely complaint with the individual's respective department head. If the individual is not satisfied with the department head's decision, or if the decision is not rendered within ten working days after submission of the complaint, the individual may then file a complaint with the Utah Anti-discrimination Division pursuant to Section 67-19-32.

(3) Filing Discrimination Complaints. Employees and applicants desiring to file a legally prohibited discrimination complaint may contact the Utah Anti-Discrimination Division.

R137-1-6. Filing Procedure.

The submission of correspondence, pleadings, grievance materials, and legal documents is subject to the following provisions:

(1) Filing/Receipt. Papers to be filed with the CSRB Office or the administrator are deemed filed on the date actually received, and are so date-stamped. The date on which papers are received and date-stamped is regarded as the date of filing.

(2) Time Periods. All papers, memoranda, petitions, grievances, pleadings, briefs, exhibits, and written motions to be filed with the administrator must be filed in the CSRB Office, 1120 State Office Building, Capitol Hill, Salt Lake City, Utah 84114, within the time limits prescribed either by law, by these rules, or by order of the administrator, by the designated CSRB hearing officer, or the board's chair or vice-chair.

(a) All filing dates are based upon the CSRB Office's working days.

(b) Papers must be signed by the person filing the paper or by the person's authorized representative.

(c) Documents being submitted are to contain the name, business address, and telephone number of the representative, if a party or person is being represented.

(d) Copies of all filed papers shall be served upon the appropriate opposing party or person to grievance proceedings, with notice of service given to the administrator.

(e) Notice to a designated representative constitutes notice to the representative's client.

(f) Notice to an employee who is not represented shall be served at the address specified on the employee's statement of grievance or correspondence, or in the absence of such specification, at the last mailing address shown in the employing agency's personnel file.

R137-1-7. Subpoenas.

Subsection 63G-4-205(2) of the UAPA is incorporated by reference.

(1) Subpoena Power. Pursuant to Subsection 67-19a-204(2)(a)(ii), the administrator may issue subpoenas to witnesses and may obtain documents or other evidence in conjunction with any inquiry, investigation, hearing, or other proceedings.

(a) The aggrieved employee has the right to require the production of books, papers, records, and other items pertinent to the facts at issue that are within the control of the agency against which the grievance is lodged, and which are not held to be protected or privileged by law. Affidavits and ex parte statements offered during a hearing may be received and considered by the CSRB hearing officer.

(b) A person receiving a subpoena issued by the CSRB will find the title of the proceeding posted thereon, and the person to whom it is directed shall be compelled to attend and give testimony. A subpoena duces tecum may be used to produce designated books, or other items at a specified time and place when these items are under an agency's or a person's control.

(c) A request by counsel or a party's representative to issue a subpoena must be reasonable and timely. At least two full working days' notice prior to a scheduled hearing must be given to the administrator, not counting preparation and delivery time. The requesting party shall simultaneously notify the opposing party of the request.

(d) The original of each subpoena is to be presented to the person named therein, and a copy shall be issued to the counsel or representative of each party.

(2) Service of Subpoenas. Service of subpoenas shall be made by the requesting party delivering the subpoena to the person named, unless the CSRB Office is requested to deposit the subpoena properly addressed and postage prepaid, with the U.S. Postal Service, or to send it by State Mail Services, or to send it by E-mail, or to send it by facsimile transmission, or in any combination.

(3) Proof of Service. If service has not been acknowledged by the witness, the server may make an affidavit of service. Failure to make proof of service does not affect the validity of the service.

(4) Quashing. Subsection 67-19a-204(2)(a)(iii) governs the quashing of subpoenas by the administrator.

R137-1-8. Notice, Service, Issuance and Distribution.

(1) Service by the Parties. The parties to a proceeding shall serve upon each other one copy of all pleadings filed with the administrator. Service of a pleading may be made by any of the following: personal delivery, U.S. Postal Service, postage prepaid, State Mail Services, facsimile, or E-mail.

(a) Pleadings must be accompanied by a certificate of service or an affidavit of mailing, indicating how, where, when and to whom service is being made.

(b) It is the duty of a party or person or their representative to notify the administrator and the opposing party or representative in writing of any changes in names, addresses, or telephone numbers.

(2) Service of Subpoena. Service of subpoenas shall be executed in accordance with Section R137-1-7(2) above.

(3) Issuance of Decisions and Orders. A CSRB decision, order, ruling or other document shall be considered issued on the date that it is signed by its CSRB originator, rather than on other dates such as the date it is mailed, postmarked, received or distributed.

(a) All notices, decisions, orders and rulings by the administrator by a CSRB hearing officer, or by the board's chair or vice-chair are to be distributed to the counsel or representatives of record and upon any person appearing pro se.

(b) The CSRB Office will retain the original notice, decision, order or ruling with the record of the proceedings. Distribution of a CSRB notice, decision, order or ruling is accomplished when any of the following occurs:

(i) deposit postage prepaid with the U.S. Postal Service,

(ii) deposit with State Mail Services,

(iii) personal delivery,

(iv) facsimile transmission, or

(v) E-mail transmission.

(c) A mailing certificate must be attached to the notice, decision, order or ruling bearing the date of mailing and the names and addresses of those persons to whom the notice, decision, order or ruling is originally distributed.

R137-1-9. Continuance/Postponement.

Timely, Written Requests. Upon receipt of a notice of hearing, or as soon thereafter as circumstances necessitating a continuance come to a party's knowledge, a party desiring to postpone the proceeding or filing of a pleading to a later date shall file a written request for continuance with the administrator.

(1) Every petition for a continuance shall specify the reason for the requested delay.

(2) In considering a request for continuance, the administrator, the appointed CSRB hearing officer, or the board shall take into account:

(a) whether the request was promptly and timely made, in writing; and

(b) whether the request is for good cause.

(3) A continuance may not be granted for insufficient cause nor as an excuse for lack of preparation.

(4) Parties must not anticipate that a given number of continuances are granted to each party, nor that a series of continuances is permitted.

R137-1-10. Eligibility to Grieve.

(1) Standing. Only executive branch career service employees may use these grievance procedures.

(a) Pursuant to Subsection 67-19-16-(6) and Section 67-19a-301, the board has no jurisdiction over grievance petitions filed by probationary employees, public applicants, exempt employees, noncareer service employees, public employees of the state's political subdivisions, public employees covered by other grievance systems, or employees of state institutions of higher education.

(2) Questionable Standing. Where a question or dispute exists whether an employee qualifies to use these grievance procedures, such controversies must be resolved through application of R137-1-17 by the administrator. The administrator's determination shall be final and subject to review only in the Utah Court of Appeals for formal adjudications and in the district court for informal adjudications according to Subsections 67-19a-301(2) and 67-19a-403(2), and Sections 63G-4-402 and 63G-4-403 of the UAPA.

(3) Class Action. Pursuant to Subsection 67-19a-401(7)(c), class action grievances will not be admissible for consideration by the board under these grievance procedures.

(4) Group Grievance. A group grievance is admissible provided that each aggrieved employee signs the grievance, according to Subsections 67-19a-401(7)(a) and (b).

R137-1-11. Issues Appealable to the Evidentiary/Step 5 and Appellate/Step 6 Levels.

All grievances shall be reviewed for jurisdictional considerations to determine:

(1) If the CSRB hearing officers and the board lack jurisdiction to hear matters which are not included within the scope of Subsections 67-19a-202(1)(a) and 67-19a-302(1), or

(2) If issues or components of a grievance are deemed to be satisfactorily resolved they may not qualify to be advanced further under these grievance procedures according to Section R137-1-17(2), and the board may refuse to hear or take action.

R137-1-12. Employees' Rights.

(1) Representation. The state does not provide legal counsel or representation to aggrieved employees nor pay the fees for an employee's representation. Also, Subsection 67-19a-406(4)(a) precludes the awarding of fees or costs to an employee's attorney or representative.

(2) Pro Se Status. A party or person to a grievance proceeding may be represented pro se. When a party or person is represented pro se, the party or person is entitled to request the issuance of subpoenas, directly examine and cross-examine witnesses, make opening and closing statements, submit documentary evidence, summarize testimony, and in all respects fully present one's own case.

(3) No Reprisal. Pursuant to Subsection 67-19a-303(3), no appointing authority, director, manager, or supervisor may take action to retaliate against a grievant, a representative, or a witness who participates in or is scheduled to participate in a grievance proceeding.

R137-1-13. Automatic Processing, Waiver, Excusable Neglect, Abandonment of Grievance, Default, Transfer and Stay.

(1) Automatic Processing. An agency's failure to reply in writing to an aggrieved employee's grievance within the prescribed time period automatically grants the aggrieved employee the right to advance the grievance to the next step of these grievance procedures listed in Section 14 (below). However, pursuant to Subsection 67-19a-401(2), the parties may mutually agree to waive steps 2, 3 or 4 or extend the statutory time period for those steps. Waivers of the statutory time periods by agency management and the aggrieved employee must be placed in writing and signed.

(2) Waiver. When the administrator finds that a grievance is one that an agency cannot resolve because of the nature of the grievance, the matter may be waived in writing to a higher level. Steps 2, 3, or 4 may be waived, but not steps 5 or 6. Any waiver agreed to between the parties must be in writing, dated, and signed by the parties or the parties' representatives according to Subsection 67-19a-401(2).

(3) Excusable Neglect. The standard of excusable neglect may be offered as a defense to lack of timeliness in processing a grievance or for not appearing at a scheduled proceeding.

(a) The administrator or appointed CSRB hearing officer shall determine the applicability of the excusable neglect standard on the basis of good cause.

(b) All questions are to be resolved at the original level of occurrence.

(4) Abandonment of Grievance. In the event the administrator determines that a grievance claim has been withdrawn, abandoned, or otherwise neglected beyond either the established time lines or a reasonable period, the matter no longer qualifies for further processing through these grievance procedures. When withdrawal is intended, it should be accomplished in writing.

(5) Default. An employee who defaults in processing a grievance forfeits further rights granted by these rules and under Section 63G-4-209 of the UAPA, which is incorporated by reference.

(6) Transfer. The administrator may administratively transfer a grievance case from the aggrieved employee's department to another, more appropriate department to respond as necessary to serve the ends of justice and fairness.

(7) Stay. Upon written request, the administrator, the board, or the CSRB hearing officer may grant a stay of a decision, order, ruling, remedy, or proceeding, when based upon good cause.

(a) The administrator, the board, or the CSRB hearing officer may grant a stay for a specific period of time or may grant an indefinite stay of an evidentiary/step 5 or appellate/step 6 proceeding.

(b) In considering a request for a stay of proceedings, the administrator, the board, or the CSRB hearing officer may take into consideration whether the request is unopposed or not. If the request for a stay is unopposed, the request may be granted if based upon good cause. If the request is opposed, the request shall be considered on its merits and ruled upon accordingly.

R137-1-14. Grievance Procedure Steps.

Persons acting on grievances pursuant to Section 667-19a-402, and in accordance with these rules, shall conduct their filings through the following steps, or levels, of increasing accountability:

Step 1; A verbal discussion shall be held with the immediate supervisor. In this informal action, the employee is required to fully describe the grievance for possible resolution.

Step 2; A written form of the grievance shall be submitted to the immediate supervisor. Thus distinguished from a verbal gripe/complaint, it then becomes a formal complaint requiring a written response. Steps 2, 3 and 4 require a written response within time periods outlined in Section 67-19a-402, and are to be conducted by only one supervisor, director, etc.

Step 3; A review of the grievance is to then be conducted by the agency or division director;

Step 4; A review of the grievance is then conducted by the department head, executive director, or commissioner (or the designated representative);

Step 5; An evidentiary de novo hearing is conducted before the CSRB hearing officer.

An appellate review is conducted before the CSRB board members.

The purpose for the above steps, or levels, is to curtail employees from having to submit their grievances to persons in agency management not specified in the above steps or levels. Only the above-listed persons (or their designated representatives) in agency management are authorized to respond to state employees' grievances.

R137-1-15. Procedure for Grieving Disciplinary Action Imposed by Department Head.

(1) An aggrieved employee who has been issued a written reprimand, suspension without pay, demotion, or dismissal, imposed by the respective department head (i.e., executive director or commissioner) may appeal that action directly to the evidentiary/step 5 level.

(a) An appeal from discipline is distinguishable from a grievance.

(b) A grievance is filed at steps 1 and 2, and proceeds through steps 3 and 4.

(c) When an appeal from discipline imposed by a department head (or designated representative) occurs at the step 4 level, it may be appealed directly to the CSRB at the evidentiary/step 5 level.

(2) When appealed to the CSRB Office, the appeal must be filed within 20 working days from the date an aggrieved employee receives written notification from the department head who imposed the disciplinary action.

R137-1-16. Procedure for Grieving Reduction in Force.

An aggrieved employee may appeal from a reduction in force according to the following:

(1) Upon receiving the department head's final, written decision, the employee may appeal from a reduction in force by filing a written appeal within 20 working days with the CSRB Office.

R137-1-17. Jurisdictional Hearing.

A jurisdictional hearing is a formal adjudication conducted according to Subsection 67-19a-403(2)(b)(i) with Section 63G-

4-206 of the UAPA incorporated by reference. An administrative review of the file is an informal adjudication according to Subsection 67-19a-403(2)(b)(ii) with Section 63G-4-202 of the UAPA incorporated by reference.

(1) Procedural Issues. The administrator shall determine the following: timeliness, standing, direct harm, jurisdiction, and eligibility of the issues to be advanced, and any other procedural matters or jurisdictional controversies according to Sections 67-19a-403 and 67-19a-404.

(2) Determination. The administrator shall determine which types of grievances may be heard at the evidentiary/step 5 level. Those types of grievances found to have been resolved at a lower level or those that do not qualify for advancement to the evidentiary/step 5 level are precluded from further consideration in any grievance submitted for CSRB consideration.

(3) Preclusion. Those types of actions not listed in Subsections 67-19a-202(1)(a) and 67-19a-302(1) are precluded from advancement to the evidentiary/step 5 level. When the grievance is precluded from the evidentiary/step 5 level, the matter under dispute shall be deemed as final at the level of the department head/step 4 written reply according to Subsection 67-19a-302(2).

(4) Reconsideration. A written request for reconsideration may be filed with the administrator. It must be filed within 20 days from the date that a jurisdictional hearing decision or an administrative review of the file decision is issued with Section 63G-4-302 of the UAPA incorporated by reference. The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the jurisdictional hearing decision or administrative review of the file decision. New or additional evidence may not be considered.

(5) Judicial Review.

(a) The aggrieved employee or the responding agency may appeal the administrator's formal adjudicative jurisdictional hearing decision and final agency action to the Utah Court of Appeals within 30 calendar days from the date of issuance according to Subsection 63G-4-401(3)(a) and Section 63G-4-403 of the UAPA which are incorporated by reference.

(b) The aggrieved employee or the responding agency may appeal the administrator's informal adjudicative decision and final agency action of an administrative review of the file to the district court according to Sections 63G-4-402 and 63G-4-404 of the UAPA which are incorporated by reference.

(6) Summary Judgment. The administrator may, pursuant to an administrative review of the procedural facts and circumstances of a grievance case, summarily dispose of a case on the ground that:

(a) the matter is untimely;

(b) the grievant has failed to appear at the properly scheduled date, time, and place pursuant to written notice;

(c) the grievant lacks standing;

(d) the grievant has withdrawn or otherwise abandoned the grievance;

(e) the grievant has not been directly harmed;

(f) the issue grieved does not qualify to be advanced beyond step 4; or

(g) the requested remedy or relief exceeds the scope of these grievance procedures.

(7) Transcription and Transcript Fees. If a party appeals a jurisdictional hearing decision to the Utah Court of Appeals or to the district court, the appealing party is responsible for paying all transcription costs and any transcript fees. The CSRB does not participate in the payment of these fees when appeals are taken to the appellate or trial court. See Utah Rules of Appellate Procedure, Rule 11, and Section 63G-4-403(3), regarding transcript costs from formal adjudications under the UAPA.

R137-1-18. Procedural Matters.

The provisions under this section pertain to jurisdictional and evidentiary/step 5 proceedings of the CSRB, but not to appellate/step 6 proceedings unless specifically indicated.

(1) Purpose. A formal adjudicative proceeding provides a fair and impartial opportunity for the parties to be heard and to present their evidence. The adjudicative process allows the CSRB administrator or the CSRB hearing officer to be completely informed about the case. After having considered the parties' evidence, the CSRB administrator or the CSRB hearing officer may then render a proper determination based upon all of the facts, circumstances, and applicable laws, rules and policies.

(2) Types of Adjudications. For purposes of Section 63G-4-202 of the UAPA:

(a) All CSRB jurisdictional, evidentiary/step 5 and appellate/step 6 adjudications are formal adjudicative proceedings. Sections 63G-4-205 through 63G-4-209, 63G-4-401 and 63G-4-403 through 63G-4-405 of the UAPA are incorporated by reference within this rule and are applicable to these adjudicative proceedings.

(b) An administrative review of the file pursuant to Subsection 67-19a-403(2)(b)(ii) is an informal adjudicative proceeding with Sections 63G-4-203, 63G-4-402, and 63G-4-404 of the UAPA incorporated by reference.

(3) Rules of Evidence/Procedure Inapplicable. The technical rules of evidence and the formal rules of civil procedure as observed in the courts of law are inapplicable to grievance procedure proceedings, except for the rules of privilege as recognized by law and those specific references to the rules of evidence and procedure as set forth in the UAPA.

(4) Expelling. The CSRB hearing officer may clear the proceeding of witnesses not under examination and may exclude any unruly or disruptive person.

(5) Presentation of Case. Each party's representative is given the opportunity to make an opening statement. At the appropriate time, each party's representative is given the opportunity to present evidence. After each party's representative has presented its respective case, the moving party, followed by the responding party, may offer a closing statement. The moving party may offer one rebuttal. Continuous rebuttal is not permissible.

(6) Objections.

(a) When an objection is made as to the admissibility of evidence, the CSRB hearing officer shall note the objection for the record. A ruling is then made by the CSRB hearing officer, or the objection may be taken under advisement to be ruled upon later.

(b) The CSRB hearing officer has discretion to exclude inadmissible evidence and to order that cumulative or repetitive evidence be discontinued.

(c) A party objecting to the introduction of evidence must state the precise grounds of the objection at the time such evidence is offered.

(7) Marking Exhibits. All exhibits shall be numerically marked and labeled in the order received into evidence, unless previously marked and labeled.

(8) Motion to Dismiss. The CSRB hearing officer may, upon a party's motion or upon the CSRB hearing officer's own motion, dismiss the grievance or appeal with due regard for the standard of excusable neglect according to R137-1-13(3).

(9) Consolidation of Grievances. Grievances of the same or of a sufficiently similar context may be consolidated by the administrator for purposes of conducting a single or joint hearing.

(10) Standard of Proof. In all CSRB adjudicative proceedings, the standard of proof is the substantial evidence standard according to Subsection 67-19a-406(2)(c).

(11) Hearsay Evidence. Hearsay evidence is admissible in

CSRB formal adjudicative proceedings as qualified by Subsection 63G-4-208(3) of the UAPA which is incorporated by reference.

(12) Discovery. The following rule provisions satisfy Subsection 63G-4-205(1) of the UAPA on discovery.

(a) Discovery shall be limited to that which is relevant and nonprivileged, and for which each party has a substantial, demonstrable need for supporting their respective claims or defenses.

(b) At the discretion and approval of the appointed CSRB hearing officer, parties to a dispute may obtain discovery. The CSRB hearing officer has discretion to entertain motions to conduct discovery on a case-by-case basis regarding the following:

(i) production of witnesses;

(ii) production of documents, records and things;

(iii) issuance of subpoenas which are issued pursuant to R137-1-6 and R137-1-8;

(iv) the taking of interrogatories;

(v) the taking of depositions, when a proposed witness is not available for giving testimony at a scheduled hearing and when a witness's testimony appears reasonably calculated to lead to the discovery of admissible evidence;

(vi) requests for admissions; and

(vii) physical and mental examinations.

(c) Witness lists and copies of exhibits shall be offered by each party to the opposing party and to the appointed CSRB hearing officer during a prehearing/scheduling conference, unless the exchange is scheduled for a later date.

(i) Each party's list of witnesses shall contain a brief statement describing the nature of the proposed testimony to be offered by each witness.

(ii) A party may not surprise the opposing party with a witness or an exhibit at the hearing which was not made known at the prehearing/scheduling conference, or by a scheduled exchange date, unless the witness or exhibit is in direct rebuttal to admitted opposing evidence. Also refer to R137-1-7(1)(c).

(13) Page Limitation.

(a) Written motions, pleadings, briefs, and memoranda for all CSRB proceedings may not exceed 20 typed, double-spaced 8-1/2 x 11 inch pages, exclusive of any statement of facts. Reply briefs may not exceed ten pages.

(b) An application for an exception to the above-stated page limitation provisions must be timely filed in writing, and not more than ten double-spaced 8-1/2 x 11 inch pages in a 12-point font. The applicant party has the burden to offer sufficient justification for requests more than 20 and 10 pages respectively to the CSRB for the granting of any exceptions to the page limitation provision.

(c) The CSRB may weigh all requests to exceed the page limitation provision based upon the reasonableness and necessity of such requests in light of each case and its circumstances. The board does not automatically grant exceptions simply on the basis of a request.

R137-1-19. Witnesses.

(1) Availability of State Employees to Testify. An agency shall be responsible for making available any of its employees who are requested to testify in a hearing.

(a) Off Duty Employees. Agencies are not responsible for making available an employee who is: off duty; on sick, annual or other approved leave; or who, for any other reason, is not at work during the time the hearing is in progress.

(b) Nondisruption. The parties and their representatives, the administrator and the CSRB hearing officer shall make every effort to avoid disruption to the operation of state government in the calling of state employees to testify in hearings under these grievance procedures.

(c) Witness Failure. If a requested witness does not appear at the scheduled hearing, the witness's failure to appear may not necessitate the postponement of any proceedings.

(d) Excessive Witnesses. If the number of witnesses requested by a party is excessive, the administrator or the CSRB hearing officer may require the party to justify the request or face denial of part or all of the request.

(e) Witness Fees and Mileage Fees. A witness fee and a mileage fee are available to nonstate employees and to state employees who use nonworking hours if their presence is required in a grievance proceeding as a witness according to Section 78B-1-119. The CSRB reserves the right to determine on an individual case basis whether it will authorize a travel fee, and to what extent, for an out-of-state witness called by a party.

(2) Hostile Witnesses. When the CSRB hearing officer determines that a witness is uncooperative or even hostile, the witness may be examined by the party calling that witness as if under cross-examination. The party calling the witness may, upon showing that the witness was called in good faith but that the testimony is a surprise, proceed to impeach the witness by proof of prior inconsistent statements.

(3) Exclusion/Sequestering of Witnesses.

(a) The CSRB hearing officer may sequester witnesses from the hearing until they are called to testify.

(b) Witnesses not presently testifying may be sequestered on motion by one or both parties.

(c) The CSRB hearing officer will counsel the witnesses not to discuss the case with those witnesses who have not yet testified.

(4) Management Representative. Prior to every hearing the agency's representative may designate a person to serve as the agency's management representative. The agency's management representative is entitled to remain throughout the hearing to represent the agency at any proceeding even if called to testify. Neither the grievant nor the management representative may be excluded from the hearing.

R137-1-20. Public Hearings.

A CSRB hearing is open to the public unless there are reasonable grounds to justify an executive session for either part or all of a hearing. This provision does not apply to witnesses who are being called to testify according to R137-1-19.

(1) Closing Hearings. All grievance procedure hearings shall be open to the public except as follows:

(a) The administrator, the board, or the CSRB hearing officer may close either a portion or an entire hearing based upon a compelling reason.

(b) An evidentiary/step 5 hearing may be closed in part or in its entirety when the proceeding involves discussion about a state employee's character, professional competence, or physical or mental health according to Subsection 52-4-205(1)(a) of the Open and Public Meetings statute.

(2) Sealing Evidence. The administrator, the board, or the CSRB hearing officer may seal the record when appropriate according to Subsection 67-19a-406(4)(c) and 67-19a-408(6).

(3) Media Presence. All hearings at the jurisdictional, evidentiary/step 5 and appellate/step 6 levels are open to the media, unless closed pursuant to R137-1-20(1) above. However, television cameras are not permitted at the evidentiary/step 5 proceeding.

(4) Distribution of Decisions. The administrator may provide copies of legal decisions, orders, and rulings to the public upon request. Portions of or entire legal decisions and orders may be withheld if deemed to be legally privileged or protected under the state's Government Records Access and Management Act (GRAMA), or if the record is sealed according to Subsection 67-19a-408(5).

R137-1-21. The Evidentiary/Step 5 Adjudicatory Procedures.

(1) Authority of the CSRB Hearing Officer/Presiding Officer. The CSRB hearing officer/presiding officer is authorized to:

(a) serve as the presiding officer at evidentiary/step 5 hearings as set forth at Subsection 63G-4-103(1)(h)(i) of the UAPA;

(b) maintain order, ensure the development of a clear and complete record, rule upon offers of proof, receive relevant evidence, and assign the burden of proof according to Subsection 67-19a-406(2);

(c) set reasonable limits on repetitive and cumulative testimony and sequester any witness whose later testimony might be colored by the testimony of another witness or any person whose presence might have a chilling effect on another testifying witness;

(d) rule on motions, exhibit lists, witness lists and proposed findings;

(e) require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(f) compel testimony and order the production of evidence and the appearance of witnesses;

(g) admit evidence that has reasonable and probative value; and

(h) reopen the evidentiary record.

(2) Conduct of Hearings. A hearing shall be confined to those issues related to the subject matter presented in the original grievance statement.

(a) An evidentiary proceeding may not be allowed to develop into a general inquiry into the policies and operations of an agency.

(b) An evidentiary proceeding is intended solely to receive evidence that either refutes or substantiates specific claims or charges. A proceeding may not be used as an occasion for irresponsible accusations, general attacks upon the character or conduct of the employing agency, agency management, or other employees. A hearing may not be used as a forum for making derogatory assertions having no bearing on the claims or specific matters under review.

(3) Evidentiary/Step 5 Hearing. An evidentiary/step 5 hearing shall be a new hearing for the record according to Subsections 67-19a-406(1) and (2), held de novo, with both parties being granted full administrative process as follows:

(a) The CSRB hearing officer shall first make factual findings based solely on the evidence presented at the hearing without deference to any prior factual findings of the agency. The CSRB hearing officer shall then determine whether:

(i) the factual findings made from the evidentiary/step 5 hearing support with substantial evidence the allegations made by the agency or the appointing authority, and

(ii) the agency has correctly applied relevant policies, rules, and statutes.

(b) When the CSRB hearing officer determines in accordance with the procedures set forth above that the evidentiary/step 5 factual findings support the allegations of the agency or the appointing authority, then the CSRB hearing officer must determine whether the agency's decision, including any disciplinary sanctions imposed, is excessive, disproportionate or otherwise constitutes an abuse of discretion. In making this latter determination, the CSRB hearing officer shall give deference to the decision of the agency or the appointing authority unless the agency's penalty is determined to be excessive, disproportionate or constitutes an abuse of discretion in which instance the CSRB hearing officer shall determine the appropriate remedy.

(4) Discretion. Upon commencement, the CSRB hearing officer shall announce that the hearing is convened and is being held on the record. The CSRB hearing officer shall note appearances for the record and shall determine which party has the burden of moving forward first.

(5) Closing the Record. After all testimony, documentary evidence, and arguments have been presented, the CSRB hearing officer shall close the record and terminate the proceeding, unless one or both parties agree to submit a posthearing brief or memoranda of law within a specified time.

(6) Posthearing Briefs. When posthearing briefs or memoranda of law are scheduled to be submitted, the record shall remain open until the briefs or memoranda are exchanged and received by the CSRB hearing officer and incorporated into the record, or until the time to receive these submissions has expired. After receipt of posthearing documents, or upon the expiration of the time to receive posthearing documents, the case is then taken under advisement, and the tolling period commences for the issuance of the written decision.

(7) Findings of Fact, Conclusions of Law. Notwithstanding R137-1-21(1)(h) above, following the closing of the record, the CSRB hearing officer shall write a decision containing findings of fact and conclusions of law according to Section 67-19a-406 and Section 63G-4-208 of the UAPA, which is incorporated by reference. When the CSRB hearing officer's decision and order is filed with the administrator it then becomes the decision and order of the evidentiary/step 5 hearing.

(8) Distribution of Decisions. The administrator shall distribute copies of the evidentiary/step 5 decision and order to the persons, parties and representatives of record.

(9) Past Work Record. In those proceedings where a disciplinary penalty is at issue, the past employment record of the employee is relevant for purposes of either mitigating or sustaining the penalty when substantial evidence supports an agency's allegations.

(10) Compliance and Enforcement. State agencies, department heads, division directors and officials are expected to comply with decisions and orders issued by the CSRB hearing officer, unless an appeal is taken to the appellate/step 6 level. Enforcement measures available to the CSRB include:

(a) petitioning the governor, who may remove his appointed state officers with or without cause, and with respect to those who can only be removed for cause, refusal to obey a lawful order may constitute sufficient cause for removal;

(b) a mandamus order to compel the official to obey the order;

(c) the charge of a Class A misdemeanor according to Section 67-19-29; and

(d) seeking enforcement of a legal decision, order or ruling through civil enforcement in the district court according to Subsection 63G-4-501(1) of the UAPA which is incorporated by reference.

(11) Rehearings. Rehearings are not permitted.

(12) Reconsideration.

(a) Section 63G-4-302 of the UAPA is incorporated by reference within this rule, and requests for reconsideration of an evidentiary/step 5 decision will be conducted in accordance with that section, except for the time period which is stated below.

(b) The written reconsideration request must contain specific reasons why a reconsideration is warranted with respect to the factual findings and legal conclusions of the evidentiary/step 5 decision. The same CSRB hearing officer shall decide the propriety of a reconsideration. A request for reconsideration is filed with the administrator. To be timely the written request for reconsideration shall be filed within ten working days upon receipt of the evidentiary/step 5 decision according to the time period at Subsection 67-19a-407(1)(a)(i), not Section 63G-4-302.

(c) An appeal to the appellate/step 6 level from a CSRB hearing officer's reconsideration decision and order must be filed within ten working days upon receipt of the reconsideration or within ten working days after expiration of

the time for receipt of the reconsideration, whichever is first.

R137-1-22. The Board's Appellate/Step 6 Procedures.

(1) Transcript Production. The party appealing the CSRB hearing officer's evidentiary/step 5 decision to the board at the appellate/step 6 level shall order transcription of the evidentiary/step 5 hearing from the court reporting firm within ten working days upon receipt of acknowledgment of the appeal from the administrator.

(a) Appellants shall be responsible for all transcription production costs. The CSRB Office receives the transcript original; the appellant receives a transcript copy.

(b) The respondent may inquire of the CSRB Office about obtaining a transcript copy, or may directly purchase a copy from the court reporting firm.

(2) Briefs. An appeal hearing before the board at step 6 is based upon the evidentiary record previously established by the CSRB hearing officer during the evidentiary/step 5 hearing. No additional or new evidence is permitted unless compelled by the board.

(a) The appellant in an appellate/step 6 proceeding must obtain the transcript of the evidentiary/step 5 hearing. After receipt of the transcript, the appellant has 30 calendar days to file an original and six copies of a brief with the administrator. Additionally, the respondent must be provided with a copy of the appellant's brief.

(b) After receiving a copy of the appellant's brief, the respondent then has 30 calendar days to file an original and six copies of a brief with the administrator. The appellant may file an original and six copies of a reply brief which addresses the respondent's brief.

(c) After receiving both parties' briefs, the administrator distributes the briefs and the CSRB hearing officer's evidentiary/step 5 decision to the board members.

(d) Each party is responsible for filing its original and six copies with the CSRB Office and for exchanging a copy with the opposing party.

(e) Briefs shall be date-stamped upon their receipt in the CSRB Office.

(f) The time frame for receiving briefs shall be modified or waived only for good cause as determined by the CSRB chair or vice-chair, or the administrator.

(3) Rules of Procedure. The following rules are applicable to appeal hearings before the board at the appellate/step 6 level:

(a) Dismissal of Appeal. Upon a motion by either party or upon its own motion, the board may dismiss any appeal prior to holding a formal appeal hearing if the appeal is clearly moot, without merit, improperly filed, untimely filed, or outside the scope of the board's authority.

(b) Notice. The board shall distribute written notice of the date, time, place, and issues for hearing to the aggrieved employee, to the employee's counsel or representative, to the appropriate agency official, to the agency's counsel or representative, and to the agency's management representative, at least five working days before the date set for the hearing.

(c) Compelling Evidence. The board may compel evidence in the conduct of its appeal hearings, according to Subsection 67-19a-202(3).

(d) Oral Argument/Time Limitation. The board grants up to 20 to 25 minutes to each party for oral argument. The board may grant additional time when deemed appropriate.

(e) Oral Argument Set Aside. If the board determines that oral argument is unnecessary, the parties shall be notified. However, the parties' representatives may be expected to appear before the board at the date, time, and place noticed to answer any questions raised by the board members.

(f) Argument or Memoranda. The board may require the parties to offer oral argument or submit written memoranda of law.

(4) The Board's Standards of Review. The board's standards of review based upon the following criteria:

(a) The board shall first make a determination of whether the factual findings of the CSRB hearing officer are reasonable and rational according to the substantial evidence standard. When the board determines that the factual findings of the CSRB hearing officer are not reasonable and rational based on the evidentiary/step 5 record as a whole, then the board may, in its discretion, correct the factual findings, and also make new or additional factual findings.

(b) Once the board has either determined that the factual findings of the CSRB hearing officer are reasonable and rational or has corrected the factual findings based upon the evidentiary/step 5 record as a whole, the board must then determine whether the CSRB hearing officer has correctly applied the relevant policies, rules, and statutes according to the correctness standard, with no deference being granted to the evidentiary/step 5 decision of the CSRB hearing officer.

(c) Finally, the board must determine whether the decision of the CSRB hearing officer, including the totality of the sanctions imposed by the agency, is reasonable and rational based upon the ultimate factual findings and correct application of relevant policies, rules, and statutes determined according to the above provisions.

(5) Appeal Hearing Record. The proceeding before the board shall be recorded by a certified court reporter, or in exceptional circumstances by a recording machine.

(6) Appellate Review. Upon a party's application for review of the CSRB hearing officer's evidentiary/step 5 decision, the board's appellate/step 6 decision is based upon a review of the record, including briefs and oral arguments presented at step 6, and no further evidentiary hearing will be held unless otherwise ordered by the board. Section 63G-4-208 of the UAPA is incorporated by reference.

(7) Remand. Until the board's decision is final, the board may remand the case to the original CSRB hearing officer to take additional evidence or to resolve any further evidentiary issues of fact or law with instructions or may make any other appropriate disposition of the appeal.

(8) Distribution of Appellate Decisions. The board's decision and order is issued on the date that it is signed and dated by the CSRB chair, vice-chair or another board member. After the board's appellate/step 6 decision is issued, it is distributed according to R137-1-8(3).

(a) The board's appellate decision shall be distributed to the aggrieved employee, the employee's counsel or representative, the appropriate agency official, the agency's counsel or representative, and to the agency's management representative. The board's appellate decision shall be final in terms of administrative review under these grievance procedures. The board may, at its discretion, release to the parties its determination orally prior to issuance of its official written decision.

(b) The board's appellate decision is binding on the agency that is a party to the appeal unless its decision and ruling is overturned, vacated, or modified resulting from an appeal to the Utah Court of Appeals.

(c) The board may affirm, reverse, adopt, modify, supplement, amend, or vacate the CSRB hearing officer's decision, either in whole or in part.

(9) Rehearings. The board does not permit rehearings.

(10) Reconsideration.

(a) Reconsideration requests of the board's appellate/step 6 decisions will be conducted pursuant to the provisions of Section 63G-4-302.

(b) Any request for reconsideration of a previously issued decision by the board is subject to the following conditions:

(i) Reconsideration requests must contain specific reasons why a reconsideration is warranted with respect to the board's

factual findings and legal conclusions.

(ii) The board has discretion to decide whether it may reconsider any previously adjudicated matter.

(iii) The board only grants a reconsideration if appropriate justification is offered.

(iv) When the board agrees to the petitioner's request, the board's reconsideration response is in writing, with no further hearing or proceeding on the record, unless the board reopens the record or remands the case to the evidentiary/step 5 level.

(v) Any appeal from a board-issued reconsideration to the Utah Court of Appeals must be filed according to Section 63G-4-401(3)(a)of the UAPA.

(11) An Appeal to the Utah Court of Appeals.

To appeal to the Utah Court of Appeals, a party must file with the court within 30 calendar days from the date of issuance of the board's decision and final agency action according to Sections 63G-4-401 and 63G-4-403 of the UAPA, which are incorporated by reference. The dates of mailing, postmarking and receipt are not applicable to filing with the court.

(12) Transcript Fee. The party petitioning the Utah Court of Appeals for a review must bear all costs of transcript production for the appellate/step 6 proceeding. The CSRB Office may not share any cost for a transcript or transcription of the appeal hearing. The petitioning party should provide a copy of the appeal hearing's transcript to the responding party when an appellate/step 6 proceeding is transcribed.

R137-1-23. Declaratory Orders.

This rule provides a procedure for the submission and review of requests for and disposition of declaratory rulings pertaining to the applicability of statutes, administrative rules, and orders either governing or issued by the administrator, the board or a CSRB hearing officer. Section 63G-4-503 of the UAPA is incorporated by reference.

(1) Applicability. The applicability of a declaratory order refers to the determination of whether a statute, rule, or order should be applied, and if so, how the law should be applied to the facts.

(2) Petition Procedure. Any person or agency with proper standing may petition for a declaratory ruling.

(a) The petition must be addressed and delivered to the CSRB Office or the administrator.

(b) The petition shall be date-stamped upon receipt in the CSRB Office.

(3) Petition Form. The petition shall:

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

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

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

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

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

(f) be signed by the petitioner.

(4) Petition Review and Disposition. As appropriate the administrator or the board:

(a) shall review and consider the petition;

(b) shall prepare a declaratory ruling, stating:

(i) the applicability or nonapplicability of the statute, rule, or order at issue;

(ii) the reasons for the applicability or nonapplicability of the statute, rule, decision or order; and

(iii) any requirements imposed on a petitioning person or agency, or any other person according to the ruling; and

(c) may:

(i) interview the petitioner or the agency representative;

(ii) hold a public hearing on the petition;

(iii) consult with legal counsel or the Attorney General; or

(iv) take any action that the board, in its judgment, deems necessary to provide the petition with an adequate review and due consideration.

(5) Time Period and Issuance. The board or the administrator shall prepare the declaratory ruling without unnecessary delay. The board shall issue a copy of the ruling to the petitioner by depositing it with the U.S. Postal Service, postage prepaid, or by depositing it with State Mail Services, by faxing it or E-mailing it, as appropriate. In the event of a necessary delay, the board must issue a notice of progress to the petitioner within 30 days of receipt of the petition.

(6) Records. The CSRB Office shall retain the petition and the original of the declaratory ruling in its records.

(7) Statutory Construction. Questions requiring the construction of statutory provisions may be submitted to the Attorney General for a formal or informal letter opinion.

(8) Refusal. The board or the administrator may refuse to issue a declaratory order if the question in issue is one that is being contested in a case currently before the board.

KEY: grievance procedures

May 6, 2009	**34A-5-106**
Notice of Continuation August 4, 2006	**67-19-30**
	67-19-31
	67-19-32
	67-19a et seq.
	63G-4 et seq.

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

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

R137-2-2. Authority.

The authority for this rule is found in Sections 63G-2-204 of the Government Records Access and Management Act (GRAMA) and 63A-12-104 of the Utah Administrative Services Code.

R137-2-3. Definitions.

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

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

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

D. "GRAMA" means the Government Records Access and Management Act as enacted by the 1992 Utah Legislature, Sections 63G-2-101 through 901, Utah Code Annotated.

E. "Records Officer" means the individual responsible to fulfill Section 63G-2-103(25) of the GRAMA.

R137-2-4. Records Officer.

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

B. The records officer shall review and respond to requests for access to CSRB records, according to Section 63A-12-103.

R137-2-5. Requests for Access.

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

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

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

R137-2-6. Fees.

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

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

R137-2-7. Waiver of Fees.

Fees for duplication and compilation of a record may be waived under certain circumstances described in Section 63G-2-203(4). Requests for application of a waiver of a fee may be made to the CSRB records officer.

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

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

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

R137-2-9. Time Periods under GRAMA.

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

R137-2-10. Appeal of Agency Decision.

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

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

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

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

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

KEY: public records, records access*
1993 **63G-2-101 through 63g-2-901**
63A-12-103 through 63A-12-104
67-19a-203(8)

R154. Commerce, Corporations and Commercial Code.
R154-1. Central Filing System for Agriculture Product Liens.
R154-1-1. Incorporation by Reference.

The Department of Commerce, Division of Corporations and Commercial Code (hereinafter "Division") incorporates by reference in its entirety 9 CFR Part 205 1992, entitled "Protection for Purchasers of Farm Products," which was developed by the Secretary of Agriculture to fulfill the Secretary's responsibility under Section 1324 of the Food Security Act of 1985, P.L. 99-198.

R154-1-2. Official Filing Office.

The system operator for the Central Filing System is the Division. All filings of any Effective Financing Statement, amendment thereto, or continuation thereof, are filed with the above Division. There are no other agencies of the State of Utah for filing.

R154-1-3. Master List.

The secured party must refile all liens on farm products produced in Utah presently on file in the Uniform Commercial Code Section of the Division in the Central Filing System on or before December 24, 1986, to protect the security interests of the secured party. Products not produced in Utah cannot be registered in the Central Filing System.

The Division shall publish the first Master List 30 days after December 24, 1986.

R154-1-4. Central Filing System (CFS).

Any filings in the Central Filing System must be filed on a CFS-1 form. Each filing must bear the signature of the debtor or be accompanied by a copy of the UCC-1 financing statement, certified by an employee of the secured party, showing filing date and the debtor's signature. Any CFS filing will be effective for a period of five years from the date of filing. Continuation CFS filings will extend the CFS filing for an additional five year period.

R154-1-5. Collateral of Crop Year.

Any filing which does not specify a particular crop year as to any one or more of the described farm products, shall be deemed to include all described farm products existing as of the date of filing together with all described farm products born, acquired or grown during the effective period of such filing.

R154-1-6. Recording of Effective Filing Statement.

The Division shall not record Effective Filing Statements received in the office after 4:00 p.m. until the next business day.

R154-1-7. Fees.

The Division shall charge fees for the use of the Central Filing System according to Section 63J-1-301. Fees shall be reasonable and fair, and shall reflect the costs of the services provided. The specific fees charged are posted at the Division offices or may be obtained by calling the Division offices.

R154-1-9. Searches.

Requests for information about any EFS filings will only be accepted by debtor name, debtor tax identification number or debtor social security number or by Effective Filing Statement file number.

R154-1-10. Telephone Requests.

Telephone requests for information concerning Central Filing System filings are limited to three inquiries per call.

R154-1-11. Requests for Certified Copies.

Requests for certified copies of Central Filing System files must be received in writing on Form CFS-2.

R154-1-12. Application for CFS Master List.

An applicant must register with the Division each year using Form CFS-4 to receive the CFS Master List and update. Registrations will expire at 5:00 p.m. on the last business day of the registration year.

R154-1-13. Change of Address.

Registrants must notify the Division of any change of address by filling out a new registration form CFS-4 in order to continue to receive copies of the Central Filing System Master List.

R154-1-14. Distribution of Master List.

The Division shall distribute the Utah State Central Filing System Master List at the beginning of each month, followed by a Master List update on the 15th of the same month. The Division shall distribute the Master List and Master List update to all current registrants.

1. New Effective Financing Statement filings only appear in the latest edition of the Master List or its update if filed with the Division before the cut-off deadline. The deadline for the monthly Master List update is filings made by 4:00 p.m. on the 15th day of the month. If the deadline falls on a weekend, holiday or other non-business day, the deadline will be the next business day after the normal deadline.
2. The Division shall mail Master Lists and update to registrants within five business days after the deadline day.

R154-1-15. Mailing of Master List.

The Division shall distribute all Central Filing System Master Lists and Central Filing System Master List Updates to current registrants by U.S. Post Office First Class Mail.

The Division shall require registrants residing in a state requiring notification by other than First Class Mail to pay any additional costs for mailing other than First Class Mail as a part of their registration filing.

R154-1-16. Notification of Registrants.

Registrants will be considered notified if:

1. The Division has mailed the list by First Class Mail by the deadline;
2. The Division has not received notice from the registrant of non-receipt of the list by 4:00 p.m. on the fifth business day after the distribution date.
3. Registrants notifying the Division of non-receipt will receive a new list by next day mail sent the same day as notice is given to the Division.

KEY: liens, crops
1991 **70a-9-400**
Notice of Continuation October 16, 2007

R154. Commerce, Corporations and Commercial Code.
R154-100. Utah Administrative Procedures Act Rules.
R154-100-1. Purpose of Rules.

The purpose of these rules is to designate those categories of adjudicative proceedings within the Division of Corporations and Commercial Code which will be conducted on an informal basis, in accordance with the Utah Administrative Procedures Act and the Rules of Procedure for Adjudicative Proceedings before the Department of Commerce.

R154-100-2. Designation of Informal Adjudicative Proceedings.

A. Any adjudicative proceedings as to the following matters shall be conducted on an informal basis:

1. The disapproval of any articles of incorporation, amendment, merger, consolidation, dissolution, or any other document required by Section 61-6-1 et seq. to be approved by the Division before filing.

2. The revocation of a certificate of authority of a foreign corporation to transact business in this state.

3. The disapproval of an application for an assumed name pursuant to Section 42-2-6.6(4).

4. The application for, and issuance of, registration of a trademark or service mark pursuant to Section 70-3-3.

5. The cancellation of registration of a trademark or service mark pursuant to Section 70-3-10.

B. All adjudicative proceedings as to any matters not specifically listed herein shall be conducted on an informal basis.

C. No hearing shall be held in any informal adjudicative proceeding which is initiated pursuant to these rules. However, any final order issued by the division is subject to agency review, consistent with the provisions of Section 63G-4-301 and the Rules of Procedure which govern Adjudicative Proceedings Before the Department of Commerce.

KEY: administrative procedure, government hearing
1988 13-1-10
Notice of Continuation October 2, 2008 63G-4-202

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

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

R156-22-102. Definitions.

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

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

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

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

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

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

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

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

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

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

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

(6) "Professional structural engineering or the practice of structural engineering", as defined in Subsection 58-22-102(14), is further defined to exclude the design and oversight of the construction and installation of highway, utility, or pedestrian bridges.

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

(a) Professional Engineer.

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

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

(b) Professional Structural Engineer.

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

(ii) passing the NCEES Structural I and II Examination; and

(iii) three years of licensed experience in professional structural engineering.

(c) Professional Land Surveyor.

(i) a two or four year degree in land surveying or equivalent education as determined by the Center for Professional Engineering Services (CPEES) and four years of full time land surveying experience under supervision of one or more licensed professional land surveyors; or eight years of full time land surveying experience under supervision of one or more licensed professional land surveyors; and

(ii) passing the NCEES Principles and Practice of Land Surveying Examination (PLS) or passing a professional land surveying examination that is substantially equivalent to the NCEES Principles and Practice of Land Surveying Examination.

(8) "Responsible charge" by a principal as used in Subsection 58-22-102(7) means that the licensee is assigned to and is personally accountable for the production of specified professional engineering, professional structural engineering or professional land surveying projects within an organization.

(9) "TAC/ABET" means Technology Accreditation Commission/Accreditation Board for Engineering and Technology.

(10) "Under the direction of the licensee" as used in Subsection 58-22-102(16), as part of the definition of "supervision of an employee, subordinate, associate, or drafter of a licensee", means that the unlicensed employee, subordinate, associate, or drafter of a person licensed under this chapter engages in the practice of professional engineering, professional structural engineering, or professional land surveying only on work initiated by a person licensed under this chapter, and only under the administration, charge, control, command, authority, oversight, guidance, jurisdiction, regulation, management, and authorization of a person licensed under this chapter.

(11) "Unprofessional conduct" as defined in Title 58, Chapters 1 and 22, is further defined, in accordance with Subsection 58-1-203(1)(e), in Section R156-22-502.

R156-22-103. Authority - Purpose.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 22.

R156-22-104. Organization - Relationship to Rule R156-1.

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

R156-22-302b. Qualifications for Licensure - Education Requirements.

(1) Education requirements - Professional Engineer.

In accordance with Subsections 58-22-302(1)(d) and 58-22-302(2)(d), the engineering program criteria is established as one of the following:

(a) The bachelors or post graduate engineering program shall be accredited by EAC/ABET or the Canadian Engineering Accrediting Board (CEAB).

(b) The post graduate engineering degree, when not accredited by EAC/ABET or CEAB, shall be earned from an institution which offers a bachelors or masters degree in an engineering program accredited by EAC/ABET or CEAB in the same specific engineering discipline as the earned post graduate

degree and the applicant is responsible to demonstrate that the combined engineering related coursework taken (both undergraduate and post graduate) included coursework that meets or exceeds the engineering related coursework required for the EAC/ABET accreditation for the bachelor degree program.

(c) If the degree was earned in a foreign country, the engineering curriculum shall be determined to be equivalent to a EAC/ABET accredited program by the Center for Professional Engineering Services (CPEES). Only deficiencies in course work in the humanities, social sciences and liberal arts and no more than five semester hours in math, science or engineering, not to exceed a total of 10 semester hours noted by the credentials evaluation may be satisfied by successfully completing the deficiencies in course work at a recognized college or university approved by the division in collaboration with the board. Engineering course work deficiencies must be completed at an EAC/ABET approved program.

(d) A TAC/ABET accredited degree is not acceptable to meet the qualifications for licensure as a professional engineer.

(2) Education requirements - Professional Land Surveyor.

In accordance with Subsection 58-22-302(3)(d), an equivalent land surveying program for licensure as a professional land surveyor is defined as an earned bachelors or masters degree and completion of a minimum of 30 semester hours or 42 quarter hours of course work in land surveying which shall include the following courses:

(a) successful completion of a minimum of one course in each of the following content areas:

(i) boundary law;

(ii) writing legal descriptions;

(iii) photogrammetry;

(iv) public land survey system;

(v) studies in land records or land record systems;

(vi) surveying field techniques; and

(b) the remainder of the 30 semester hours or 42 quarter hours may be made up of successful completion of courses from the following content areas:

(i) algebra, calculus, geometry, statistics, trigonometry, not to exceed six semester hours or eight quarter hours;

(ii) control systems;

(iii) drafting, not to exceed six semester hours or eight quarter hours;

(iv) geodesy;

(v) geographic information systems;

(vi) global positioning systems;

(vii) land development; and

(viii) survey instrumentation.

R156-22-302c. Qualifications for Licensure - Experience Requirements.

(1) General Requirements. These general requirements apply to all applicants under this chapter and are in addition to the specific license requirements in Subsections (2), (3) and (4).

(a) Experience must be progressive on projects that are of increasing quality and requiring greater responsibility.

(b) Only experience of an engineering, structural engineering or surveying nature, as appropriate for the specific license, is acceptable.

(c) Experience is not acceptable if it is obtained in violation of applicable statutes or rules.

(d) Unless otherwise provided in Subsection (1)(e), experience shall be gained under the direct supervision of a person licensed in the profession for which the license application is submitted. Supervision of an intern by another intern is not permitted.

(e) Experience is also acceptable when obtained in a work setting where licensure is not required or is exempted from licensure requirements, including experience obtained in the armed services if:

(i) the experience is performed under the supervision of qualified persons and the applicant provides verifications of the credentials of the supervisor; and

(ii) the experience gained is equivalent to work performed by an intern obtaining experience under a licensed supervisor in a licensed or civilian setting, and the applicant provides verification of the nature of the experience.

(f) Proof of supervision. The supervisor shall provide to the applicant the certificate of qualifying experience in a sealed envelope with the supervisor's seal stamped across the seal flap of the envelope, which the applicant shall submit with the application for licensure.

(g) In the event the supervisor is unavailable or refuses to provide a certification of qualifying experience, the applicant shall submit a complete explanation of why the supervisor is unavailable and submit verification of the experience by alternative means acceptable to the board, which shall demonstrate that the work was profession-related work, competently performed, and sufficient accumulated experience for the applicant to be granted a license without jeopardy to the public health, safety or welfare.

(h) In addition to the supervisor's documentation, the applicant shall submit at least one verification of qualifying experience from a person licensed in the profession who has personal knowledge of the applicant's knowledge, ability and competence to practice in the profession applied for.

(i) Duties and responsibilities of a supervisor. The duties and responsibilities of a licensee under Subsection (1)(d) or other qualified person under Subsection (1)(e) include the following.

(i) A person may not serve as a supervisor for more than one firm.

(ii) A person who renders occasional, part time or consulting services to or for a firm may not serve as a supervisor.

(iii) The supervisor shall be in responsible charge of the projects assigned and is professionally responsible for the acts and practices of the supervisee.

(iv) The supervision shall be conducted in a setting in which the supervisor is independent from control by the supervisee and in which the ability of the supervisor to supervise and direct the practice of the supervisee is not compromised.

(v) The supervisor shall be available for advice, consultation and direction consistent with the standards an ethics of the profession.

(vi) The supervisor shall provide periodic review of the work assigned to the supervisee.

(vii) The supervisor shall monitor the performance of the supervisee for compliance with laws, standards and ethics applicable to the profession.

(viii) The supervisor shall provide supervision only to a supervisee who is an employee of a licensed professional or alternatively in a setting wherein both the supervisor and the supervisee are engaged in a work setting in which the work is exempt from licensure requirements.

(ix) The supervisor shall submit appropriate documentation to the division with respect to all work completed by the supervisee during the period of supervised experience, including the supervisor's evaluation of the supervisee's competence to practice in the profession.

(x) The supervisor shall assure each supervisee has obtained the degree which is a prerequisite to the intern beginning to obtain qualifying experience.

(2) Experience Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(e), an applicant for licensure as a professional engineer shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience, obtained while under the supervision of one or more licensed professional engineers, which experience has been certified by the licensed professional who provided the supervision documenting completion of a minimum of four years of full time or equivalent part time qualifying experience in professional engineering approved by the division in collaboration with the board in accordance with the following:

(A) The qualifying experience must be obtained after meeting the education requirements.

(B) A maximum of three of the four years of qualifying experience may be approved by the board as follows:

(I) A maximum of three years of qualifying experience may be granted for teaching advanced engineering subjects in a college or university offering an engineering curriculum accredited by EAC\ABET.

(II) A maximum of three years of qualifying experience may be granted for conducting research in a college or university offering an engineering curriculum accredited by EAC/ABET provided the research is under the supervision of a licensed professional and is directly related to the practice of engineering, as long as such research has not been credited towards the education requirements. Therefore research which is included as part of the classwork, thesis or dissertation or similar work is not acceptable as additional work experience.

(III) A maximum of one year of qualifying experience may be granted for completion of a masters degree in engineering provided that both the earned bachelors and masters degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(IV) A maximum of two years of qualifying experience may be granted for completion of a doctorate degree in engineering provided that both the earned bachelors or masters degree and doctorate degree in engineering meet the program criteria set forth in Subsection R156-22-302b(1).

(b) The performance or supervision of construction work as a contractor, foreman or superintendent is not qualifying experience for licensure as a professional engineer.

(c) Experience should include demonstration of, knowledge, application, and practical solutions using engineering mathematics, physical and applied science, properties of materials and the fundamental principles of engineering design.

(3) Experience Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(e), each applicant shall submit verification of three years of full time or equivalent part time professional structural engineering experience obtained while under the supervision of one or more licensed professional structural engineers, which experience is certified by the licensed structural engineer supervisor and is in addition to the qualifying experience required for licensure as a professional engineer.

(b) Professional structural engineering experience shall include responsible charge of structural design in one or more of the following areas:

(i) structural design of any building or structure two stories and more, or 45 feet in height, located in a region of moderate or high seismic risk designed in accordance with current codes adopted pursuant to Section 58-56-4;

(ii) structural design for a major seismic retrofit/rehabilitation of an existing building or structure located in a region of moderate or high seismic risk; or

(iii) structural design of any other structure of comparable structural complexity.

(c) Professional structural engineering experience shall include structural design in all of the following areas:

(i) use of three of the following four materials as they relate to the design, rehabilitation or investigation of buildings or structures:

(A) steel;

(B) concrete;

(C) wood; or

(D) masonry;

(ii) selection of framing systems including the consideration of alternatives and the selection of an appropriate system for the interaction of structural components to support vertical and lateral loads;

(iii) selection of foundation systems including the consideration of alternatives and the selection of an appropriate type of foundation system to support the structure;

(iv) design and detailing for the transfer of forces between stories in multi-story buildings or structures;

(v) application of lateral design in the design of the buildings or structures in addition to any wind design requirements; and

(vi) application of the local, state and federal code requirements as they relate to design loads, materials, and detailing.

(4) Experience Requirements - Professional Land Surveyor.

(a) In accordance with Subsections 58-22-302(3)(d), an applicant for licensure as a professional land surveyor shall complete the following qualifying experience requirements:

(i) Submit verification of qualifying experience obtained under the supervision of one or more licensed professional land surveyors who have provided supervision, which experience is certified by the licensed professional land surveyor supervisor and is in accordance with the following:

(A) Applicants who have met the education requirements in Subsection 58-22-302(3)(d)(i) shall document four years of full time or equivalent part time qualifying experience in land surveying which experience may be obtained before, during or after completing the education requirements for licensure.

(B) Prior to January 1, 2007, applicants who did not complete the education requirements in Subsection 58-22-302(3)(d)(i) shall have until December 31, 2009 to apply for licensure by documenting eight years of qualifying experience in land surveying.

(b) The four years of qualifying experience required in R156-22-302c(4)(a)(i)(A) and four of the eight years required in R156-22-302c(4)(a)(i)(B) shall comply with the following:

(i) Two years of experience should be specific to field surveying with actual "hands on" surveying, including all of the following:

(A) operation of various instrumentation;

(B) review and understanding of plan and plat data;

(C) public land survey systems;

(D) calculations;

(E) traverse;

(F) staking procedures;

(G) field notes and manipulation of various forms of data encountered in horizontal and vertical studies; and

(ii) Two years of experience should be specific to office surveying, including all of the following:

(A) drafting (includes computer plots and layout);

(B) reduction of notes and field survey data;

(C) research of public records;

(D) preparation and evaluation of legal descriptions; and

(E) preparation of survey related drawings, plats and record of survey maps.

(c) The remaining qualifying experience required in R156-22-302c(4)(a)(i)(B) shall include any aspects of the practice of land surveying under the supervision of a licensed professional land surveyor in accordance with Subsection 58-22-102(16).

R156-22-302d. Qualifications for Licensure - Examination Requirements.

(1) Examination Requirements - Professional Engineer.

(a) In accordance with Subsection 58-22-302(1)(f), the examination requirements for licensure as a professional engineer are defined, clarified or established as the following:

(i) the NCEES Fundamentals of Engineering (FE) Examination with a passing score as established by the NCEES except that an applicant who has completed an undergraduate degree from an EAC/ABET accredited program and has completed a Ph.D. or doctorate in engineering from an institution that offers EAC/ABET undergraduate programs in the Ph.D. field of engineering is not required to take the FE examination;

(ii) the NCEES Principles and Practice of Engineering (PE) Examination other than Structural II with a passing score as established by the NCEES; and

(iii) pass all questions on the open book, take home Utah Law and Rules Examination, which is included as part of the application for licensure forms.

(b) If an applicant was approved by the Utah Division of Occupational and Professional Licensing to take the examinations required for licensure as an engineer under prior Utah statutes and rules and did take and pass all examinations required under such prior rules, the prior examinations will be acceptable to qualify for reinstatement of licensure rather than the examinations specified under Subsection R156-22-302d(1)(a).

(c) Prior to submitting an application for pre-approval to sit for the NCEES PE examination, an applicant must have successfully completed three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(1), and have successfully completed the education requirements set forth in Subsection R156-22-302b(1).

(d) The admission criteria to sit for the NCEES FE examination is set forth in Section 58-22-306.

(2) Examination Requirements - Professional Structural Engineer.

(a) In accordance with Subsection 58-22-302(2)(f), the examination requirements for licensure as a professional structural engineer are defined, clarified, or established as the following:

(i) the NCEES Fundamentals of Engineering Examination (FE) with a passing score as established by the NCEES;

(ii) the NCEES Structural I and Structural II Examinations with a passing score as established by the NCEES; and

(iii) as part of the application for license, pass all questions on the open book, take home Utah Law and Rules Examination.

(b) Prior to submitting an application for pre-approval to sit for the NCEES Structural II examination, an applicant must have successfully completed two out of the three years of the experience requirements set forth in Subsection R156-22-302c(3).

(3) Examination Requirements - Professional Land Surveyor.

(a) In accordance with Subsection 58-22-302(3)(e), the examination requirements for licensure as a professional land surveyor are established as the following:

(i) the NCEES Fundamentals of Land Surveying (FLS) Examination with a passing score as established by the NCEES;

(ii) the NCEES Principles and Practice of Land Surveying (PLS) Examination with a passing score as established by the NCEES; and

(iii) the Utah Local Practice Examination with a passing score of at least 75.

(b) Prior to submitting an application for pre-approval to sit for the NCEES PLS examination, an applicant must have successfully completed the education requirement set forth in Subsection R156-22-302b(2) and three out of the four years of the qualifying experience requirements set forth in Subsection R156-22-302c(4).

(4) Examination Requirements for Licensure by Endorsement.

In accordance with Subsection 58-22-302(4)(d)(ii), the examination requirements for licensure by endorsement are established as follows:

(a) Professional Engineer: An applicant for licensure as a professional engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(1) except that the board may waive one or more of the following examinations under the following conditions:

(i) the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed;

(ii) the NCEES PE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application, who has been licensed for 20 years preceding the date of the license application, and who was not required to pass the NCEES PE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(b) Professional Structural Engineer: An applicant for licensure as a professional structural engineer by endorsement shall comply with the examination requirements in Subsection R156-22-302d(2) except that the board may waive the NCEES FE Examination for an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FE Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

(c) Professional Land Surveyor: An applicant for licensure as a professional land surveyor by endorsement shall comply with the examination requirements in Subsection R156-22-302d(3) except that the board may waive either the NCEES FLS Examination or the NCEES PLS Examination or both to an applicant who is a principal for five of the last seven years preceding the date of the license application and who was not required to pass the NCEES FLS Examination or the PLS Examination for initial licensure from the recognized jurisdiction the applicant was originally licensed.

R156-22-304. Continuing Education for Professional Engineers, Professional Structural Engineers and Professional Land Surveyors.

In accordance with Subsection 58-22-303(2) and Section 58-22-304, the qualifying continuing professional education standards for professional engineers, professional structural engineers and professional land surveyors are established as follows:

(1) During each two year period ending on December 31 of each even numbered year, a licensed professional engineer, professional structural engineer and professional land surveyor shall be required to complete not less than 24 hours of qualified professional education directly related to the licensee's professional practice.

(2) The required number of hours of professional education for an individual who first becomes licensed during the two year period shall be decreased in a pro-rata amount equal to any part of that two year period preceding the date on which that individual first became licensed.

(3) Qualified continuing professional education under this section shall:

(a) have an identifiable clear statement of purpose and defined objective for the educational program directly related to the practice of a professional engineer, professional structural engineer, or professional land surveyor;

(b) be relevant to the licensee's professional practice;

(c) be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program;

(d) be prepared and presented by individuals who are qualified by education, training and experience; and

(e) have associated with it a competent method of registration of individuals who actually completed the professional education program and records of that registration and completion are available for review.

(4) Credit for qualified continuing professional education shall be recognized in accordance with the following:

(a) unlimited hours shall be recognized for professional education completed in blocks of time of not less than one hour in formally established classroom courses, seminars, or conferences;

(b) a maximum of 12 hours per two year period may be recognized for teaching in a college or university or for teaching qualified continuing professional education courses in the field of professional engineering, professional structural engineering or professional land surveying, provided it is the first time the material has been taught during the preceding 12 months;

(c) a maximum of four hours per two year period may be recognized for preparation of papers, articles, or books directly related to the practice of professional engineering, professional structural engineering or professional land surveying and submitted for publication; and

(d) a maximum of eight hours per two year period may be recognized at the rate of one hour for each hour served on committees or in leadership roles in any state, national or international organization for the development and improvement of the profession of professional engineering, professional structural engineering or professional land surveying but no more than four of the eight hours may be obtained from such activity in any one organization;

(e) unlimited hours may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(5) A licensee shall be responsible for maintaining records of completed qualified continuing professional education for a period of four years after close of the two year period to which the records pertain. It is the responsibility of the licensee to maintain information with respect to qualified continuing professional education to demonstrate it meets the requirements under this section.

(6) If a licensee exceeds the 24 hours of qualified continuing professional education during the two year period, the licensee may carry forward a maximum of 12 hours of qualified continuing professional education into the next two year period.

(7) A licensee who documents they are engaged in full time activities or is subjected to circumstances which prevent that licensee from meeting the continuing professional education requirements established under this section may be excused from the requirement for a period of up to three years. However, it is the responsibility of the licensee to document the reasons and justify why the requirement could not be met.

(8) Any licensee who fails to timely complete the continuing education required by this rule shall be required to complete double the number of hours missed to be eligible for renewal or reinstatement of licensure.

(9) Any applicant for reinstatement who was not in compliance with the continuing education requirement at the time of the expiration of licensure shall be required to complete 24 hours of continuing education complying with this rule within two years prior to the date of application for reinstatement of licensure.

R156-22-305. Inactive Status.

(1) A person currently licensed and in good standing as a professional engineer, professional structural engineer or professional land surveyor may apply for a transfer of that license to inactive status if:

(a)(i) the licensee is at least 60 years of age;

(ii) the licensee is disabled; or

(iii) the division finds other good cause for believing that the licensee will not return to the practice as a professional engineer, professional structural engineer or professional land surveyor;

(b) the licensee makes application for transfer of status and registration and pays a registration fee determined by the department under Section 63J-1-504; and

(c) the licensee, on application for transfer, certifies that he will not engage in the practice for which a license is required while on inactive status.

(2) Each inactive license shall be issued in accordance with the two-year renewal cycle established by Section R156-1-308a.

(3) Inactive status licensees may not engage in practice for which a license is required.

(4) Inactive status licensees are not required to fulfill the continuing professional education under this rule.

(5) Each inactive status licensee is responsible for renewing his inactive license according to division procedures.

(6) An inactive status licensee may reinstate his license to active status by:

(a) submitting an application in a form prescribed by the division;

(b) paying a fee determined by the department under Section 63J-1-504; and

(c) showing evidence of having completed the continuing professional education requirement established in Subsection R156-22-304(9).

R156-22-501. Administrative Penalties - Unlawful Conduct.

In accordance with Subsections 58-1-501, 58-1-501(1)(a) through (d), 58-22-501 and 58-22-503, unless otherwise ordered by the presiding officer, the following fine schedule shall apply.

(1) Engaging in unlicensed practice or using any title that would cause a reasonable person to believe the user of the title is licensed under this chapter.

First Offense: $800

Second Offense: $1,600

(2) Engaging in, or representing oneself as engaged in the practice of professional engineering or land surveying as a corporation, proprietorship, partnership, or limited liability company unless exempted from licensure.

First Offense: $800

Second Offense: $1,600

(3) Impersonating another licensee or engaging in practice under this chapter using a false or assumed name, unless permitted by law.

First Offense: $1,000

Second Offense: $2,000

(4) Knowingly employing any person to practice under this chapter who is not licensed to do so.

First Offense: $1,000

Second Offense: $2,000

(5) Knowingly permits any person to use his or her license except as permitted by law.

First Offense: $1,000

Second Offense: $2,000

(6) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor. If a citation is issued for a third offense, the fine is double the second offense amount, with a maximum amount not to exceed the maximum fine allowed under Subsection 58-22-

503(1)(i).

(7) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(8) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(9) In all cases the presiding officer shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount based upon the evidence reviewed.

R156-22-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) submitting an incomplete final plan, specification, report or set of construction plans to:

(a) a client, when the licensee represents, or could reasonably expect the client to consider the plan, specification, report or set of construction plans to be complete and final; or

(b) to a building official for the purpose of obtaining a building permit;

(2) failing as a principal to exercise responsible charge;

(3) failing as a supervisor to exercise supervision of an employee, subordinate, associate or drafter; or

(4) failing to conform to the accepted and recognized standards and ethics of the profession including those stated in the "Model Rules of Professional Conduct" of the National Council of Examiners for Engineering and Surveying (NCEES), 1997, which is hereby incorporated by reference.

R156-22-601. Seal Requirements.

(1) In accordance with Section 58-22-601, all final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats prepared by the licensee or prepared under the supervision of the licensee, shall be sealed in accordance with the following:

(a) Each seal shall be a circular seal, 1-1/2 inches minimum diameter.

(b) Each seal shall include the licensee's name, license number, "State of Utah", and "Professional Engineer", "Professional Structural Engineer", or "Professional Land Surveyor" as appropriate.

(c) Each seal shall be signed and dated with the signature and date appearing across the face of each seal imprint.

(d) Each original set of final plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats, as a minimum, shall have the original seal imprint, original signature and date placed on the cover or title sheet.

(e) A seal may be a wet stamp, embossed, or electronically produced.

(f) Copies of the original set of plans, specifications, reports, maps, sketches, surveys, drawings, documents and plats which contain the original seal, original signature and date is permitted, if the seal, signature and date is clearly recognizable.

(2) A person who qualifies for and uses the title of professional engineer intern is not permitted to use a seal.

KEY: engineers, surveyors, professional land surveyors, professional engineers

April 7, 2009 **58-22-101**

Notice of Continuation November 15, 2007 **58-1-106(1)(a)**

58-1-202(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-31c. Nurse Licensure Compact Rule.
R156-31c-101. Title.

This rule is known as the "Nurse Licensure Compact Rule".

R156-31c-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 31c, as used in Title 58, Chapter 31c or this rule:

(1) "Board", as used in this rule, means the party state's regulatory body responsible for issuing nurse licenses.

(2) "Information system", as used in this rule, means the coordinated licensure information system as defined in Section 58-31c-102.

(3) "Primary state of residence", as used in this rule, means the state of a person's declared fixed permanent and principal home for legal purposes; domicile.

(4) "Public", as used in this rule, means any individual or entity other than designated staff or representatives of party state Boards or the National Council of State Boards of Nursing, Inc.

R156-31c-103. Authority - Purpose.

This rule is adopted by the Division under the authority of Subsection 58-1-106(1) to enable the Division to administer Title 58, Chapter 31c.

R156-31c-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.

R156-31c-201. Issuing a License.

(1) As of July 1, 2005 no applicant for initial licensure will be issued a compact license granting a multi-state privilege to practice unless the applicant first obtains a passing score on the applicable NCLEX examination or any predecessor examination used for licensure.

(2) A nurse applying for a license in a home party state shall produce evidence of the nurse's primary state of residence. Such evidence shall include a declaration signed by the licensee. Further evidence that may be requested may include:

(a) driver's license with a home address;

(b) voter registration card displaying a home address;

(c) federal income tax return declaring the primary state of residence;

(d) military form no. 2058 - state of legal residence certificate; or

(e) W-2 form from the United States government or any bureau, division or agency thereof indicating the declared state of residence.

(3) A nurse on a visa from another country applying for licensure in a party state may declare either the country of origin or the party state as the primary state of residence. If the foreign country is declared the primary state of residence, a single state license will be issued by the party state.

(4) A license issued by a party state is valid for practice in all other party states unless clearly designated as valid only in the state which issued the license.

(5) When a party state issues a license authorizing practice only in that state and not authorizing practice in other party states (i.e. a single state license), the license shall be clearly marked with words indicating that it is valid only in the state of issuance.

(6) A nurse changing primary state of residence, from one party state to another party state, may continue to practice under the former home state license and multi-state privilege during the processing of the nurse's licensure application in the new home state for a period not to exceed 30 days.

(7) The licensure application in the new home state of a nurse under pending investigation by the former home state shall be held in abeyance and the 30 day period in Subsection (2) shall be stayed until resolution of the pending investigation.

(8) The former home state license shall be expired and no longer valid upon the issuance of a new home state license.

(9) If a decision is made by the new home state denying licensure the new home state shall notify the former home state within ten business days and the former home state shall take action in accordance with that state's laws and rules.

R156-31c-302. Limitations on Multi-state Licensure Privilege - Discipline.

(1) Home state Boards shall include in all licensure disciplinary orders and stipulation agreements that limit practice or require monitoring the requirement that the licensee subject to said order or stipulation will agree to limit the licensee's practice to the home state during the pendency of the order or stipulation. This requirement may, in the alternative, allow the nurse to practice in other party states with prior written authorization from both the home state and such other party state Boards.

(2) An individual who had a license which was surrendered, revoked, suspended, or an application denied for cause in a prior state of residence may be issued a single state license in a new primary state of residence until such time as the individual would be eligible for an unrestricted license by the prior state(s) of adverse action. Once eligible for licensure in the prior state, a multistate license may be issued.

R156-31c-401. Information System.

(1) Levels of Access:

(a) The public shall have access to nurse licensure information limited to:

(i) the nurse's name;

(ii) jurisdiction(s) of licensure;

(iii) license expiration date(s);

(iv) licensure classification(s) and status(es);

(v) public emergency and final disciplinary actions, as defined by the contributing state authority; and

(vi) the status of multi-state licensure privileges.

(b) Non-party state Boards shall have access to all Information System data except current significant investigative information and other information as limited by the contributing party state authority.

(c) Party state Boards shall have access to all Information System data contributed by the party states and other information as limited by contributing non-party states' authority.

(2) The licensee may request in writing to the home state Board to review the data relating to the licensee in the Information System. In the event a licensee asserts that any data relating to him is inaccurate, the burden of proof shall be upon the licensee to provide evidence that substantiates such claim. The Board shall verify and within ten business days correct inaccurate data to the Information System.

(3) The Board shall report to the Information System within ten business days:

(a) disciplinary action, stipulation or order requiring participation in alternative programs or which limit practice or require monitoring (except agreements relating to participation in alternative programs required to remain nonpublic by the contributing state authority);

(b) dismissal of a complaint; and

(c) changes in status of disciplinary action, or licensure encumbrance.

(4) Current significant investigative information shall be deleted from the Information System within ten business days upon report of disciplinary action, stipulation or order requiring participation in alternative programs or stipulations which limit practice or require monitoring or dismissal of a complaint.

(5) Changes to licensure information in the Information

System shall be completed within ten business days upon notification by a Board.

KEY: nurses, licensing
May 11, 2009 58-31c-103
Notice of Continuation November 29, 2004 58-1-106(1)(a)

R156. Commerce, Occupational and Professional Licensing.
R156-37. Utah Controlled Substances Act Rules.
R156-37-101. Title.

These rules are known as the "Utah Controlled Substances Act Rules."

R156-37-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 37, as used in Title 58, Chapters 1 and 37, or these rules:

(1) "DEA" means the Drug Enforcement Administration of the United States Department of Justice.

(2) "NABP" means the National Association of Boards of Pharmacy.

(3) "Principle place of business or professional practice", as used in Subsection 58-37-6(2)(e), means any location where controlled substances are received or stored.

(4) "Schedule II controlled stimulant" means any material, compound, mixture or preparation listed in Subsection 58-37-4(2)(b)(iii).

(5) "Unprofessional conduct", as defined in Title 58 is further defined in accordance with Subsections 58-1-203(1)(e) and 58-37-6(1)(a), in Section R156-37-502.

R156-37-103. Purpose - Authority.

These rules are adopted by the division under the authority of Subsections 58-1-106(1)(a) and 58-37-6(1)(a) to enable the division to administer Title 58, Chapter 37.

R156-37-104. Organization - Relationship to Rule R156-1.

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

R156-37-301. License Classifications - Restrictions.

(1) Consistent with the provisions of law, the division may issue a controlled substance license to manufacture, produce, distribute, dispense, prescribe, obtain, administer, analyze, or conduct research with controlled substances in Schedules I, II, III, IV, or V to qualified persons. Licenses shall be issued to qualified persons in the following categories:

(a) pharmacist;
(b) optometrist;
(c) podiatric physician;
(d) dentist;
(e) osteopathic physician and surgeon;
(f) physician and surgeon;
(g) physician assistant;
(h) veterinarian;
(i) advanced practice registered nurse;
(j) certified nurse midwife;
(k) certified registered nurse anesthetist;
(l) Class A pharmacy-retail operations located in Utah;
(m) Class B pharmacy located in Utah providing services to a target population unique to the needs of the healthcare services required by the patient, including:
(i) closed door;
(ii) hospital clinic pharmacy;
(iii) methadone clinics;
(iv) nuclear;
(v) branch;
(vi) hospice facility pharmacy;
(vii) veterinarian pharmaceutical facility;
(viii) pharmaceutical administration facility; and
(ix) sterile product preparation facility.
(n) Class C pharmacy located in Utah engaged in:
(i) manufacturing;
(ii) producing;
(iii) wholesaling; and
(iv) distributing.
(o) Class D Out-of-state mail order pharmacies.
(p) Class E pharmacy including:
(i) medical gases providers; and
(ii) analytical laboratories.
(q) Utah Department of Corrections for the conduct of execution by the administration of lethal injection under its statutory authority and in accordance with its policies and procedures.

(2) A license may be restricted to the extent determined by the division, in collaboration with appropriate licensing boards, that a restriction is necessary to protect the public health, safety or welfare, or the welfare of the licensee. A person receiving a restricted license shall manufacture, produce, obtain, distribute, dispense, prescribe, administer, analyze, or conduct research with controlled substances only to the extent of the terms and conditions under which the restricted license is issued by the division.

R156-37-302. Qualifications for Licensure - Application Requirements.

(1) An applicant for a controlled substance license shall:
(a) submit an application in a form as prescribed by the division; and
(b) shall pay the required fee as established by the division under the provisions of Section 63J-1-504.

(2) Any person seeking a controlled substance license shall:
(a) be currently licensed by the state in the appropriate professional license classification as listed in R156-37-301 and shall maintain that license classification as current at all times while holding a controlled substance license; or
(b) be engaged in the following activities which require the administration of a controlled substance but do not require licensure under Subsection (a):
(i) animal capture for transport or relocation as an employee or under contract with a state or federal government agency; or
(ii) other activity approved by the Division in collaboration with the appropriate board.

(3) The division and the reviewing board may request from the applicant information which is reasonable and necessary to permit an evaluation of the applicant's:
(a) qualifications to engage in practice with controlled substances; and
(b) the public interest in the issuance of a controlled substance license to the applicant.

(4) To determine if an applicant is qualified for licensure, the division may assign the application to a qualified and appropriate licensing board for review and recommendation to the division with respect to issuance of a license.

R156-37-303. Qualifications for Licensure - Site Inspections - Investigations.

The division shall have the right to conduct site inspections, review research protocol, conduct interviews with persons knowledgeable about the applicant, and conduct any other investigation which is reasonable and necessary to determine the applicant is of good moral character and qualified to receive a controlled substance license.

R156-37-304. Qualifications for Licensure - Examinations.

Each applicant for a controlled substance license shall be required to pass an examination administered at the direction of the division on the subject of controlled substance laws.

R156-37-305. Exemption from Licensure - Animal Euthanasia and Law Enforcement Personnel.

In accordance with Subsection 58-37-6(2)(d), the following persons are exempt from licensure under Title 58, Chapter 37:

(1) Individuals employed by an agency of the State or any of its political subdivisions, who are specifically authorized in writing by the state agency or the political subdivision to possess specified controlled substances in specified reasonable and necessary quantities for the purpose of euthanasia upon animals, shall be exempt from having a controlled substance license if the agency or jurisdiction employing that individual has obtained a controlled substance license, a DEA registration number, and uses the controlled substances according to a written protocol in performing animal euthanasia.

(2) Law enforcement agencies and their sworn personnel are exempt from the licensing requirements of the Controlled Substance Act to the extent their official duties require them to possess controlled substances; they act within the scope of their enforcement responsibilities; they maintain accurate records of controlled substances which come into their possession; and they maintain an effective audit trail. Nothing herein shall authorize law enforcement personnel to purchase or possess controlled substances for administration to animals unless the purchase or possession is in accordance with a duly issued controlled substance license.

R156-37-401. Grounds for Denial of License - Disciplinary Proceedings.

Grounds for refusing to issue a license to an applicant, for refusing to renew the license of a licensee, for revoking, suspending, restricting, or placing on probation the license of a licensee, for issuing a public or private reprimand to a licensee, and for issuing a cease and desist order shall be in accordance with Section 58-1-401.

R156-37-502. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) a licensee with authority to prescribe or administer controlled substances:

(a) prescribing or administering to himself any Schedule II or III controlled substance which is not lawfully prescribed by another licensed practitioner having authority to prescribe the drug;

(b) prescribing or administering a controlled substance for a condition he is not licensed or competent to treat;

(2) violating any federal or state law relating to controlled substances;

(3) failing to deliver to the division all controlled substance license certificates issued by the division to the division upon an action which revokes, suspends or limits the license;

(4) failing to maintain controls over controlled substances which would be considered by a prudent practitioner to be effective against diversion, theft, or shortage of controlled substances;

(5) being unable to account for shortages of controlled substances any controlled substance inventory for which the licensee has responsibility;

(6) knowingly prescribing, selling, giving away, or administering, directly or indirectly, or offering to prescribe, sell, furnish, give away, or administer any controlled substance to a drug dependent person, as defined in Subsection 58-37-2(s), except for legitimate medical purposes as permitted by law;

(7) refusing to make available for inspection controlled substance stock, inventory, and records as required under these rules or other law regulating controlled substances and controlled substance records;

(8) failing to submit controlled substance prescription information to the database manager after being notified in writing to do so.

R156-37-601. Access to Records, Facilities, and Inventory.

Applicants for licensure and all licensees shall make available for inspection to any person authorized to conduct an administrative inspection pursuant to Title 58, Chapter 37, these rules or federal law, to the extent they exist, during regular business hours and at other reasonable times in the event of an emergency, their controlled substance stock or inventory, records required under the Utah Controlled Substances Act and these rules or under the federal controlled substance laws, and facilities related to activities involving controlled substances.

R156-37-602. Records.

(1) Records of purchase, distribution, dispensing, prescribing, and administration of controlled substances shall be kept according to state and federal law. Prescribing practitioners shall keep accurate records reflecting the examination, evaluation and treatment of all patients. Patient medical records shall accurately reflect the prescription or administration of controlled substances in the treatment of the patient, the purpose for which the controlled substance is utilized and information upon which the diagnosis is based. Practitioners shall keep records apart from patient records of each controlled substance purchased, and with respect to each controlled substance, its disposition, whether by administration or any other means, date of disposition, to whom given and the quantity given.

(2) Any licensee who experiences any shortage or theft of controlled substances shall immediately file the appropriate forms with the Drug Enforcement Administration, with a copy to the division directed to the attention of the Investigation Bureau. He shall also report the incident to the local law enforcement agency.

(3) All records required by federal and state laws or rules must be maintained by the licensee for a period of five years. If a licensee should sell or transfer ownership of his files in any way, those files shall be maintained separately from other records of the new owner.

(4) Prescription records may be maintained electronically so long as:

(a) the original of each prescription, including telephone prescriptions, is maintained in a physical file and contains all of the information required by federal and state law; and

(b) an automated data processing system is used for the storage and immediate retrieval of refill information for prescription orders for controlled substances in Schedule III and IV, in accordance with federal guidelines.

(5) All records relating to Schedule II controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

(6) All records relating to Schedules III, IV and V controlled substances received, purchased, administered or dispensed by the practitioner shall be maintained separately from all other records of the pharmacy or practice.

R156-37-603. Restrictions Upon the Prescription, Dispensing and Administration of Controlled Substances.

(1) A practitioner may prescribe or administer the Schedule II controlled substance cocaine hydrochloride only as a topical anesthetic for mucous membranes in surgical situations in which it is properly indicated and as local anesthetic for the repair of facial and pediatric lacerations when the controlled substance is mixed and dispensed by a registered pharmacist in the proper formulation and dosage.

(2) A practitioner shall not prescribe or administer a controlled substance without taking into account the drug's potential for abuse, the possibility the drug may lead to dependence, the possibility the patient will obtain the drug for a nontherapeutic use or to distribute to others, and the possibility of an illicit market for the drug.

(3) When writing a prescription for a controlled substance,

each prescription shall contain only one controlled substance per prescription form and no other legend drug or prescription item shall be included on that form.

(4) In accordance with Subsection 58-37-6(7)(f)(v)(D), unless the prescriber determines there is a valid medical reason to allow an earlier dispensing date, the dispensing date of a second or third prescription shall be no less than 30 days from the dispensing date of the previous prescription, to allow for receipt of the subsequent prescription before the previous prescription runs out.

(5) If a practitioner fails to document his intentions relative to refills of controlled substances in Schedules III through V on a prescription form, it shall mean no refills are authorized. No refill is permitted on a prescription for a Schedule II controlled substance.

(6) Refills of controlled substance prescriptions shall be permitted for the period from the original date of the prescription as follows:

(a) Schedules III and IV for six months from the original date of the prescription; and

(b) Schedule V for one year from the original date of the prescription.

(7) No refill may be dispensed until such time has passed since the date of the last dispensing that 80% of the medication in the previous dispensing should have been consumed if taken according to the prescriber's instruction.

(8) No prescription for a controlled substance shall be issued or dispensed without specific instructions from the prescriber on how and when the drug is to be used.

(9) Refills after expiration of the original prescription term requires the issuance of a new prescription by the prescribing practitioner.

(10) Each prescription for a controlled substance and the number of refills authorized shall be documented in the patient records by the prescribing practitioner.

(11) A practitioner shall not prescribe or administer a Schedule II controlled stimulant for any purpose except:

(a) the treatment of narcolepsy as confirmed by neurological evaluation;

(b) the treatment of abnormal behavioral syndrome, attention deficit disorder, hyperkinetic syndrome, or related disorders;

(c) the treatment of drug-induced brain dysfunction;

(d) the differential diagnostic psychiatric evaluation of depression;

(e) the treatment of depression shown to be refractory to other therapeutic modalities, including pharmacologic approaches, such as tricyclic antidepressants or MAO inhibitors;

(f) in the terminal stages of disease, as adjunctive therapy in the treatment of chronic severe pain or chronic severe pain accompanied by depression;

(g) the clinical investigation of the effects of the drugs, in which case the practitioner shall submit to the division a written investigative protocol for its review and approval before the investigation has begun. The investigation shall be conducted in strict compliance with the investigative protocol, and the practitioner shall, within 60 days following the conclusion of the investigation, submit to the division a written report detailing the findings and conclusions of the investigation; or

(h) in treatment of depression associated with medical illness after due consideration of other therapeutic modalities.

(12) A practitioner may prescribe, dispense or administer a Schedule II controlled stimulant when properly indicated for any purpose listed in Subsection (11), provided that all of the following conditions are met:

(a) before initiating treatment utilizing a Schedule II controlled stimulant, the practitioner obtains an appropriate history and physical examination, and rules out the existence of any recognized contraindications to the use of the controlled substance to be utilized;

(b) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant when he knows or has reason to believe that a recognized contraindication to its use exists;

(c) the practitioner shall not prescribe, dispense or administer any Schedule II controlled stimulant in the treatment of a patient who he knows or should know is pregnant; and

(d) the practitioner shall not initiate or shall discontinue prescribing, dispensing or administering all Schedule II controlled stimulants immediately upon ascertaining or having reason to believe that the patient has consumed or disposed of any controlled stimulant other than in compliance with the treating practitioner's directions.

R156-37-604. Prescribing of Controlled Substances for Weight Reduction or Control.

(1) A practitioner shall not prescribe, dispense or administer a Schedule II or Schedule III controlled substance for purposes of weight reduction or control.

(2) A prescribing practitioner may prescribe or administer a Schedule IV controlled substance in treating excessive weight leading to increased health risks only when all the following conditions are met:

(a) medication is used only as an adjunct to a comprehensive weight loss program based on supplemental weight loss activities including, but not limited to, changing lifestyle counseling, nutritional education, and a regular, individualized exercise regimen;

(b) prior to initiating treatment the prescribing practitioner shall:

(i) determine through thorough review of past medical records that the patient has made a substantial good-faith effort to lose weight in a comprehensive weight loss program without the use of controlled substances, and the previous regimen has not been effective;

(ii) obtain a complete history, perform a complete physical examination of the patient, and rule out the existence of any recognized contraindications to the use of the medication(s);

(iii) determine and document this assessment in the patient's medical record, that the health benefit to the patient greatly outweighs the possible risks of the medications prescribed; and

(iv) discuss with the patient the possible risks associated with the medication and have on record an informed consent which clearly documents that the long term effects of using controlled substances for weight loss or weight control are not known;

(c) throughout the prescribing period, the prescribing practitioner shall:

(i) supervise, oversee, and regularly monitor the patient, including his participation in supplemental weight loss activities, efficacy of the medication, and advisability of continuing to prescribe the weight loss or weight control medication; and

(ii) maintain a central medical record, containing at least, the goal of treatment or target weight, the ongoing progress toward that goal or maintenance of the weight loss, the patient's supplemental weight loss activities with documentation of compliance with the comprehensive weight loss program; and

(d) the prescribing practitioner shall immediately discontinue the weight loss medication in any of the following situations:

(i) the practitioner knows or should know that the patient is pregnant;

(ii) the patient has consumed or disposed of any controlled substance other than in compliance with the prescribing practitioner's directions;

(iii) the patient is abusing the controlled substance being

prescribed for weight loss;

(iv) the patient develops a contraindication during the course of therapy; or

(v) the medication is not effective or that the patient is not abiding with and following through with the agreed upon comprehensive weight loss program.

R156-37-605. Emergency Verbal Prescription of Schedule II Controlled Substances.

(1) Prescribing practitioners may give a verbal prescription for a Schedule II controlled substance if:

(a) the quantity dispensed is only sufficient to cover the patient for the emergency period, not to exceed 72 hours;

(b) the prescribing practitioner has examined the patient within the past 30 days, the patient is under the continuing care of the prescribing practitioner for a chronic disease or ailment, or the prescribing practitioner is covering for another practitioner and has knowledge of the patient's condition; and

(c) a written prescription is delivered to the pharmacist within seven working days of the verbal order.

(2) A pharmacist may fill an emergency verbal or telephonic prescription from a prescribing practitioner for a Schedule II controlled substance if:

(a) the amount does not exceed a 72 hour supply; and

(b) the filling pharmacist reasonably believes that the prescribing practitioner is licensed to prescribe the controlled substances or makes a reasonable effort to determine that he is licensed.

R156-37-606. Disposal of Controlled Substances.

(1) Any disposal of controlled substances by licensees shall:

(a) be consistent with the provisions of 1307.21 of the Code of Federal Regulations; or

(b) require the authorization of the division after submission to the division to the attention of Chief Investigator of a detailed listing of the controlled substances and the quantity of each. Disposal shall be conducted in the presence of one of its investigators or a division authorized agent as is specifically instructed by the division in its written authorization.

(2) Records of disposal of controlled substances shall be maintained and made available on request to the division or its agents for inspection for a period of five years.

R156-37-607. Surrender of Suspended or Revoked License.

(1) Licenses which have been restricted, suspended or revoked shall be surrendered to the division within 30 days of the effective date of the order of restriction, suspension or revocation. Compliance with this section will be a consideration in evaluating applications for relicensing.

R156-37-608. Herbal Products.

The division shall not apply the provisions of the Controlled Substance Act or these rules in restricting citizens or practitioners, regardless of their license status, from the sale or use of food or herbal products that are not scheduled as controlled substances by State or Federal law.

R156-37-609. Controlled Substance Database - Procedure and Format for Submission to the Database.

(1) In accordance with Subsections 58-37-7.5(6)(a), the format in which the information required under Section 58-37-7.5 shall be submitted to the administrator of the database is:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk or compact disc (CD);

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;

(d) electronic data sent via a secured internet transfer method, including but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) The required information may be submitted on paper, if the pharmacy or pharmacy group submits a written request to the division and receives prior approval.

(3) The division will consider the following in granting the request:

(a) the pharmacy or pharmacy group has no computerized record keeping system upon which the data can be electronically recorded; or

(b) the pharmacy or pharmacy group is unable to conform its submissions to the format required by the database administrator without incurring undue financial hardship.

(4) As of October 1, 2008, each pharmacy or pharmacy group shall submit all data collected during the preceding seven days at least once per week. If the data is submitted by a single pharmacy entity, the data shall be submitted in chronological order according to the date each prescription was filled. If the data is submitted by a pharmacy group, the data is required to be sorted by individual pharmacy within the group, and the data of each individual pharmacy within the group is required to be submitted in chronological order according to the date each prescription was filled.

(5) The format for submission to the database shall be in accordance with uniform formatting developed by the American Society for Automation in Pharmacy system (ASAP). The division may approve alternative formats or adjustments to be consistent with database collection instruments and contain all necessary data elements.

(6) The pharmacist-in-charge of each reporting pharmacy shall submit a report on a form approved by the division including:

(a) the pharmacy name;

(b) NABP number;

(c) the period of time covered by each submission of data;

(d) the number of prescriptions in the submission;

(e) the submitting pharmacist's signature attesting to the accuracy of the report; and

(f) the date the submission was prepared.

R156-37-609a. Controlled Substance Database - Reporting Procedure and Format for Submission to the Database for Pharmacies and Pharmacy Groups Selected by the Division for the Real Time Pilot Program.

(1) In accordance with Subsection 58-37-7.8(8), the information required under Section 58-37-7.5 shall be submitted to the Division's database manager by licensees designated by the Division to participate in the real time reporting pilot program in the following formats:

(a) electronic data via telephone modem;

(b) electronic data stored on floppy disk or compact discs (CD);

(c) electronic data sent via electronic mail (e-mail) if encrypted and approved by the database manager;

(d) electronic data sent via a secured internet transfer methods, including, but not limited to, FTP site transfer and HyperSend; or

(e) any other electronic method preapproved by the database manager.

(2) Each pharmacy or pharmacy group shall enter and submit data required under Section 58-37-7.5 on a daily basis each day that the pharmacy or pharmacy group is open for business or the data reporting entity of the pharmacy or pharmacy group is open for business.

(3) The format for submission to the database shall be in accordance with the uniform formatting developed by the American Society for Automation in Pharmacy System (ASAP).

The Division may approve alternative formats.

(4) The pharmacist-in-charge of each reporting pharmacy or pharmacy group shall be responsible for compliance with this rule.

(5) In accordance with Subsection 58-37-7.8(1)(a)(i), the pilot area is designated as the entire state of Utah. Any pharmacy or pharmacy group that submits information to the database based upon information available at the time of dispensing to the ultimate user is eligible and may participate in the Real Time Pilot Program.

R156-37-609b. Controlled Substance Database - Limitations on Access to Real Time Database Information - Individuals Allowed to Access - Standards and Procedures for Access to Real Time Pilot Program.

(1) In accordance with Subsection 58-37-7.8(8), access to information contained in the controlled substance database is limited to individuals who are designated by the Division to participate in the real time pilot program, as follows:

(a) personnel employed by federal, state and local law enforcement agencies;

(b) pharmacists licensed to dispense controlled substances in Utah;

(c) practitioners licensed to prescribe controlled substances in Utah; and

(d) employees of the Department of Health who have previously been approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program.

(2) All individuals who are granted access to information in the controlled substance database via the real time pilot program shall provide any documentation requested by the Division's database manager to confirm the individual's identity. The individual will then be provided a username, password, and PIN number by which the individual will access the information contained in the database. Pursuant to Subsection 58-37-7.5 (9), (10), and (11), it is unlawful for an authorized user to allow another individual to use the authorized user's assigned username, password and PIN number.

(3) Personnel employed by federal, state, and local law enforcement agencies may access only information related to a current investigation involving controlled substances being conducted by that agency.

(4) Pharmacists licensed to dispense controlled substances in Utah may access only information related specifically to a current patient to whom that pharmacist is dispensing or is considering dispensing any controlled substance.

(5) Practitioners licensed to prescribe controlled substances in Utah may access only information related specifically to a current patient of the practitioner, to whom the practitioner is prescribing or is considering prescribing any controlled substance.

(6) Employees of the Department of Health who have been previously approved by the Division to access controlled substance database information in furtherance of the Pain Medication Management and Education Program may access only information in order to conduct scientific studies to evaluate opioid use and opioid-related morbidity and ways to reduce deaths and other harm from improper or risky prescribing and dispensing practices as codified in Section 26-1-36.

R156-37-610. Controlled Substance Database - Limitations on Access to Database Information - Standards and Procedures for Identifying Individuals Requesting Information.

(1) In accordance with Subsections 58-37-7.5(8)(a) and (b), the division director shall designate in writing those individuals within the division who shall have access to the information in the database.

(2) Personnel from federal, state or local law enforcement agencies may obtain information from the database if the information relates to a current investigation being conducted by such agency. The manager of the database may also provide information from the database to such agencies on his own volition when the information may reasonably constitute a basis for investigation relative to violation of state or federal law.

(3) In accordance with Subsections 58-37-7.5(5)(c), (6)(b), (7)(b), and (8)(d) and (e), the database manager may provide information from the database to licensed practitioners having authority to prescribe controlled substances and to licensed pharmacists having authority to dispense controlled substances. The database manager may provide the information on his own volition to accomplish the stated purposes set forth in Subsection 58-37-7.5(5).

(4) Any individual may request information in the database relating to that individual's controlled substances receipt history. An individuals may not request or receive an accounting of persons or entities that have requested or received information about the individual. Upon request for database information on an individual who is the recipient of a controlled substance prescription entered in the database, the manager of the database shall make available database information exclusively relating to that particular individual's controlled substance receipt history under the following limitations and conditions:

(a) The requestor seeking database information personally appears before the manager of the database, or a designee, with picture identification confirming his identity as the same person on whom database information is sought.

(b) The requestor seeking database information submits a signed and notarized request executed under the penalty of perjury verifying his identity as the same person on whom database information is sought, and providing their full name, home and business address, date of birth, and social security number.

(c) The requestor seeking database information presents a power of attorney over the person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the grantor of the power of attorney is the same person on whom database information is sought, including the grantor's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the person holding the power of attorney.

(d) The requestor seeking database information presents verification that he is the legal guardian of an incapacitated person on whom database information is sought and further complies with the following:

(i) submits a signed and notarized request executed by the requestor under the penalty of perjury verifying that the incapacitated ward of the guardian is the same person on whom database information is sought, including the ward's full name, address, date of birth, and social security number; and

(ii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the legal guardian of the incapacitated person.

(e) The requestor seeking database information shall present a release-of-records statement from the person on whom database information is sought and further complies with the following:

(i) submits a verification from the person on whom database information is sought consistent with the requirements

set forth in paragraph (4)(b);

(ii) submits a signed and notarized release of records statement executed by the person on whom database information is sought authorizing the manager of the database to release the relevant database information to the requestor; and

(iii) personally appears before the manager of the database with picture identification to verify personal identity, or otherwise submits a signed and notarized statement executed by the requestor under the penalty of perjury verifying his identity as that of the requestor identified in the release of records;

(5) Before data is released upon oral request, a written request may be required and received.

(6) Database information may be disseminated either orally, by facsimile or by U.S. mail.

(7) The Utah Department of Health may access Database information for purposes of scientific study regarding public health. To access information, the scientific investigator must:

(a) show the research is an approved project of the Utah Department of Health;

(b) provide a description of the research to be conducted including a research protocol for the project and a description of the data needed from the Database to conduct that research;

(c) provide assurances and a plan that demonstrates all Database information will be maintained securely, with access only permitted by the scientific investigator;

(d) provide for electronic data to be stored on a secure database computer system with access only allowed by the scientific investigator; and

(e) pay all relevant expenses for data transfer and manipulation.

KEY: controlled substances, licensing
April 21, 2009 **58-1-106(1)(a)**
Notice of Continuation March 15, 2007 **58-37-6(1)(a)**
58-37-7.5(7)

R156. Commerce, Occupational and Professional Licensing.
R156-55a. Utah Construction Trades Licensing Act Rule.
R156-55a-101. Title.

This rule shall be known as the "Utah Construction Trades Licensing Act Rule".

R156-55a-102. Definitions.

In addition to the definitions in Title 58, Chapters 1 and 55, as defined or used in this rule:

(1) "Construction trades instructor", as used in Subsection 58-55-301(2)(o) is clarified to mean the education facility which is issued the license as a construction trades instructor. It does not mean individuals employed by the facility who may teach classes.

(2) "Construction trades instruction facility" means the facility which is granted the license as a construction trades instructor as specified in Subsection 58-55-301(2)(o) and as clarified in R156-55a-102(1).

(3) "Employee", as used in Subsections 58-55-102(12)(a) and 58-55-102(14), means a person providing labor services in the construction trades who works for a licensed contractor, or the substantial equivalent of a licensed contractor as determined by the Division, for compensation who has federal and state taxes withheld and workers' compensation and unemployment insurance provided by the person's employer.

(4) "Incidental", as used in Subsection 58-55-102(36), means work which:

(a) can be safely and competently performed by the specialty contractor; and

(b) arises from and is directly related to work performed in the licensed specialty classification and does not exceed 10 percent of the overall contract and does not include performance of any electrical or plumbing work unless specifically included in the specialty classification description under Subsection R156-55a-301(2).

(5) "Maintenance" means the repair, replacement and refinishing of any component of an existing structure; but, does not include alteration or modification to the existing weight-bearing structural components.

(6) "Mechanical", as used in Subsections 58-55-102(18) and 58-55-102(29), means the work which may be performed by a S350 HVAC Contractor under Section R156-55a-301.

(7) "Personal property" means, as it relates to Title 58, Chapter 56, factory built housing and modular construction, a structure which is titled by the Motor Vehicles Division, state of Utah, and taxed as personal property.

(8) "Qualifier", as used in Title 58, Chapter 55 and this rule, means the individual who demonstrates competence for a contractor or construction trades instruction facility license by passing the examinations, completing the experience requirements or holding the individual licenses that are prerequisite requirements to obtain the contractor or construction trades instruction facility license.

(9) "School" means a Utah school district, applied technology college, or accredited college.

(10) "Unprofessional conduct" defined in Title 58, Chapters 1 and 55, is further defined in accordance with Section 58-1-203 in Section R156-55a-501.

R156-55a-103. Authority.

This rule is adopted by the division under the authority of Subsection 58-1-106(1)(a) to enable the division to administer Title 58, Chapter 55.

R156-55a-104. Organization - Relationship to Rule R156-1.

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

R156-55a-301. License Classifications - Scope of Practice.

(1) In accordance with Subsection 58-55-301(2), the classifications of licensure are listed and described in this section. The construction trades or specialty contractor classifications listed are those determined to significantly impact the public health, safety, and welfare. A person who is engaged in work which is included in the items listed in Subsections R156-55a-301(4) and (5) is exempt from licensure in accordance with Subsection 58-55-305(1)(i).

(2) Licenses shall be issued in the following primary classifications and subclassifications:

E100 - General Engineering Contractor. A General Engineering contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(19).

B100 - General Building Contractor. A General Building contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(18) and pursuant to Subsection 58-55-102(18)(b) is clarified as follows: the General Building Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

B200 - Modular Unit Installation Contractor. Set up or installation of modular units as defined in Subsection 58-56-3(11) and constructed in accordance with Section 58-56-13. The scope of the work permitted under this classification includes construction of the permanent or temporary foundations, placement of the modular unit on a permanent or temporary foundation, securing the units together if required and securing the modular units to the foundations. Work excluded from this classification includes installation of factory built housing and connection of required utilities.

R100 - Residential and Small Commercial Contractor. A Residential and Small Commercial contractor is a contractor licensed to perform work as defined in Subsection 58-55-102(29) and pursuant to Subsection 58-55-102(29) is clarified as follows: the Residential and Small Commercial Contractor scope of practice does not include activities described in this Subsection under specialty classification S202 - Solar Photovoltaic Contractor unless the work is performed under the immediate supervision of an employee who holds a current certificate issued by the North American Board of Certified Energy Practitioners.

R101 - Residential and Small Commercial Non Structural Remodeling and Repair. Remodeling and repair to any existing structure built for support, shelter and enclosure of persons, animals, chattels or movable property of any kind with the restriction that no change is made to the bearing portions of the existing structure, including footings, foundation and weight bearing walls; and the entire project is less than $50,000 in total cost.

R200 - Factory Built Housing Contractor. Disconnection, setup, installation or removal of manufactured housing on a temporary or permanent basis. The scope of the work permitted under this classification includes placement of the manufactured housing on a permanent or temporary foundation, securing the units together if required, securing the manufactured housing to the foundation, and connection of the utilities from the near proximity, such as a meter, to the manufactured housing unit and construction of foundations of less than four feet six inches in height. Work excluded from this classification includes site preparation or finishing, excavation of the ground in the area where a foundation is to be constructed, back filling and grading around the foundation, construction of foundations of more than four feet six inches in height and construction of utility services from the utility source to and including the meter or meters if required or if not required to the near proximity of the manufactured housing unit from which they are connected to the

unit.

I101 - General Engineering Trades Instruction Facility. A General Engineering Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsection 58-55-102(19).

I102 - General Building Trades Instruction Facility. A General Building Trades Instruction Facility is a construction trades instruction facility authorized to teach the construction trades and is subject to the scope of practice defined in Subsections 58-55-102(18) or 58-55-102(29).

I103 - Electrical Trades Instruction Facility. An Electrical Trades Instruction Facility is a construction trades instruction facility authorized to teach the electrical trades and subject to the scope of practice defined in Subsection R156-55a-301(S200).

I104 - Plumbing Trades Instruction Facility. A Plumbing Trades Instruction Facility is a construction trades instruction facility authorized to teach the plumbing trades and subject to the scope of practice defined in Subsection R156-55a-301(S210).

I105 - Mechanical Trades Instruction Facility. A Mechanical Trades Instruction Facility is a construction trades instruction facility authorized to teach the mechanical trades and subject to the scope of practice defined in Subsection R156-55a-301(S350).

S200 - General Electrical Contractor. Fabrication, construction, and/or installation of generators, transformers, conduits, raceways, panels, switch gear, electrical wires, fixtures, appliances, or apparatus which utilizes electrical energy.

S201 - Residential Electrical Contractor. Fabrication, construction, and/or installation of services, disconnecting means, grounding devices, panels, conductors, load centers, lighting and plug circuits, appliances and fixtures in any residential unit, normally requiring non-metallic sheathed cable, including multiple units up to and including a four-plex, but excluding any work generally recognized in the industry as commercial or industrial.

S202 - Solar Photovoltaic Contractor. Fabrication, construction, installation, and repair of photovoltaic cell panels and related components including battery storage systems, distribution panels, switch gear, electrical wires, inverters, and other electrical apparatus for solar photovoltaic systems. Work excluded from this classification includes work on any alternating current system or system component.

S210 - General Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in buildings, by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting, heating, and industrial purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a building out to the main water, sewer or gas pipeline.

S211 - Boiler Installation Contractor. Fabrication and/or installation of fire-tube and water-tube power boilers and hot water heating boilers, including all fittings and piping, valves, gauges, pumps, radiators, converters, fuel oil tanks, fuel lines, chimney flues, heat insulation and all other devices, apparatus, and equipment related thereto.

S212 - Irrigation Sprinkling Contractor. Layout, fabrication, and/or installation of water distribution system for artificial watering or irrigation.

S213 - Industrial Piping Contractor. Fabrication and/or installation of pipes and piping for the conveyance or transmission of steam, gases, chemicals, and other substances including excavating, trenching, and back-filling related to such work.

S214 - Water Conditioning Equipment Contractor. Fabrication and/or installation of water conditioning equipment and only such pipe and fittings as are necessary for connecting the water conditioning equipment to the water supply system within the premises.

S215 - Solar Thermal Systems Contractor. Construction, repair and/or installation of solar thermal systems up to the system shut off valve or where the system interfaces with any other plumbing system.

S216 - Residential Sewer Connection and Septic Tank Contractor. Construction of residential sewer lines including connection to the public sewer line, and excavation and grading related thereto. Excavation, installation and grading of residential septic tanks and their drainage.

S217 - Residential Plumbing Contractor. Fabrication and/or installation of material and fixtures to create and maintain sanitary conditions in residential building, including multiple units up to and including a four-plex by providing a permanent means for a supply of safe and pure water, a means for the timely and complete removal from the premises of all used or contaminated water, fluid and semi-fluid organic wastes and other impurities incidental to life and the occupation of such premises, and provision of a safe and adequate supply of gases for lighting and heating purposes. Work permitted under this classification shall include the furnishing of materials, fixtures and labor to extend service from a residential building out to the main water, sewer or gas pipeline. Excluded is any new construction and service work generally recognized in the industry as commercial or industrial.

S220 - Carpentry Contractor. Fabrication for structural and finish purposes in a structure or building using wood, wood products, metal studs, vinyl materials, or other wood/plastic/metal composites as is by custom and usage accepted in the building industry as carpentry. Incidental work includes the installation of tub liners and wall systems.

S221 - Cabinet, Millwork and Countertop Installation Contractor. On-site construction and/or installation of milled wood products or countertops.

S222 - Overhead and Garage Door Contractor. The installation of overhead and garage doors and door openers.

S230 - Siding Contractor. Fabrication, construction, and/or installation of siding.

S231 - Raingutter Installation Contractor. On-site fabrication and/or installation of raingutters and drains, roof flashings, gravel stops and metal ridges.

S240 - Glass and Glazing Contractor. Fabrication, construction, installation, and/or removal of all types and sizes of glass, mirrors, substitutes for glass, glass-holding members, frames, hardware, and other incidental related work.

S250 - Insulation Contractor. Installation of any insulating media in buildings and structures for the sole purpose of temperature control, sound control or fireproofing, but shall not include mechanical insulation of pipes, ducts or conduits.

S260 - General Concrete Contractor. Fabrication, construction, mixing, batching, and/or installation of concrete and related concrete products along with the placing and setting of screeds for pavement for flatwork, the construction of forms, placing and erection of steel bars for reinforcing and application of plaster and other cement-related products.

S261 - Concrete Form Setting and Shoring Contractor. Fabrication, construction, and/or installation of forms and shoring material; but, does not include the placement of concrete, finishing of concrete or embedded items such as metal reinforcement bars or mesh.

S262 - Gunnite and Pressure Grouting Contractor. Installation of a concrete product either injected or sprayed

under pressure.

S263 - Cementatious Coating Systems Resurfacing and Sealing Contractor. Fabrication, construction, mixing, batching and installation of cementatious coating systems or sealants limited to the resurfacing or sealing of existing surfaces, including the preparation or patching of the surface to be covered or sealed.

S270 - General Drywall and Plastering Contractor. Fabrication, construction, and installation of drywall, gypsum, wallboard panels and assemblies. Preparation of drywall or plaster surfaces for suitable painting or finishing. Application to surfaces of coatings made of plaster, including the preparation of the surface and the provision of a base. This does not include applying stucco to lathe, plaster and other surfaces. Exempted is the plastering of foundations.

S272 - Ceiling Grid Systems, Ceiling Tile and Panel Systems Contractor. Fabrication and/or installation of wood, mineral, fiber, and other types of ceiling tile and panels and the grid systems required for placement.

S273 - Light-weight Metal and Non-bearing Wall Partitions Contractor. Fabrication and/or installation of light-weight metal and other non-bearing wall partitions.

S280 - General Roofing Contractor. Application and/or installation of asphalt, pitch, tar, felt, flax, shakes, shingles, roof tile, slate, and any other material or materials, or any combination of any thereof which use and custom has established as usable for, or which are now used as, water-proof, weatherproof, or watertight seal or membranes for roofs and surfaces; and roof conversion. Incidental work includes the installation of roof clamp ring to the roof drain.

S290 - General Masonry Contractor. Construction by cutting, and/or laying of all of the following brick, block, or forms: architectural, industrial, and refractory brick, all brick substitutes, clay and concrete blocks, terra-cotta, thin set or structural quarry tile, glazed structural tile, gypsum tile, glass block, clay tile, copings, natural stone, plastic refractories, and castables and any incidental works, including the installation of shower pans, as required in construction of the masonry work.

S291 - Stone Masonry Contractor. Construction using natural or artificial stone, either rough or cut and dressed, laid at random, with or without mortar. Incidental work includes the installation of shower pans.

S292 - Terrazzo Contractor. Construction by fabrication, grinding, and polishing of terrazzo by the setting of chips of marble, stone, or other material in an irregular pattern with the use of cement, polyester, epoxy or other common binders. Incidental work includes the installation of shower pans.

S293 - Marble, Tile and Ceramic Contractor. Preparation, fabrication, construction, and installation of artificial marble, burned clay tile, ceramic, encaustic, falence, quarry, semi-vitreous, and other tile, excluding hollow or structural partition tile. Incidental work includes the installation of shower pans.

S294 - Cultured Marble Contractor. Preparation, fabrication and installation of slab and sheet manmade synthetic products including cultured marble, onyx, granite, onice, corian, and corian type products. Incidental work includes the installation of shower pans.

S300 - General Painting Contractor. Preparation of surface and/or the application of all paints, varnishes, shellacs, stains, waxes and other coatings or pigments.

S310 - Excavation and Grading Contractor. Moving of the earth's surface or placing earthen materials on the earth's surface, by use of hand or power machinery and tools, including explosives, in any operation of cut, fill, excavation, grading, trenching, backfilling, or combination thereof as they are generally practiced in the construction trade.

S320 - Steel Erection Contractor. Construction by fabrication, placing, and tying or welding of steel reinforcing bars or erecting structural steel shapes, plates of any profile, perimeter or cross-section that are used to reinforce concrete or as structural members, including riveting, welding, and rigging.

S321 - Steel Reinforcing Contractor. Fabricating, placing, tying, or mechanically welding of reinforcing bars of any profile that are used to reinforce concrete buildings or structures.

S322 - Metal Building Erection Contractor. Erection of pre-fabricated metal structures including concrete foundation and footings, grading, and surface preparation.

S323 - Structural Stud Erection Contractor. Fabrication and installation of metal structural studs and bearing walls.

S330 - Landscaping Contractor.

(a) grading and preparing land for architectural, horticultural, or decorative treatment;

(b) arrangement, and planting of gardens, lawns, shrubs, vines, bushes, trees, or other decorative vegetation;

(c) construction of small decorative pools, tanks, fountains, hothouses, greenhouses, fences, walks, garden lighting of 50 volts or less, or sprinkler systems;

(d) construction of retaining walls except retaining walls which are intended to hold vehicles, structures, equipment or other non natural fill materials within the area located within a 45 degree angle from the base of the retaining wall to the level of where the additional weight bearing vehicles, structures, equipment or other non natural fill materials are located; or

(e) patio areas except that:

(i) no decking designed to support humans or structures shall be included; and

(ii) no concrete work designed to support structures to be placed upon the patio shall be included.

(f) This classification does not include running electrical or gas lines to any appliance.

S340 - Sheet Metal Contractor. Layout, fabrication, and installation of air handling and ventilating systems. All architectural sheet metal such as cornices, marquees, metal soffits, gutters, flashings, and skylights and skydomes including both plastic and fiberglass.

S350 - HVAC Contractor. Fabrication and installation of complete warm air heating and air conditioning systems, and complete ventilating systems.

S351 - Refrigerated Air Conditioning Contractor. Fabrication and installation of air conditioning ventilating systems to control air temperatures below 50 degrees.

S352 - Evaporative Cooling Contractor. Fabrication and installation of devices, machinery, and units to cool the air temperature employing evaporation of liquid.

S353 - Warm Air Heating Contractor. Layout, fabrication, and installation of such sheet metal, gas piping, and furnace equipment as necessary for a complete warm air heating and ventilating system.

S360 - Refrigeration Contractor. Construction and/or installation of refrigeration equipment including, but not limited to, built-in refrigerators, refrigerated rooms, insulated refrigerated spaces and equipment related thereto; but, the scope of permitted work does not include the installation of gas fuel or electric power services other than connection of electrical devices to a junction box provided for that device and electrical control circuitry not exceeding 50 volts.

S370 - Fire Suppression Systems Contractor. Layout, fabrication, and installation of fire protection systems using water, steam, gas, or chemicals. When a potable sanitary water supply system is used as the source of supply, connection to the water system must be accomplished by a licensed journeyman plumber. Excluded from this classification are persons engaged in the installation of fire suppression systems in hoods above cooking appliances.

S380 - Swimming Pool and Spa Contractor. On-site fabrication, construction and installation of swimming pools, prefabricated pools, spas, and tubs.

S390 - Sewer and Waste Water Pipeline Contractor.

Construction of sewer lines, sewage disposal and sewage drain facilities including excavation and grading with respect thereto, and the construction of sewage disposal plants and appurtenances thereto.

S400 - Asphalt Paving Contractor. Construction of asphalt highways, roadways, driveways, parking lots or other asphalt surfaces, which will include but will not be limited to, asphalt overlay, chip seal, fog seal and rejuvenation, micro surfacing, plant mix sealcoat, slurry seal, and the removal of asphalt surfaces by milling. Also included is the excavation, grading, compacting and laying of fill or base-related thereto. Also included in painting on asphalt surfaces including striping, directional and other types of symbols or words.

S410 - Pipeline and Conduit Contractor. Fabrication, construction, and installation of pipes, conduit or cables for the conveyance and transmission from one station to another of such products as water, steam, gases, chemicals, slurries, data or communications. Included are the excavation, cabling, horizontal boring, grading, and backfilling necessary for construction of the system.

S420 - General Fencing, Ornamental Iron and Guardrail Contractor. Fabrication, construction, and installation of fences, guardrails, handrails, and barriers.

S421 - Residential Fencing Contractor. Fabrication and installation of residential fencing up to and including a height of six feet.

S430 - Metal Firebox and Fuel Burning Stove Installer. Fabrication, construction, and installation of metal fireboxes, fireplaces, and wood or coal-burning stoves, including the installation of venting and exhaust systems, provided the individual performing the installation is RMGA certified.

S440 - Sign Installation Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state or local governmental jurisdictions. Signs and graphic displays shall include signs of all types, both lighted and unlighted, permanent highway marker signs, illuminated awnings, electronic message centers, sculptures or graphic representations including logos and trademarks intended to identify or advertise the user or his product, building trim or lighting with neon or decorative fixtures, or any other animated, moving or stationary device used for advertising or identification purposes. Signs and graphic displays must be fabricated, installed and erected in accordance with professionally engineered specifications and wiring in accordance with the National Electrical Code.

S441 - Non Electrical Outdoor Advertising Sign Contractor. Installation of signs and graphic displays which require installation permits or permission as issued by state and local governmental jurisdictions. Signs and graphics shall include outdoor advertising signs which do not have electrical lighting or other electrical requirements, and in accordance with professionally engineered specifications.

S450 - Mechanical Insulation Contractor. Fabrication, application and installation of insulation materials to pipes, ducts and conduits.

S460 - Wrecking and Demolition Contractor. The raising, cribbing, underpinning, moving, and removal of building and structures.

S470 - Petroleum Systems Contractor. Installation of above and below ground petroleum and petro-chemical storage tanks, piping, dispensing equipment, monitoring equipment and associated petroleum and petro-chemical equipment including excavation, backfilling, concrete and asphalt.

S480 - Piers and Foundations Contractor. The excavation, drilling, compacting, pumping, sealing and other work necessary to construct, alter or repair piers, piles, footings and foundations placed in the earth's subsurface to prevent structural settling and to provide an adequate capacity to sustain or transmit the structural load to the soil or rock below.

S490 - Wood Flooring Contractor. Installation of wood flooring including prefinished and unfinished material, sanding, staining and finishing of new and existing wood flooring. Underlayments, non-structural subfloors and other incidental related work.

S491 - Laminate Floor Installation Contractor. Installation of laminate floors including underlayments, non-structural subfloors and other incidental related work, but does not include the installation of sold wood flooring.

S500 - Sports and Athletic Courts, Running Tracks, and Playground Installation Contractor. Installation of sports and athletic courts including but not limited to tennis courts, racquetball courts, handball courts, basketball courts, running tracks, playgrounds, or any combination. Includes nonstructural floor subsurfaces, nonstructural wall surfaces, perimeter walls and perimeter fencing. Includes the installation and attachment of equipment such as poles, basketball standards or other equipment.

S600 - General Stucco Contractor. Applying stucco to lathe, plaster and other surfaces.

S700 - Specialty License Contractor.

(a) A specialty license is a license that confines the scope of the allowable contracting work to a specialized area of construction which the Division grants on a case-by-case basis.

(b) When applying for a specialty license, an applicant, if requested, shall submit to the Division the following:

(i) a detailed statement of the type and scope of contracting work that the applicant proposes to perform; and

(ii) any brochures, catalogs, photographs, diagrams, or other material to further clarify the scope of the work that the applicant proposes to perform.

(c) A contractor issued a specialty license shall confine the contractor's activities to the field and scope of operations as outlined by the Division.

(3)(a) Any person holding a S215 Solar Systems Contractor license before the effective date of this rule may obtain a S202 Solar Photovoltaic Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(b) Any person holding a S271 Plastering and Stucco Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(c) Any person holding a S274 Drywall Contractor license before the effective date of this rule shall be issued a S270 General Drywall and Plastering Contractor license.

(d) Any person holding a S271 Plastering and Stucco Contractor license or an S270 General Drywall, Stucco and Plastering Contractor license before the effective date of this rule may obtain a S600 General Stucco Contractor license by submitting an affidavit demonstrating two years of experience that meets the requirements of R156-55a-302b no later than March 31, 2010.

(e) Any person holding any of the following licenses before the effective date of this rule shall be issued a S280 General Roofing Contractor license:

(i) S281 Single Ply and Specialty Coating Contractor;

(ii) S282 Build-up Roofing Contractor;

(iii) S283 Shingle and Shake Roofing Contractor;

(iv) S284 Tile Roofing Contractor; and

(v) S285 Metal Roofing Contractor.

(4) The following activities are determined to not significantly impact the public health, safety and welfare and therefore do not require a contractors license:

(a) sandblasting;

(b) pumping services;

(c) tree stump or tree removal;

(d) installation within a building of communication cables

including phone and cable television;

(e) installation of low voltage electrical as described in R156-55b-102(1);

(f) construction of utility sheds, gazebos or other similar items which are personal property and not attached;

(g) building and window washing, including power washing;

(h) central vacuum systems installation;

(i) concrete cutting;

(j) interior decorating;

(k) wall paper hanging;

(l) drapery and blind installation;

(m) welding on personal property which is not attached;

(n) chimney sweepers other than repairing masonry;

(o) carpet and vinyl floor installation; and

(p) artificial turf installation.

(5) The following activities are those determined to not significantly impact the public health, safety and welfare beyond the regulations by other agencies and therefore do not require a contractors license:

(a) lead removal regulated by the Department of Environmental Quality;

(b) asbestos removal regulated by the Department of Environmental Quality;

(c) elevator installation and maintenance regulated by the Labor Commission; and

(d) fire alarm installation regulated by the Fire Marshal.

R156-55a-302a. Qualifications for Licensure - Examinations.

(1) In accordance with Subsection 58-55-302(1)(c), the qualifier for an applicant for licensure as a contractor or the qualifier for an applicant for licensure as a construction trades instruction facility shall pass the following examinations:

(a) the Utah Contractor Business - Law Examination; and

(b) an approved trade classification specific examination, where required in Subsection (2).

(2) An approved trade classification specific examination is required for the following contractor license classifications:

E100 - General Engineering Contractor
B100 - General Building Contractor
B200 - Modular Unit Installation Contractor
R100 - Residential and Small Commercial Contractor
R101 - Residential and Small Commercial Non Structural Remodeling and Repair Contractor
I101 - General Engineering Trades Instruction Facility
I102 - General Building Trades Instruction Facility
I105 - Mechanical Trades Instruction Facility
S212 - Irrigation Sprinkling Contractor
S213 - Industrial Piping Contractor
S215 - Solar Thermal Systems Contractor
S216 - Residential Sewer Connection and Septic Tank Contractor
S220 - Carpentry Contractor
S222 - Overhead and Garage Door Contractor
S230 - Siding Contractor
S240 - Glass and Glazing Contractor
S250 - Insulation Contractor
S260 - General Concrete Contractor
S270 - General Drywall and Plastering Contractor
S280 - General Roofing Contractor
S290 - General Masonry Contractor
S293 - Marble, Tile and Ceramic Contractor
S300 - General Painting Contractor
S310 - Excavation and Grading Contractor
S320 - Steel Erection Contractor
S321 - Steel Reinforcing Contractor
S330 - Landscaping Contractor
S340 - Sheet Metal Contractor
S350 - HVAC Contractor
S351 - Refrigerated Air Conditioning Contractor
S353 - Warm Air Heating Contractor
S360 - Refrigeration Contractor
S370 - Fire Suppression Systems Contractor
S380 - Swimming Pool and Spa Contractor
S390 - Sewer and Waste Water Pipeline Contractor
S410 - Pipeline and Conduit Contractor
S440 - Sign Installation Contractor
S450 - Mechanical Insulation Contractor
S490 - Wood Flooring Contractor
S600 - General Stucco Contractor

(3) The passing score for each examination is 70%.

(4) Qualifications to sit for examination.

(a) An applicant applying to take any examination specified in this Section must sign an affidavit verifying that an applicant has completed the experience required under Subsection R156-55a-302b.

(5) "Approved trade classification specific examination" means a trade classification specific examination:

(a) given, currently or in the past, by the Division's contractor examination provider; or

(b) given by another state if the Division has determined the examination to be substantially equivalent.

(6) An applicant for licensure who fails an examination may retake the failed examination as follows:

(a) no sooner than 30 days following any failure up to three failures; and

(b) no sooner than six months following any failure thereafter.

R156-55a-302b. Qualifications for Licensure - Experience Requirements.

In accordance with Subsection 58-55-302(1)(e)(ii), the minimum experience requirements are established as follows:

(1) Requirements for all license classifications:

(a) All experience shall be directly supervised by the applicant's employer.

(b) All experience shall be directly related to the scope of practice set forth in Section R156-55a-301 of the classification the applicant is applying for, as determined by the Division.

(c) One year of work experience means 2000 hours.

(d) No more than 2000 hours of experience during any 12 month period may be claimed.

(e) Except as described in paragraph (2)(c), experience obtained under the supervision of a construction trades instructor as a part of an educational program is not qualifying experience for a contractors license.

(2) Requirements for E100 General Engineering, B100 General Building, R100 Residential and Small Commercial Building license classifications:

(a) In addition to the requirements of paragraph (1), an applicant for an R100, B100 or E100 license shall have within the past 10 years a minimum of four years experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(b) Two of the required four years of experience shall be in a supervisory or managerial position.

(c) A person holding a four year bachelors degree or a two year associates degree in Construction Management may have one year of experience credited towards the supervisory or managerial experience requirement.

(d) A person holding a Utah professional engineer license may be credited with satisfying one year toward the supervisory or managerial experience required for E100 contractor license.

(3) Requirements for S220 Carpentry, S280 General Roofing, S290 General Masonry, S320 Steel Erection, S350 Heating Ventilating and Air Conditioning, S360 Refrigeration

and S370 Fire Suppression Systems license classifications:

In addition to the requirements of paragraph (1), an applicant shall have within the past 10 years a minimum of four years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(4) Requirements for I101 General Engineering Trades Instruction Facility, I102 General Building Trades Instruction Facility, I103 Electrical Trades Instruction Facility, I104 Plumbing Trades Instruction Facility, I105 Mechanical Trades Instruction Facility license classifications:

An applicant for construction trades instruction facility license shall have the same experience that is required for the license classifications for the construction trade they will instruct.

(5) Requirements for other license classifications:

Except as set forth in paragraph (6), in addition to the requirements of paragraph (1), an applicant for contractor license classification not listed above shall have within the past 10 years a minimum of two years of experience as an employee of a contractor licensed in the license classification applied for, or the substantial equivalent of a contractor licensed in that license classification as determined by the Division.

(6) Requirements for S202 Solar Photovoltaic Contractor. In addition to the requirements of paragraphs (1) and (5), an applicant shall hold a current certificate by the North American Board of Certified Energy Practitioners.

R156-55a-302c. Qualifications for Licensure Requiring Licensure in a Prerequisite Classification.

(1) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I103 Electrical Trades Instruction Facility shall also be licensed as a master electrician or a residential master electrician.

(2) Beginning at the effective date of this rule, each new applicant as a qualifier for licensure as a I104 Plumbing Trades Instruction Facility shall also be licensed as a master plumber or a residential master plumber.

R156-55a-302d. Qualifications for Licensure - Proof of Insurance and Registrations.

In accordance with the provisions of Subsection 58-55-302(2)(b), an applicant who is approved for licensure shall submit proof of public liability insurance in coverage amounts of at least $100,000 for each incident and $300,000 in total by means of a certificate of insurance naming the Division as a certificate holder.

R156-55a-302e. Additional Requirements for Construction Trades Instructor Classifications.

In accordance with Subsection 58-55-302(1)(f), the following additional requirements for licensure are established:

(1) Any school that provides instruction to students by building houses for sale to the public is required to become a Utah licensed contractor with a B100 General Building Contractor or R100 Residential and Small Commercial Building Contractor classification or both.

(2) Any school that provides instruction to students by building houses for sale to the public is also required to be licensed in the appropriate instructor classification.

(a) Before being licensed in a construction trades instruction facility classification, the school shall submit the name of an individual person who acts as the qualifier in each of the construction trades instructor classifications in accordance with Section R156-55a-304. The applicant for licensure as a construction trades instructor shall:

(i) provide evidence that the qualifier has passed the required examinations established in Section R156-55a-302a; and

(ii) provide evidence that the qualifier meets the experience requirement established in Subsection R156-55a-302b(4).

(3) Each individual employed by a school licensed as a construction trades instruction facility and working with students on a job site shall meet any teacher certification, or other teacher requirements imposed by the school district or college, and be qualified to teach the construction trades instruction facility classification as determined by the qualifier.

R156-55a-303a. Renewal Cycle - Procedures.

(1) In accordance with Subsection 58-1-308(1), the renewal date for the two year renewal cycle applicable to licensees under Title 58, Chapter 55 is established by rule in Section R156-1-308a.

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

(3) In accordance with Subsections 58-55-501(21) and 58-1-308(3)(b)(i), there is established a continuing education requirement for license renewal. Each licensee, or the licensee's qualifier, or an officer, director or supervising individual, as designated by the licensee, shall comply with the continuing education requirements set forth in Section R156-55a-303b.

R156-55a-303b. Continuing Education - Standards.

(1) Required Hours. Pursuant to Subsection 58-55-501(21), each licensee shall complete a total of six hours of continuing education during each two year license term except that for the renewal term ending November 30, 2009, the continuing education must be completed between July 1, 2007 and November 30, 2009. A minimum of three hours shall be core education. The remaining three hours are to be professional education. Additional core education hours beyond the required amount may be substituted for professional education hours.

(a) "Core continuing education" is defined as construction codes, construction laws, OSHA 10 or OSHA 30 safety training, governmental regulations pertaining to the construction trades and employee verification and payment practices.

(b) "Professional continuing education" is defined as substantive subjects dealing with the practice of the construction trades, including land development, land use, planning and zoning, energy conservation, professional development, arbitration practices, estimating, finance and bookkeeping, marketing techniques, servicing clients, personal and property protection for the licensee and the licensee's clients and similar topics.

(c) The following course subject matter is not acceptable as core education or professional education hours: mechanical office and business skills, such as typing, speed reading, memory improvement and report writing; physical well-being or personal development, such as personal motivation, stress management, time management, dress for success, or similar subjects; presentations by a supplier or a supplier representative to promote a particular product or line of products; and meetings held in conjunction with the general business of the licensee or employer.

(d) The Division may defer or waive the continuing education requirements as provided in Section R156-1-308d.

(2) A continuing education course shall meet the following standards:

(a) Time. Each hour of continuing education course credit shall consist of 50 minutes of education in the form of seminars, lectures, conferences, training sessions or distance learning modules. The remaining ten minutes is to allow for breaks.

(b) Provider. The course provider shall meet the requirements of this Section and shall be one of the following:

(i) a recognized accredited college or university;

(ii) a state or federal agency;

(iii) a professional association or organization involved in the construction trades; or

(iv) a commercial continuing education provider providing a program related to the construction trades.

(c) Content. The content of the course shall be relevant to the practice of the construction trades and consistent with the laws and rules of this state.

(d) Objectives. The learning objectives of the course shall be reasonably and clearly stated.

(e) Teaching Methods. The course shall be presented in a competent, well organized and sequential manner consistent with the stated purpose and objective of the program.

(f) Faculty. The course shall be prepared and presented by individuals who are qualified by education, training and experience.

(g) Distance learning. A course may be recognized for continuing education that is provided via Internet or through home study courses provided the course verifies registration and participation in the course by means of a test which demonstrates that the participant has learned the material presented.

(h) Documentation. The course provider shall have a competent method of registration of individuals who actually completed the course, shall maintain records of attendance that are available for review by the Division and shall provide individuals completing the course a certificate which contains the following information:

(i) the date of the course;

(ii) the name of the course provider;

(iii) the name of the instructor;

(iv) the course title;

(v) the hours of continuing education credit and type of credit (core or professional);

(vi) the attendee's name; and

(v) the signature of the course provider.

(3) On a random basis, the Division may assign monitors at no charge to attend a course for the purpose of evaluating the course and the instructor.

(4) Each licensee shall maintain adequate documentation as proof of compliance with this section, such as certificates of completion, course handouts and materials. The licensee shall retain this proof for a period of three years from the end of the renewal period for which the continuing education is due.

(5) Licensees who lecture in continuing education courses meeting these requirements shall receive two hours of continuing education for each hour spent lecturing. However, no lecturing or teaching credit is available for participation in a panel discussion.

(6) The continuing education requirement for electricians as established in Section R156-55b-304, which is completed by an electrical contractor, shall satisfy the continuing education requirement for contractors as established in Subsection 58-55-501(21) and implemented herein.

(7) Licensees who obtain an initial license after March 31st of the renewal year shall not be required to meet the continuing education requirement for that renewal cycle.

(8) A continuing education registry qualified under Subsection R156-55a-303b(9) may approve continuing education programs sponsored by or submitted to the continuing education registry for approval under this rule.

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

(a) be a professional association whose membership primarily consists of licensed contractors;

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

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

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

(ii) publish and disseminate to their members or other contractors on request, listings of continuing education programs which they have approved which meet the standards for continuing education credit under this rule;

(iii) maintain accurate records of qualified continuing education approved and provide a list of such continuing education programs to the Division; and

(iv) make records of approved continuing education programs available for audit by representatives of the Division.

(d) Fees. A continuing education registry may charge a reasonable fee to continuing education providers for services provided for review and approval of continuing education programs.

R156-55a-304. Construction Trades Instruction Facility License Qualifiers.

In accordance with Subsection 58-55-302(1)(f), the contractor license qualifier requirements in Section 58-55-304 shall also apply to construction trades instruction facilities.

R156-55a-305. Compliance Agency Reporting of Sole Owner Building Permits Issued.

In accordance with Subsection 58-55-305(2), all compliance agencies that issue building permits to sole owners of property must submit information concerning each building permit issued in their jurisdiction within 30 days of the issuance, with the building permit number, date issued, name, address and phone number of the issuing compliance agency, sole owner's full name, home address, phone number, and subdivision and lot number of the building site, to a fax number, email address or written mailing address designated by the division.

R156-55a-305a. Exempt Contractors Filing Affirmation of Liability and Workers Compensation Insurance.

(1) Initial affirmation. In accordance with Subsection 58-55-305(1)(h)(ii)(F), any person claiming exemption under Subsection 58-55-305(1)(h) for projects with a value greater than $1,000 but less than $3,000 shall file a registration of exemption with the Division which includes:

(a) the identity and address of the person claiming the exemption; and

(b) a statement signed by the registrant verifying:

(i) that the person has public liability insurance in force which includes the Division being named as a certificate holder, the policy number, the expiration date of the policy, the insurance company name and contact information, and coverage amounts of at least $100,000 for each incident and $300,000 in total; and

(ii) that the person has workers compensation insurance in force which names the Division as a certificate holder, includes the policy number, the expiration date of the policy, the insurance company name and contact information; or

(iii) that the person does not hire employees and is therefore exempt from the requirement to have workers compensation insurance.

(2) Periodic reaffirmations required. The affirmation required under Subsection (1) shall be reaffirmed on or before November 30 of each odd numbered year.

R156-55a-306. Contractor Financial Responsibility - Division Audit.

In accordance with Subsections 58-55-306(2) and 58-55-102(16), the Division may consider various relevant factors in conducting an audit of the demonstration of financial responsibility including:

(1)(a) judgments, tax liens, collection actions, bankruptcy schedules and a history of late payments to creditors, including

documentation showing the resolution of each of the above actions;

(b) the applicant's or licensee's financial statements and tax returns, including the ability to prepare or have prepared competent and current financial statements and tax returns;

(c) an acceptable current credit report of the applicant or licensee which meets the following requirements:

(i) for individuals:

(A) a credit report from each of the three national reporting agencies, Trans Union, Experian, and Equifax; or

(B) a merged credit report of the agencies identified in Subsection (A) prepared by the National Association of Credit Managers (NACM); or

(ii) for entities, a business credit report such as an Experian Business Credit Report or a Dun and Bradstreet Report;

(d) the applicant's or licensee's explanation of the reasons for any financial difficulties and how the financial difficulties were resolved;

(e) any of the factors listed in Subsection R156-1-302 which may relate to failure to maintain financial responsibility;

(f) each of the factors listed in this Subsection regarding the financial history of the owners of the applicant or licensee;

(g) any guaranty agreements provided for the applicant or licensee; and

(h) any history of prior entities owned or operated by the owners of the applicant or licensee which have failed to maintain financial responsibility.

R156-55a-308a. Operating Standards for Schools or Colleges Licensed as Contractors.

(1) Each school licensed as a B100 General Building Contractor or a R100 Residential and Small Commercial Contractor or both shall obtain all required building permits for homes built for resale to the public as part of an educational training program.

(2) Each employee that works as a teacher for a school licensed as a construction trades instruction facility shall:

(a) have on their person a school photo ID card with the trade they are authorized to teach printed on the card; and

(b) if instructing in the plumbing or electrical trades, they shall also carry on their person their Utah journeyman or residential journeyman plumber license or Utah journeyman, residential journeyman, master, or residential master electrician license.

(3) Each school licensed as a construction trades instruction facility shall not allow any teacher or student to work on any portion of the project subcontracted to a licensed contractor unless the teacher or student are lawful employees of the subcontractor.

R156-55a-308b. Natural Gas Technician Certification.

(1) In accordance with Subsection 58-55-308(1), the scope of practice defined in Subsection 58-55-308(2)(a) requiring certification is further defined as the installation, modifications, maintenance, cleaning, repair or replacement of the gas piping, combustion air vents, exhaust venting system or derating of gas input for altitude of a residential or commercial gas appliance.

(2) An approved training program shall include the following course content:

(a) general gas appliance installation codes;

(b) venting requirements;

(c) combustion air requirements;

(d) gas line sizing codes;

(e) gas line approved materials requirements;

(f) gas line installation codes; and

(g) methods of derating gas appliances for elevation.

(3) In accordance with Subsection 58-55-308(2)(c)(i), the following programs are approved to provide natural gas technician training, and to issue certificates or documentation of exemption from certification:

(a) Federal Bureau of Apprenticeship Training;

(b) Utah college apprenticeship program; and

(c) Trade union apprenticeship program.

(4) In accordance with Subsection 58-55-308(3), the approved programs set forth in paragraphs (2)(b) and (2)(c) herein shall require program participants to pass the Rocky Mountain Gas Association Gas Appliance Installers Certification Exam or approved equivalent exams established or adopted by a training program, with a minimum passing score of 80%.

(5) In accordance with Subsection 58-55-308(3), a person who has not completed an approved training program, but has passed the Rocky Mountain Gas Association Gas Exam or approved equivalent exam established or adopted by an approved training program, with a minimum passing score of 80%, or the Utah licensed Journeyman or Residential Journeyman Plumber Exam, with a minimum passing score of 70%, shall be exempt from the certification requirement set forth in Subsection 58-55-308(2)(c)(i).

(6) Content of certificates of completion. An approved program shall issue a certificate, including a wallet certificate, to persons who successfully complete their training program containing the following information:

(a) name of the program provider;

(b) name of the approved program;

(c) name of the certificate holder;

(d) the date the certification was completed; and

(e) signature of an authorized representative of the program provider.

(7) Documentation of exemption from certification. The following shall constitute documentation of exemption from certification:

(a) certification of completion of training issued by the Federal Bureau of Apprenticeship Training;

(b) current Utah licensed Journeyman or Residential Journeyman plumber license; or

(c) certification from the Rocky Mountain Gas Association or approved equivalent exam which shall include the following:

(i) name of the association, school, union, or other organization who administered the exam;

(ii) name of the person who passed the exam;

(iii) name of the exam;

(iv) the date the exam was passed; and

(v) signature of an authorized representative of the test administrator.

(8) Each person engaged in the scope of practice defined in Subsection 58-55-308(2)(a) and as further defined in Subsection (1) herein, shall carry in their possession documentation of certification or exemption.

R156-55a-309. Reinstatement Application Fee.

The application fee for a contractor applicant who is applying for reinstatement more than two years after the expiration of licensure, who has been engaged in unauthorized practice of contracting following the expiration of the applicant's license, shall be the current license application fee normally required for a new application rather than the reinstatement fee provided under R156-1-308g(3)(d).

R156-55a-311. Reorganization - Conversion of Contractor Business Entity.

A reorganization of the business organization or entity under which a licensed contractor is licensed shall require application for a new license under the new form of organization or business structure. The creation of a new legal entity constitutes a reorganization and includes a change to a new entity under the same form of business entity or a change

of the form of business entity between proprietorship, partnership, whether limited or general, joint venture, corporation or any other business form.

Exception: A conversion from one form of entity to another form where "Articles of Conversion" are filed with the Utah Division of Corporations and Commercial Code shall not require a new contractor application.

R156-55a-312. Inactive License.

(1) The requirements for inactive licensure specified in Subsection R156-1-305(3) shall also include certification that the licensee will not engage in the construction trade(s) for which his license was issued while his license is on inactive status except to identify himself as an inactive licensee.

(2) A license on inactive status will not be required to meet the requirements of licensure in Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b).

(3) The requirements for reactivation of an inactive license specified in Subsection R156-1-305(6) shall also include:

(a) documentation that the licensee meets the requirements of Subsections 58-55-302(1)(e)(i), 58-55-302(2)(a) and 58-55-302(2)(b); and

(b) documentation that the licensee has taken and passed the business and law examination and the trade examination for the classification for which activation is sought except that the following exceptions shall apply to the reactivation examination requirement:

(i) No license shall be in an inactive status for more than six years.

(ii) Prior to a license being activated, a licensee shall meet the requirements of renewal.

R156-55a-401. Minimum Penalty for Failure to Maintain Insurance.

(1) A minimum penalty is hereby established for the violation of Subsection R156-55a-501(2) as follows:

(a) For a violation the duration of which is less than 90 days, where the licensee at the time a penalty is imposed documents that the required liability and workers compensation insurance have been reacquired, and provided an insurable loss has not occurred while not insured, a minimum of a 30 day suspension of licensure, stayed indefinitely, automatically executable in addition to any other sanction imposed, upon any subsequent violations of Subsection R156-55a-501(2).

(b) For a violation the duration of which is 90 days or longer, or where insurable loss has occurred, where the licensee at the time a penalty is imposed documents that the required insurance have been reacquired, a minimum of 30 days suspension of licensure.

(c) For a violation of any duration, where the licensee at the time a penalty is imposed fails to document that the required insurance have been reacquired, a minimum of indefinite suspension. A license which is placed on indefinite suspension may not be reinstated any earlier than 30 days after the licensee documents the required insurance have been reacquired.

(d) If insurable loss has occurred and licensee has not paid the damages, the license may be suspended indefinitely until such loss is paid by the licensee.

(e) Nothing in this section shall be construed to restrict a presiding officer from imposing more than the minimum penalty for a violation of Subsection R156-55a-501(2) and (3). However, absent extraordinary cause, the presiding officer may not impose less than the minimum penalty.

R156-55a-501. Unprofessional Conduct.

"Unprofessional conduct" includes:

(1) failing to notify the Division with respect to any matter for which notification is required under this rule or Title 58, Chapter 55, the Construction Trades Licensing Act, including a change in qualifier. Such failure shall be considered by the Division and the Commission as grounds for immediate suspension of the contractors license;

(2) failing to continuously maintain insurance and registration as required by Subsection 58-55-302(2), in coverage amounts and form as implemented by this chapter; and

(3) failing, upon request by the Division, to provide proof of insurance coverage within 30 days.

R156-55a-502. Penalty for Unlawful Conduct.

The penalty for violating Subsection 58-55-501(1) while suspended from licensure shall include the maximum fine allowed by Subsection 58-55-503(4)(i).

R156-55a-503. Administrative Penalties.

(1) In accordance with Subsection 58-55-503, the following fine schedule shall apply to citations issued under Title 58, Chapter 55:

TABLE

FINE SCHEDULE

FIRST OFFENSE

Violation	All Licenses Except Electrical or Plumbing	Electrical or Plumbing
58-55-308(2)	$ 500.00	N/A
58-55-501(1)	$ 500.00	$ 500.00
58-55-501(2)	$ 500.00	$ 800.00
58-55-501(3)	$ 800.00	$1,000.00
58-55-501(9)	$ 500.00	$ 500.00
58-55-501(10)	$ 800.00	$1,000.00
58-55-501(12)	N/A	$ 500.00
58-55-501(14)	$ 500.00	N/A
58-55-501(19)	$ 500.00	N/A
58-55-501(21)	$ 500.00	$ 500.00
58-55-504(2)	$ 500.00	N/A

SECOND OFFENSE

58-55-308(2)	$1,000.00	N/A
58-55-501(1)	$1,000.00	$1,500.00
58-55-501(2)	$1,000.00	$1,500.00
58-55-501(3)	$1,600.00	$2,000.00
58-55-501(9)	$1,000.00	$1,000.00
58-55-501(10)	$1,600.00	$2,000.00
58-55-501(12)	N/A	$1,000.00
58-55-501(14)	$1,000.00	N/A
58-55-501(19)	$1,000.00	N/A
58-55-501(21)	$1,000.00	$1,000.00
58-55-504(2)	$1,000.00	N/A

THIRD OFFENSE

Double the amount for a second offense with a maximum amount not to exceed the maximum fine allowed under Subsection 58-55-503(4)(h).

(2) Citations shall not be issued for third offenses, except in extraordinary circumstances approved by the investigative supervisor.

(3) If multiple offenses are cited on the same citation, the fine shall be determined by evaluating the most serious offense.

(4) An investigative supervisor may authorize a deviation from the fine schedule based upon the aggravating or mitigating circumstances.

(5) The presiding officer for a contested citation shall have the discretion, after a review of the aggravating and mitigating circumstances, to increase or decrease the fine amount imposed by an investigator based upon the evidence reviewed.

R156-55a-504. Crane Operator Certifications.

In accordance with Subsection 58-55-504(2)(a) one of the following certifications is required to operate a crane on commercial construction projects:

(1) a certification issued by the National Commission for the Certification of Crane Operators; or

(2) a certification issued by the Operating Engineers Certification Program formerly known as the Southern California Crane and Hoisting Certification Program.

R156-55a-602. Contractor License Bonds.

(1) Pursuant to the provisions of Subsection 58-55-306(1)(b), a contractor shall provide a license bond issued by a surety acceptable to the Division in the amount of $50,000 or such higher amount as may be determined by the Division and the Commission as provided for in Subsection R156-55a-602(3). An acceptable surety is one that is listed in the Department of Treasury, Fiscal Service, Circular 570, entitled "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" at the date of the bond.

(2) The coverage of the license bond shall include losses which may occur as the result of the contractor's violation of the unprofessional or unlawful provisions contained in Title 58, Chapters 1 and 55.

(3) The amount of the bond specified under Subsection R156-55a-602(1) may be increased by an amount determined by the Commission and Division when the financial history of the applicant, including any of its owners holding more than 10 percent interest, indicates the $50,000 bond is insufficient to reasonably cover risks to the public health, safety and welfare.

KEY: contractors, occupational licensing, licensing

May 11, 2009	**58-1-106(1)(a)**
Notice of Continuation November 8, 2006	**58-1-202(1)(a)**
	58-55-101
	58-55-308(1)
	58-55-102(35)
	58-55-501(21)

R162. Commerce, Real Estate.
R162-105. Scope of Authority.
R162-105-1. Scope of Authority.

105.1 Transaction value. "Transaction value" means:

105.1.1 For loans or other extensions of credit, the amount of the loan or extension of credit;

105.1.2 For sales, leases, purchases, and investments in or exchanges of real property, the market value of the real property interest involved; and

105.1.3 For the pooling of loans or interests in real property for resale or purchase, the amount of the loan or market value of the real property calculated with respect to each such loan or interest in real property.

105.2 State-Licensed Appraisers. In federally-related transactions, the Utah Real Estate Appraiser Licensing Act and the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 and related federal regulations allow State-Licensed Appraisers to perform the appraisal of non-complex one to four residential units having a transaction value of less than $1,000,000 and complex one to four residential units having a transaction value of less than $250,000.

105.2.1 Subject to the transaction value limits in Section 105.2, State-Licensed Appraisers may also perform appraisals in federally-related transactions of vacant or unimproved land that is utilized for one to four family purposes, or for which the highest and best use is 1-4 family purposes, so long as net income capitalization analysis is not required by the terms of the assignment.

105.2.2 State-Licensed Appraisers may not perform appraisals of subdivisions in federally-related transactions for which a development analysis/appraisal is necessary or for which discounted cash flow analysis is required by the terms of the assignment.

105.3 Trainees.

105.3.1 For the purposes of these rules, "trainee" means a person who is working under the direct supervision of a State-Certified Appraiser to earn points for licensure.

105.3.2 Appraisal-related duties by unlicensed persons. Unlicensed persons who have not qualified as trainees as provided in Subsection 105.3.3 may perform only clerical duties in connection with an appraisal. For the purposes of this rule, appraisal-related clerical duties include typing an appraiser's research notes or an appraiser's report, taking photographs of properties, and obtaining copies of public records. Only those persons who have properly qualified as trainees as provided in Subsection 105.3.3 may perform the following appraisal-related duties: participating in property inspections, measuring or assisting in the measurement of properties, performing appraisal-related calculations, participating in the selection of comparables for an appraisal assignment, making adjustments to comparables, and drafting or assisting in the drafting of an appraisal report. The supervising appraiser shall be responsible to determine the point at which a trainee is competent to participate in each of these activities.

105.3.2.1 A trainee may not solicit an assignment or accept an assignment on behalf of anyone other than the trainee's supervisor or the supervisor's appraisal firm. All engagement letters shall be addressed to the supervisor or the supervisor's appraisal firm, not to the trainee. In all appraisal assignments, the supervisor shall delegate only such duties as are appropriate to the trainee and shall directly supervise the trainee in the performance of those duties.

105.3.3 In order to become a trainee, the person must have successfully completed 75 classroom hours of State-approved education in subjects related to real estate appraisal, including the Uniform Standards of Professional Appraisal Practice (USPAP), must have passed the final examination in all courses, and must file a notification with the Division as provided in Subsection 105.3.3.1. The education required by this Subsection must have been completed within the 5 years preceding the filing of the notification required by Subsection 105.3.3.1.

105.3.3.1 Trainee Notification. Prior to performing any of the appraisal-related activities for which points will be claimed toward licensure, a trainee must file with the Division a notification in the form required by the Division. In addition to any identifying information about the trainee required by the Division, the notification shall contain the name and business address of the appraiser(s) who will supervise the trainee in the performance of the appraisal-related duties, and shall be signed by the supervisor. The notification shall also contain the course names, course provider names, and course completion dates for the 75 hours of education required by Subsection 105.3.3. The original course completion certificates shall be submitted to the Division with the notification.

105.3.3.2 Except as provided in Subsection 105.3.3.3, no experience points will be granted toward licensure for trainee experience that is claimed to have been earned prior to the date the notification was filed with the Division.

105.3.3.3 Until September 10, 2009, points that were earned prior to September 10, 2004, may be claimed and will be awarded to applicants who are able to document those points on the forms required by the Division, notwithstanding the fact that the points were earned prior to the date a trainee notification was filed with the Division.

105.3.4 Supervising Appraisers. A trainee may have more than one supervising appraiser. A supervising appraiser may supervise a maximum of three trainees at one time.

105.3.5 Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Certified Appraiser on all inspections of residential property until the trainee has performed 100 inspections of residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.6 Non-Residential Property Inspections. A trainee, including a trainee who was previously a state-registered appraiser, must be accompanied by a supervising State-Certified General Appraiser on all inspections of non-residential property until the trainee has performed 20 inspections of non-residential properties in which both the interior and the exterior of the properties are inspected. All reports in appraisals in which a trainee participated in the inspection of the subject property shall comply with the requirements of Section 106.9.

105.3.7 Points for Licensure. A trainee may accumulate experience points for each duty listed below with the respective percentages, not to exceed the maximum number of points awarded by the Appraisal Experience Point Schedule under Section 104-15.1 and 104-15.2. No more than one-third of the experience points submitted toward licensure may come from any one of the following categories:

(a) participation in highest and best use analysis - 10% of total points;

(b) participation in neighborhood description and analysis - 10% of total points;

(c) as provided in Sections 105.3.5 and 105.3.6, inspecting the interior and exterior, including measurement of the exterior of a property that is the subject of an appraisal and inspection of the exterior of a property that may be used as a comparable in an appraisal. No points will be granted for inspections that do not include both an interior and exterior inspection of the subject property - 20% of total points;

(d) participation in land value estimate - 20% of total points;

(e) participation in sales comparison property selection and analysis - 30% of total points;

(f) participation in cost analysis - 20% of total points;
(g) participation in income analysis - 30% of total points;
(h) participation in the final reconciliation of value - 10% of total points;
(i) participation in report preparation - 20% of total points.

105.3.8 Credit will be given for appraisal experience earned only within five years immediately preceding the licensure or certification application.

105.3.9 All trainees are prohibited from signing an appraisal report or discussing an appraisal assignment with anyone other than the appraiser responsible for the assignment, state enforcement agencies and such third parties as may be authorized by due process of law, or a duly authorized professional peer review committee.

105.3.10 A state-certified appraiser who supervises a trainee shall be responsible for the training and direct supervision of the trainee.

105.3.10.1 Direct supervision shall consist of critical observation and direction of all aspects of the appraisal process and accepting full responsibility for the appraisal and the contents of the appraisal report. The supervising appraiser shall be responsible to personally inspect each residential property that is appraised with a trainee until the trainee has performed 100 residential inspections as provided in Subsection 105.3.5 and 20 non-residential inspections as provided in Subsection 105.3.6. The supervising appraiser must actively supervise those inspections and the resulting appraisals.

105.3.11 A supervising appraiser shall require the trainee to maintain a log in a form satisfactory to the Board which shall contain, at a minimum, the following information for each appraisal.
(a) Type of property;
(b) Address of appraised property;
(c) Description of work performed;
(d) Number of work hoursand points claimed;
(e) Signature and state certification number of the supervising appraiser; and
(f) Client name.

105.3.12 The trainee shall maintain a separate appraisal log for each supervising appraiser.

105.4. Trainee Status after Revocation, Surrender, Denial, or Suspension of License or Certification.

105.4.1 Trainee Status after Revocation, Surrender, or Denial of License or Certification. Unless otherwise ordered by the Board, an appraiser whose appraiser certification or license has been revoked by the Board, whose application for renewal of a certification or license has been denied by the Board, or who has surrendered a certification or license as a result of an investigation by the Division, may not serve as a trainee for a period of four years after the date of the revocation, denial, or surrender, nor may a licensed or certified appraiser employ or supervise the former appraiser in the performance of the activities permitted trainees for that same period of time.

105.4.2 Trainee Status while License or Certification is Suspended. Unless otherwise ordered by the Board, any appraiser whose appraiser license or certificate has been suspended by the Board as a result of an investigation by the Division may not serve as a trainee during the period of suspension. While an appraiser is suspended, a licensed or certified appraiser may not employ or supervise the suspended appraiser in the performance of the activities permitted trainees.

KEY: real estate appraisals
June 1, 2009 **61-2b-6(1)(l)**
Notice of Continuation November 10, 2008

R162. Commerce, Real Estate.
R162-201. Residential Mortgage Definitions.
R162-201-1. Residential Mortgage Definitions.

201.1 Control. As used in Section 61-2c-102(1) of the Utah Residential Mortgage Practices Act, "control" is defined as the power to directly or indirectly:

(a) direct or exercise a controlling influence over:

(i) the management or policies of an entity;

(ii) the election of a majority of the directors, officers, managers, or managing partners of an entity;

(b) vote 20% or more of any class of voting securities of an entity by an individual; or

(c) vote more than 5% of any class of voting securities of an entity by another entity.

201.2 Certification. "Certification" means that the holder of a certificate is authorized by the Division to:

(a) establish and operate a school that provides courses for prelicensing requirements;

(b) provide courses that are approved for continuing education; or

(c) function as an instructor for courses approved for prelicensing requirements or for continuing education.

KEY: residential mortgage loan origination
November 3, 2004 61-2c-103(3)
Notice of Continuation May 27, 2009

R162. Commerce, Real Estate.
R162-204. Residential Mortgage Record Keeping Requirements.
R162-204-1. Residential Mortgage Record Keeping Requirements.

204.1.1 Entity Requirements. An entity licensed under the Utah Residential Mortgage Practices Act shall maintain for the period set forth in Utah Code Section 61-2c-302 the following records:

(a) Application forms;
(b) Disclosure forms;
(c) Truth-in-Lending forms;
(d) Credit reports and the explanations to the credit reports;
(e) Conversation logs;
(f) Verifications of employment, paycheck stubs, and tax returns;
(g) Proof of legal residency, if applicable;
(h) Appraisals, appraisal addenda, and records of communications between the appraiser and the registrant or lender;
(i) Underwriter denials;
(j) Notices of adverse action;
(k) Loan approval; and
(l) All other records required by underwriters involved with the transaction.

204.1.2. Principal Lending Manager Requirements. Except as provided in Subsection 204.1.2.1, the principal lending manager of an entity is responsible to make the records set forth in Section 204.1.1 available to the Division as provided in Utah Code Annotated Section 61-2c-302(3).

204.1.2.1. Defunct entity. If a licensed entity ceases doing business in Utah, an owner or director of the entity, rather than the principal lending manager, is responsible to make the records set forth in Section 204.1.1 available to the Division.

204.1.3. Disposal of Records. If an entity licensed under the Utah Residential Mortgage Practices Act disposes of the records under this section after the end of the retention schedule in Utah Code Section 61-2c-302, the entity shall dispose of the records in a reasonable manner that safeguards any personal information, as defined in Utah Code Annotated Section 13-44-102.

KEY: residential mortgage loan origination
June 1, 2009 61-2c-302
Notice of Continuation December 13, 2006

R162. Commerce, Real Estate.
R162-205. Residential Mortgage Unprofessional Conduct.
R162-205-1. Residential Mortgage Unprofessional Conduct.

205.1 Unprofessional conduct includes the following acts:

205.1.1 conducting the business of residential mortgage loans, including soliciting or marketing, in the licensee's individual name, the principal lending manager's individual name, or any name other than the name of the licensed mortgage entity with which the individual's principal lending manager is affiliated;

205.1.2 failing to remit to third party service providers the appraisal fees, inspection fees, credit reporting fees, insurance premiums, or other similar fees which have been collected from a borrower;

205.1.3 withholding payment owed, as determined by a court of competent jurisdiction to a third party service provider in connection with the business of residential mortgage loans;

205.1.4 charging for services not actually performed;

205.1.5 charging a borrower more for third party services than the actual cost of those services;

205.1.6 filling out or altering any Real Estate Purchase Contract or other contract for the sale of real property, or any addenda to the contract;

205.1.7 making any alteration to any appraisal of real property;

205.1.8 unless acting as a real estate licensee and not as a mortgage licensee:

(a) providing a buyer or seller of real estate with comparative market analysis or otherwise assisting a buyer or seller to determine the offering price or sales price of real estate;

(b) representing or assisting a buyer or seller of real estate in negotiations concerning a possible sale of real estate, except that a mortgage licensee may advise a borrower about the consequences that the terms of a purchase agreement may have on the terms and availability of various mortgage products;

(c) performing any other acts that require a real estate license under Title 61, Chapter 2;

(d) advertising the sale of real estate by use of any advertising medium, except that a mortgage licensee may:

(i) advertise real estate owned by the licensee as a "for sale by owner";

(ii) provide advertising to a property owner who has not signed an agency agreement with a real estate licensee and is selling the real estate "for sale by owner", so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the property owner and the mortgage licensee; or

(iii) advertise in conjunction with a real estate brokerage, so long as the advertising provides clear and distinguishable identification, contact information, function and responsibility of both the real estate licensee and the mortgage licensee.

205.1.9 disposing of records in violation of R162-204.1.3

R162-205-2. Residential Mortgage Standards of Practice.

205.2.1 Supervision of licensees and unlicensed staff. Principal lending managers shall exercise reasonable supervision by controlling and directing the details and means of the work activities of all licensees affiliated with the principal lending manager and all unlicensed staff. To exercise reasonable supervision, a principal lending manager shall:

(a) establish, maintain, and provide to all licensees affiliated with the principal lending manager and all unlicensed staff written policies setting out the office procedures for complying with federal and state laws governing residential mortgage lending, including the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(b) ensure that each person affiliated with the principal lending manager and all unlicensed staff have read the Utah Residential Mortgage Practices Act and the rules promulgated thereunder;

(c) ensure that the business of residential mortgage loans conducted by an entity is conducted only by individuals who hold active mortgage officer or associate lending manager licenses issued by the Division of Real Estate;

(d) ensure that the licensees affiliated with the principal lending manager conduct all residential mortgage loan business, as defined in Utah Code Section 61-2c-102(1)(e), in the name of the licensed mortgage entity with which the principal lending manager is affiliated, and not in the licensee's own name or any other name;

(e) establish and enforce written policies and procedures for ensuring the independent judgment of any underwriter employed by the entity which employs the principal lending manager;

(f) establish and follow procedures for responding to all consumer complaints, and personally review any complaint relating to conduct that could constitute a violation of federal or state law governing residential mortgage lending by a licensee affiliated with the principal lending manager or by any unlicensed staff;

(g) establish and maintain a quality control plan that includes at a minimum procedures for performing pre-closing and post-closing auditing of at least ten percent of all loan files and taking corrective action for problems identified through the audit process. Quality control plans which comply with HUD/FHA or Freddie Mac requirements shall be deemed to be in compliance with this rule; and

(h) review for compliance with applicable federal and state laws all advertising and marketing materials and all marketing methods to be used by the entity and licensees affiliated with the principal lending manager.

205.2.1.1 Assistance from associate lending managers. A principal lending manager may employ associate lending managers to assist in performing the duties listed in Subsection 205.2.1. The principal lending manager shall actively supervise such associate lending managers and will remain personally responsible for adequate supervision of all licensees affiliated with the principal lending manager and all unlicensed staff.

205.2.2 Reasonable supervision. A principal lending manager will not be held responsible for failing to exercise reasonable supervision if:

(a) a licensee affiliated with the principal mortgage officer or an unlicensed staff member violates a provision of federal or state law, including the Utah Residential Mortgage Practices Act, in contravention of the principal lending manager's specific written policies;

(b) the principal lending manager's current written policies were provided to the licensee or unlicensed staff prior to the violation;

(c) the principal lending manager took reasonable steps intended to enforce the written policies;

(d) upon learning of the violation, the principal lending manager reported the violation to the Division and attempted to prevent or mitigate the damage;

(e) the principal lending manager did not participate in or implicitly or explicitly condone the violation; and

(f) the principal lending manager did not attempt to avoid learning of the violation.

KEY: residential mortgage loan origination
June 1, 2009 61-2c-301(1)(k)
Notice of Continuation December 13, 2006

R162. Commerce, Real Estate.
R162-210. Certification of Prelicensing Education Providers.
R162-210-1. Definitions.

210.1.1 For the purposes of this rule, "school" includes:

(a) Any college or university accredited by a regional accrediting agency which is recognized by the United States Department of Education;

(b) Any community college, vocational-technical school, state or federal agency or commission;

(c) Any nationally recognized mortgage organization, any Utah mortgage organization, or any local mortgage organization which has been approved by the Utah Residential Mortgage Regulatory Commission; and

d) Any proprietary mortgage education school.

210.1.2 For the purposes of this rule, "applicant" shall include school directors, school owners and pending instructors.

210.1.3 "Distance Education" is defined as education in which the instruction does not take place in a traditional classroom setting, but rather through other media where teacher and student are separated by distance and sometimes by time.

R162-210-2. Application for School Certification.

210.2.1 A school offering prelicensing education must be certified by the Division of Real Estate before providing any education. Each school requesting approval of an educational program designed to meet the prelicensing education requirements must make application for approval on the form prescribed by the Division. The application must include the non-refundable application fee and the following information which will be used in determining the school's eligibility for approval:

(a) Name, phone number and address of the school, school director, and all owners of the school;

(b) A description of the type of school and a description of the school's physical facilities. All courses must be taught in an appropriate classroom facility and not in any private residence, except for courses approved for specific home-study purposes;

(c) A comprehensive course outline including a description of the course, the length of time to be spent on each subject area broken into class periods, and a minimum of three to five learning objectives for every three hours of classroom time. The curriculum must include all of the topics set forth in the Standard Curriculum approved by the Utah Residential Mortgage Regulatory Commission and the Division. A school may alter the sequence of presentation of the required topics, and may add topics in addition to those required by the Standard Curriculum;

(d) A list of each certified instructor the school intends to use and the instructor certification number which has been issued by the Division. A college or university may use any faculty member to teach an approved course provided the instructor demonstrates to the satisfaction of the Division the academic training or experience qualifying him to teach the course;

(e) An itemization of methods of instruction, including lecture method, slide presentation, cassette, videotape, movie, or other method;

(f) A list of the titles, authors and publishers of all required textbooks. All texts, workbooks, supplement pamphlets and any other materials must be appropriate and current in their application to the required course outline;

(g) A schedule of the days, times and locations of classes;

(h) A copy of the statement which shall be provided for each student outlining the days, times and locations of classes; the number of quizzes and examinations; the grading system, including methods of testing and standards of grading; the requirements for attendance; the school's evidence of notification to candidates of the qualifying questionnaire; and the school's refund policy. The statement to the student shall state in capital letters no smaller than 1/4 inch the following language: "Any student attending the (school name) is under no obligation to affiliate with any of the mortgage entities that may be soliciting for licensees at this school;" and

(i) Any other information as the Division may require.

R162-210-3. School Certification and Renewal.

210.3.1 When a school has met all conditions of certification, and upon approval by the Division, a school will be issued certification. A school certification will expire 24 months from the date of issuance. A school shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

R162-210-4. Rules of Conduct for Certified Schools.

210.4.1 A school shall teach the approved course of study as outlined in the Standard Course Outline approved by the Utah Residential Mortgage Regulatory Commission.

210.4.2 A school shall require each student to attend the required number of hours.

210.4.3 A school shall maintain a record of each student's attendance for a minimum of five years after enrollment.

210.4.4 A school shall not accept a student for a number of hours that is less than the full prelicensing curriculum without first having a written statement from the Division indicating the exact number of hours that an applicant for licensure by reciprocity is required by the Division to complete.

210.4.5 A school shall not make any misrepresentation in its advertising about any course of instruction, and shall be able to provide substantiation of any claims made in its advertising. School advertising and public notices shall not denigrate the mortgage profession and shall not make disparaging remarks about a competitor's services or methods of operation.

210.4.6 Guest Lecturers. No more than 20% of the required prelicensing education hours may be provided by guest lecturers. Guest lecturers shall be experts in the field on which they provide instruction. Prior to using any guest lecturer, a certified school shall provide to the Division the name of the guest lecturer and a resume which defines the knowledge and expertise of the guest lecturer, or other evidence of professional qualifications of the guest lecturer.

210.4.7 Minimum class time. A school shall not give a student credit for more credit hours of education than the student has actually completed. A credit hour is defined as 50 minutes of instruction within a 60 minute time period. A 10 minute break will be given for each 50 minutes of instruction.

210.4.8 Maximum class hours per day. Education credit will be limited to a maximum of eight credit hours per day.

210.4.9 Limitation on Non-lecture Methods of Instruction. Absent special approval from the Division: (a) Non-lecture methods of instruction will be limited to 50% of the total credit hours of the prelicensing curriculum; (b) Non-lecture methods of instruction will have an accompanying workbook for the student to complete during the instruction. The schools shall submit copies of the workbooks to the Division prior to using a non-lecture method of instruction; and (c) A school must have a certified instructor available to answer student questions within 48 hours after a non-lecture method of instruction has been used.

210.4.10 Proof of Course Integrity for Distance Education Courses. Distance education courses will be reviewed on a case by case basis and will be approved only if, in the opinion of the Division, assurance of the following can be provided: a) There is a method to insure that the person actually completing the course is the student who is to receive credit for the course; b) The course provides no fewer hours of actual instruction than the number of credit hours that will be granted for the course;

and c) There is a method to insure that the student comprehends the material.

210.4.11 Challenge by Examination. A student cannot challenge a course or any part of a course of study by examination in lieu of attendance at the course.

210.4.12 College Credit Hour Equivalents. A college or a university that provides Division-approved prelicensing education courses may schedule those courses within its regular quarter or semester schedule. A college quarter hour credit is the equivalent of 10 classroom hours of prelicensing education, and a college semester hour credit is the equivalent of 15 classroom hours of prelicensing education.

210.4.13 Within 15 calendar days after the occurrence of any material change in the information provided in the school's application for certification, the school shall give the Division written notice of that change.

210.4.14 A school shall not attempt by any means to obtain or to use in its educational offerings the questions from the prelicensing examination unless the questions have been dropped from the current bank of exam questions.

210.4.15 A school shall not give any valuable consideration to an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to the school, nor shall a school accept valuable consideration from an individual or entity licensed with the Division under the Utah Residential Mortgage Practices Act for having referred students to a licensed mortgage entity.

210.4.16 Licensed mortgage entities may be permitted by a school to solicit prospective mortgage officers at the school, provided that no solicitation may be made during the class time or the 10-minute breaks that are permitted during every hour of instruction. Such solicitation may be made only after the regularly scheduled class time has concluded. No student may be required to attend any such solicitation.

210.4.17 A school shall use only certified instructors or guest lecturers. The school shall notify the Division about which class sessions the guest lecturers will teach.

210.4.18 A school's owners and directors shall be responsible for the quality of instruction in the school and for adherence to the state laws and regulations regarding school and instructor certification.

210.4.19 School directors shall provide the instructor for each course with the required content outline for the course and shall assure that the required subject matter has been taught.

210.4.20 Disclosure Requirements Regarding Criminal History. For the purposes of this rule, criminal history is defined as any felony or misdemeanor convictions, any pleas in abeyance or diversion agreements, or any pending criminal charges.

210.4.20.1 Prior to accepting payment from a prospective student for a pre-licensing education course, a certified school shall provide a written disclosure to the prospective student stating: a) applicants for licensure must disclose any criminal history by answering a questionnaire as part of the mortgage exam; b) applicants for licensure must submit fingerprint cards to the Division and consent to a criminal background check; c) licenses issued by the Division are conditional pending the completion of the background check and failure to accurately disclose a criminal history will result in an immediate and automatic license revocation; d) applicants with a criminal history described in Subsection R162-202-5(202.5.1) do not qualify for a license; and e) applicants with a criminal history other than as described in Subsection R162-202-5(202.5.1) will be considered on a case-by-case basis and may be required to appear at an administrative hearing to determine qualifications for licensure.

210.4.20.2 The school shall be required to obtain the student's signature on the written disclosure required by Section 210.4.20.1 acknowledging receipt of the disclosure. The disclosure form and acknowledgement shall be retained in the school's records and made available for inspection by the Division for a minimum of two years following the date upon which the student completes the pre-licensing course.

R162-210-5. Instructor Application for Certification.

210.5.1 An instructor shall not teach a prelicensing course by himself without having been certified by the Division prior to teaching the course. Each applicant for certification as a prelicensing instructor shall make application for approval on the form required by the Division.

210.5.2 The applicant for instructor certification to teach Mortgage Officer prelicensing courses shall provide:

(a) Evidence of a minimum educational level of graduation from high school or its equivalent;

(b) Evidence of a minimum of five years of experience in the residential mortgage industry within the past ten years, or evidence of having completed appropriate college-level courses specific to the topic proposed to be taught;

(c) Evidence of a minimum of twelve months of fulltime teaching experience or an equivalent number of months of part time teaching experience, or attendance at Instructor Development Workshops totaling at least two days in length; and

(d) Evidence of having passed an examination designed to test the knowledge of the subject matter proposed to be taught.

210.5.3 Lending Manager Prelicensing Courses. In addition to the requirements of Section 210.5.2, an applicant for certification to teach the following specific Lending Manager prelicensing courses shall have experience as follows:

210.5.3.1 Management of a Residential Mortgage Loan Office. An applicant for certification to teach office management courses must be have at least two years practical experience in managing an office that engaged in the business of residential mortgage loans.

210.5.3.2 Mortgage Lending Law. An applicant to teach mortgage lending law courses must be a current member of the Utah Bar Association or have graduated from an American Bar Association accredited law school, and must have at least two years practical experience in the field of real estate law.

210.5.3.3 Advanced Appraisal. An applicant to teach advanced appraisal courses must be a State-Certified appraiser and must hold an MAI designation or equivalent designation. The instructor applicant must have at least two years practical experience in appraising.

210.5.3.4 Advanced Finance. An applicant to teach advanced finance courses must have been associated with a lending institution as a loan officer or have a degree in finance. The instructor applicant must have at least two years practical experience in real estate finance.

210.5.4 Special Circumstances. Instructor applicants who cannot meet the requirements of Section 210.5.2, but who believe they are qualified to be certified as instructors, may petition the Utah Residential Mortgage Regulatory Commission on an individual basis for evaluation and approval of their qualifications as being substantially equivalent to those required for instructor certification.

R162-210-6. Instructor Certification and Renewal.

210.6.1. Upon approval by the Division, an instructor applicant will be issued a certification that expires twenty-four months following certification. An instructor shall apply for renewal for additional twenty-four month periods prior to the expiration of each current certification, using the form required by the Division.

210.6.2. As a condition of renewal of certification, the applicant shall include the following with the application for renewal:

(a) Proof of having taught at least 20 hours of in-class

instruction in a certified mortgage education course during the preceding two years;

(b) Proof of attendance at an instructor development workshop sponsored by the Division during the preceding two years; and

(c) Proof of successful completion of 12 hours of live education courses taken in real estate financing related subjects;

210.6.3 A renewed certification will be issued for two full calendar years, expiring on December 31 of the second calendar year.

210.6.4 If an application for renewal of instructor certification, including all required fees and documentation, is not received prior to the expiration date of the current instructor certification, the instructor certification shall expire.

210.6.4.1 When an instructor certification expires, the certification may be reinstated for a period of thirty days after the expiration date of the certification upon payment of a non-refundable late fee in addition to completion of the requirements for a timely renewal.

210.6.4.2 After the thirty day period, and until three months after the expiration date, an instructor certification may be reinstated upon payment of a non-refundable late fee and completion of 6 classroom hours of education related to residential mortgages or teaching techniques in addition to completing all of the requirements for a timely renewal. After the three month period, an instructor will be required to apply as for an original certification.

R162-210-7. Determining Fitness for Certification.

210.7.1 In order to qualify for school certification, all school directors and all owners of the school must meet the criteria of honesty, integrity, truthfulness, reputation, and competency. In order to qualify for instructor certification, all instructors must meet the criteria of good moral character, honesty, integrity, truthfulness, reputation, and competency.

210.7.2 The determination of whether a person possesses these qualifications will be made by the Division, with the concurrence of the Commission. In determining fitness for certification, the Division and Commission may consider various factors, including:

(a) whether the person has had a license to practice in the mortgage profession, or any other regulated profession or occupation denied, restricted, suspended, or revoked or subjected to any other disciplinary action by this or another jurisdiction;

(b) whether the person has been permitted to resign or surrender a mortgage license or any other professional license or has ever allowed a license to expire while the applicant was under investigation, or while action was pending against the applicant by a mortgage licensing or any other regulatory agency;

(c) whether any action is pending against the person by any mortgage licensing or other regulatory agency;

(d) whether the person is currently under investigation for, or charged with, or has ever been convicted of or pled guilty or no contest to, or entered a plea in abeyance to, a misdemeanor or felony;

(e) the circumstances that led to any criminal convictions;

(f) the amount of time that has passed since the individual's last criminal conviction;

(g) whether the person has ever been placed on probation or ordered to pay a fine or restitution in connection with any criminal offense or a licensing action;

(h) whether a civil judgment has ever been entered against the person based on fraud, misrepresentation or deceit, and, if the judgment awarded damaged against the person, whether the judgment has been fully satisfied;

(i) whether any restitution ordered by a court in a criminal conviction has been fully satisfied;

(j) whether the probation in a criminal conviction or a licensing action has been completed and fully served;

(k) whether there has been subsequent good conduct on the part of the person;

(l) any character testimony presented at the hearing and any character references submitted by the individual;

(m) past acts related to honesty or moral character involving the business of residential mortgage loans;

(n) whether the individual has been guilty of dishonest conduct in the five years preceeding application that would have been ground under Utah law for revocation or suspension of a certification had the individual then been certified;

(o) whether any tax and child support arrearages have been paid; and

(p) whether the individual has demonstrated competency in business subsequent to any part incompetence by the individual in the mortgage loan business.

R162-210-8. Division Evaluation and Monitoring of Courses and Instructors.

210.8.1 The Division shall cause certified prelicensing education courses to be evaluated for adherence to course content and other prescribed criteria, and for the effectiveness of the instructor.

210.8.2 On a randomly selected basis, the Division may assign monitors to attend courses for the purpose of evaluating the courses and the instructors. The monitors will complete a standard evaluation form provided by the Division and return the form to the Division within 10 days after the last class.

KEY: residential mortgage loan origination
April 7, 2008 61-2c-103(6)
Notice of Continuation May 27, 2009

R182. Community and Culture, Administration.
R182-1. Government Records Access And Management Act Rules.
R182-1-1. Purpose.
The purpose of the following rule is to provide procedures for access to government records.

R182-1-2. Authority.
The authority for the following rule is Section 63G-2-204 and Section 63A-12-104 of the Government Records Access and Management Act (GRAMA), effective July 1, 1992.

R182-1-3. Allocation of Responsibility within DCC.
DCC and its agencies shall be considered a single government entity and the Executive Director of DCC or designee shall be considered the chief administrative officer of DCC and its agencies for purposes of Section 63G-2-401.

R182-1-4. Requests for Access.
(1) Requests for access to government records of the Department of Community and Culture (DCC) and its agencies must be made in writing. Except as provided for in Subsection R182-1-4(1)(a) below, record access requests must be directed to the records officer of the DCC agency holding the requested record. The response to a request may be delayed if not properly directed. See Subsections 63G-2-204(2), (6). Record access requests must be directed as set forth below:
(a) Media and other expedited requests must be addressed to the DCC Public Information Officer, located at the DCC Administrative Office in Salt Lake City.
(b) All other requests must be addressed to the Records Officer, located at the main Salt Lake City office of the appropriate DCC agency listed below:
(i) DCC Administration, which includes all other DCC agencies not specifically referenced below;
(ii) Housing and Community Development;
(iii) Office of Ethnic Affairs, which includes Asian Affairs, Black Affairs, Hispanic/Latino Affairs, and Pacific Island Affairs;
(iv) Division of Arts and Museums;
(v) Division of Indian Affairs;
(vi) Division of State History; and
(vii) Division of State Library.

R182-1-5. Fees.
A fee schedule for the direct and indirect costs of duplicating or compiling a record may be obtained from DCC by contacting Executive Assistant to the Executive Director, DCC Administration, located at the DCC Administrative Office in Salt Lake City. DCC and its agencies may require payment of past fees and future estimated fees before beginning to process a request if fees are expected to exceed $50.00 or if the requester has not paid fees from previous requests.

R182-1-6. Waiver of Fees.
Fees for duplication and compilation of a record may be waived under certain circumstances described in Subsection 63G-2-203(3). Requests for waiver of fees are made to DCC Executive Assistant to the Executive Director, located at the DCC Administrative Office in Salt Lake City.

R182-1-7. Request for Access for Research Purposes.
Access to private or controlled records for research purposes is allowed by Subsection 63G-2-202(8). Requests for access to such records for research purposes may be made directly to the records officer of the DCC agency from which the record is sought as set forth in R182-1-4.

R182-1-8. Requests for Records Containing Intellectual Property Rights.
If the department owns an intellectual property right contained within records being requested, it shall duplicate and distribute such materials in accordance with Subsection 63G-2-201(10). Initial decisions with regard to these rights will be made by the records officer of the DCC agency from which the record is sought as set forth in R182-1-4.

R182-1-9. Requests to Amend a Record.
(1) An individual may contest the accuracy or completeness of a document pertaining to him pursuant to Section 63G-2-603. All such requests to amend a record shall be made in writing and include the following: 1) the requester's name, mailing address, and daytime telephone number; and 2) a brief statement explaining why DCC should amend the record. Such requests shall be made and directed to the appropriate DCC agency director as set forth below:
(a) Requests to amend records held by DCC Administration or by DCC agencies not specifically referenced below shall be addressed to the Executive Director, located at the DCC Administrative Office in Salt Lake City.
(b) Requests to amend records held by the following listed DCC agencies shall be addressed to the Executive Director, located at the main Salt Lake City office of the applicable agency:
(i) Housing and Community Development;
(ii) Office of Ethnic Affairs, which includes Asian Affairs, Black Affairs, Hispanic/Latino Affairs, and Pacific Island Affairs;
(iii) Division of Arts and Museums;
(iv) Division of Indian Affairs;
(v) Division of State History; and
(vi) Division of State Library.
(2) Adjudicative proceedings resulting from requests to amend a record shall be conducted informally. Pursuant to Section 63G-4-203, the following procedures are established by rule to govern such proceedings:
(a) The Director of a DCC agency may delegate the responsibility to respond to a request to amend a record.
(b) An individual making a request to amend a record may also request a meeting to present information or evidence. The agency Director, or designee, receiving the request shall determine whether a meeting with the petitioner will be required to fairly respond to the request.
(c) The Director, or designee, receiving a request to amend a record shall respond to the request in writing within a reasonable time following receipt of the request. In the event a meeting with the petitioner is necessary to fairly evaluate the merits of a request, a written response shall be made within a reasonable time following the conclusion of any such meeting. The response shall contain the following information:
(i) The decision reached.
(ii) The reasons for the decision.
(iii) A notice of the requester's right to appeal to the Executive Director of DCC, or designee, within 30 days of the date of the response, pursuant to Section 63G-4-301.

R182-1-10. Appeals to Agency Head.
Review of an order denying a request to amend a record may be taken to the Executive Director of DCC, or designee, located at the DCC Administrative Office in Salt Lake City. Such review shall be conducted pursuant to the procedures outlined in Section 63G-4-301 of the Utah Code.

R182-1-11. 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.

R182-1-12. Forms.

(1) All forms described in this Section are available from the records officer of the DCC agency from which the record is sought as set forth in R182-1-4. The forms described as follows or a document prepared by the requester containing substantially similar information to that requested in the DCC forms, shall be completed by requester in connection with records requests:

(a) DCC Record Access Request form is for use by all entities requesting records from DCC or its agencies. This form is intended to assist entities, who request records, to comply with the requirements of Subsection 63G-2-204(1) regarding the contents of a request. If a request is made through a written document other than a completed DCC Record Access Request form, the document must be legible and include the following information: the requester's name; mailing address; daytime telephone number (if available); a description of the records requested that identifies the record with reasonable specificity; and if the request is for a record which is not public, information regarding the requester's status.

(b) DCC Request For Protected Record Status form is for use by all entities providing records to DCC or its agencies. This form is intended to comply with the Section 63G-2-309 regarding business confidentiality claims. If a request for protected records status is made through a written document other than a DCC Request For Protected Record Status form, the document must contain a claim of business confidentiality and a concise statement of reasons supporting the claim of business confidentiality.

(c) DCC Disclosure and Agreement form is for use when another government entity, political subdivisions of the state and their designated economic development agencies request controlled, private or protected records from DCC or its agencies, pursuant to Subsection 63G-2-206. This form discloses to the government entity certain information regarding restrictions on access, and obtains the written agreement of the entity to abide with those restrictions.

(d) DCC Certification by Requesting Government Entity form is for use by another government entity requesting controlled or private records from DCC or its agencies, pursuant to Subsection 63G-2-206. This form requires the information found in the DCC Record Access Request form, as well as certain representations required from the government entity, if the information sought is not public.

(2) DCC or its agencies may use forms to respond to requests for records.

KEY: government documents, freedom of information, public records

1992 **63G-2-204**

Notice of Continuation October 16, 2006 **63A-12-104**

R230. Community and Culture, Indian Affairs.
R230-1. Native American Grave Protection and Repatriation.
R230-1-1. General Policy Statement Regarding Native American Burials.

1. Native American burials are regarded as spiritual and sacred ceremonies where the deceased is prepared for their journey into the next dimension of life. Once the deceased, the grave and the funerary objects are blessed, consecrated and dedicated to the care and keeping of the creator the burial site is then considered "sacred ground".

2. Native American burial sites discovered on state lands or non-federal lands must not be disturbed except as allowed by this rule and other applicable law. Any disturbances that are allowed should be conducted in a manner that minimizes desecration of the site.

R230-1-2. Purpose.

1. This rule provides procedures designed to preserve the sacred nature of Native American burials by protecting Native American burial sites and insuring that the final disposition of unidentified Native American remains, discovered on state lands or non-federal lands, shall be in keeping with that sacred nature.

R230-1-3. Authority.

1. This rule is authorized under Section 9-9-403 and Section 9-9-405, the Native American Grave Protection and Repatriation Act and Section 9-9-104(2)(c).

R230-1-4. Definitions.

1. Terms used in this rule are defined in Section 9-9-402.

2. In addition, as used in this rule "agency" means the state agency having primary management authority over the land or state repository, including museums, where Native American remains are found.

3. "Committee" means the Native American Remains Review Committee.

4. "Director" means the Director of the Division of Indian Affairs.

5. "Division" means the Division of Indian Affairs.

6. "Scientific testing" means physical or chemical tests such as radiocarbon dating and DNA analysis, performed by a qualified technician to determine the age, ethnicity or any other pertinent information.

7. "Lineal descendant" means the genealogical descendant established by oral or written record or other evidence.

8. "Cultural affiliation" means a relationship of shared group identity that may be reasonably traced historically or prehistorically between a present-day Indian tribe and an identifiable earlier group.

9. "State land" as defined by 9-9-402.

10. "Nonfederal land" as defined by 9-9-402.

R230-1-5. Scope and Applicability.

1. This rule applies to all Native American remains found on state lands or non-federal lands.

R230-1-6. Ascertaining Lineal Descendents and Cultural Affiliation.

1. Each agency, in consultation with Antiquities Section, Utah Division of State History, shall compile an inventory of acquired ancient human remains and report updates of the inventory to the Committee biannually until such time as the remains have been determined to be unclaimed, unaffiliated, or placed in the burial vault.

a. The inventory shall identify the lineal descent, cultural affiliation, and geographic location of the remains to the extent possible, and upon completion, the inventory shall be sent to the Director to disseminate to the Committee, Indian tribes, and all interested parties.

b. The inventory of lineal descent and cultural affiliation shall be completed in consultation with appropriate tribes and tribal government representatives, which consultation shall be coordinated and facilitated by the Division.

2. The agency shall have one year from date of discovery to complete research for an assessment of lineal descent or cultural affiliation.

a. The documentation for the inventory can consist of existing agency records, relevant studies, other pertinent data for determining lineal descent, the cultural affiliation, geographical origin, and basic facts surrounding the acquisition of ancient human remains.

b. Evidence of a lineal descendant or cultural affiliation to ancient human remains shall be established by using the following types of evidence: kinship, biological, archeological, anthropological, linguistic, folklore, oral tradition, historical, geographical, or other relevant information or expert opinion.

3. Lineal descent and cultural affiliation assessments shall be established by a preponderance of the evidence. Agencies do not have to establish lineal descent or cultural affiliation with scientific certainty.

4. If an agency has made a good faith effort to consult and identify the remains, but has been unable to complete the process within the one year time frame, the agency may appeal to the Committee for an extension. The Committee may grant an extension upon findings of good faith effort.

R230-1-7. Notification of Possible Owners of the Remains.

1. Once the Division has been notified of the discovery of Native American remains and a lineal descendent ascertained by the Agency, the Director shall notify any known or possible lineal descendants, Indian tribes in Utah, and all other interested parties within 30 days.

2. If no lineal descendants can be ascertained, and if the cultural affiliation of the remains has been determined by the Agency, the Director shall notify within 30 days all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person.

3. If no lineal descendent or cultural affiliation to any tribe can be ascertained, or the geographic location of discovery of the remains is unknown, the Director shall notify all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, of known information regarding the remains.

4. Notice to the tribes shall include a request that the tribes take reasonable steps to notify their members of the discovery and of the process and time limits for filing an intent to claim by posting the notice in a public place and/or by including it in tribal news media.

5. Any interested party may request notification of the discovery and repatriation process of Native American remains by sending a letter to the Division, specifying a contact person to be notified in the event of a discovery and an address where they can be reached.

R230-1-8. Claims of Ownership.

1. Lineal descendants or Indian tribes may assert a claim of ownership for the remains by notifying the Division of their intent to claim within forty-five days from the date that notification is sent out by the Division. Lineal descendants or Indian tribes will have sixty days from the Division's receipt of the Intent to Claim notice to provide substantiating documentation.

R230-1-9. Determination of Ownership.

1. When only one claimant has asserted a claim of ownership with an intent to claim notice regarding a claim of lineal descent or cultural affiliation, the Director shall request a

written petition from the claimant, substantiating the claim. The claimant will have 60 days from the Divisions receipt of the intent to claim notice, to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the claimant makes a substantial showing of lineal descent or cultural affiliation the Agency will make a determination of lineal descent or cultural affiliation and grant ownership of the remains to that claimant.

2. When two or more claimants have asserted claims of ownership with intent to claim notices for lineal descent or cultural affiliation, the Director shall request a written petition from the claimants, substantiating the claims. The claimants will have 60 days from the Division's receipt of the intent to claim notices to deliver substantiating documents. Once the Division receives the substantiating documents and/or the 60 days has expired, the Director shall notify the Agency of all claims with substantiating documents, or lack of claims, within 10 business days. If the agency determines both claimants have made a substantial showing of lineal descent or cultural affiliation, the Director and Committee shall facilitate a resolution of the competing claims. If the facilitation of resolution between claimants does not result in resolution, determination of ownership shall be made by the Agency in consultation with the Director and Committee based upon a preponderance of the evidence in an informal proceeding which shall comply with Section 63G-4-101 et seq., the Utah Administrative Procedures Act.

R230-1-10. Procedure for the Resolution of Claims for Lineal Descent or Cultural Affiliation.

1. After the expiration of time for the substantiating documents of claims regarding lineal descent or cultural affiliation to be submitted has occurred, and the agency has determined all claims have made a substantial showing, the Director, in consultation with the Agency and Committee, shall schedule a time within 60 days to facilitate the resolution of the competing claims and shall notify the claimants of such date.

2. In an informal proceeding, the Director and Committee shall meet with competing claimants and facilitate the resolution between claimants if at all possible.

3. If the facilitation of resolution of the competing claims does not result in resolution, the Agency shall conduct an informal hearing at which the competing claimants shall be allowed to testify, present evidence, and comment on issues concerning their claim.

a. Lineal descent or cultural affiliation may be established by genealogical records, archeological records, oral or written history, oral tradition, scientific analysis, relevant Tribal records, associated funerary objects and any other supporting material.

4. The Agency shall grant ownership to the claimant that has shown the closest lineal descent, or if none, to the tribe that has shown the strongest genetic or cultural relationship with the remains, by a preponderance of the evidence.

R230-1-11. Adjudication of Disputed Claims.

1. If any party is dissatisfied with the Agency's or Director's decision, the claimants may appeal the decision to the Committee. The Committee shall review the decision and issue findings relating to the identity of, the cultural affiliation of the remains, or an aboriginal land use determination, which shall be used in accordance with 9-9-403(6).

2. A copy of the Committee's findings and the Director's or Agency's decision shall be mailed to each of the claimants and interested parties who have designated a contact person along with a notice explaining the procedure for seeking an appeal of the Director's or Agency's decision in the District Court where the Agency that has temporary possession of the remains pending this process, is located.

3. If no party has filed an appeal in the District Court within 30 days, the Director's or Agency's decision shall be binding upon the parties.

R230-1-12. Disposition of Unidentified and Unclaimed Remains.

1. When lineal descent and cultural affiliation cannot be determined, and the Division has notified all Indian tribes in Utah and any other interested parties who have requested notification and have designated a contact person, and has received no intent to claim notices within 30 days, then the Director shall, upon recommendation of the agency and in consultation with the Committee, coordinate at least every six months, the placement of the ancient human remains in the Indian burial vault or other designated cemetery until such time as further information regarding the identity and owner of the remains can be obtained.

2. If the remains have not been excavated and have gone through the determination of ownership and control process and are unclaimed, the remains may be permanently left in place upon final approval by the agency and in consultation with the Director.

3. If the remains have been excavated and have gone through the determination of ownership process and are unclaimed, the remains shall be re-interred in the Indian Burial Repository or other designated cemeteries throughout the state.

R230-1-13. Re-interment of Ancient Human Remains.

1. Annually, or as needed, the Director shall present to the Committee an inventory of remains that have completed the process of repatriation and have been determined to be without a lineal descendant or cultural affiliation or unclaimed, that reside in the burial vault. The Director shall include a plan for interment regarding the final resting place of the remains in either the burial vault or designated cemetery, and with approval of the Committee, the Director shall coordinate the interment of the remains.

R230-1-14. Role and Responsibilities of Committee.

1. The Committee shall meet quarterly or as deemed necessary to monitor the identification process described in R230-1-10 conducted by the Agency for lineal descent or cultural affiliation claims per 9-9-405(3).

R230-1-15. Disposition of Remains Once Ownership has been Determined.

1. If the remains have not been excavated, the owner of the remains may excavate the remains pursuant to Section 76-9-704, for the purpose of repatriation elsewhere or may leave the remains in place, subject to agreement by the agency or non-federal agency.

2. If the remains have already been excavated pursuant to R212-4, the owner or person or tribe in control of the remains may then take possession of the remains from the agency that has temporary possession of the remains.

R230-1-16. Scientific Investigation of Remains.

1. No scientific investigation beyond that allowed in 9-9-4 shall be conducted on remains except upon written permission granted by the Director in consultation with the Committee.

2. If the ownership of the remains has not been determined, and further information regarding the identity and owner of remains becomes available, the agency or other interested parties may petition the Committee to recommend removal of the remains from the Indian burial vault or designated cemetery for testing.

a. The agency will provide to the Committee and Director a report specifying the nature and duration of the testing and the

Committee will determine per majority vote whether to grant the removal request.

R230-1-17. Savings Provision.

1. If, following the conclusion of the process to determine ownership of human remains using lineal descent and cultural affiliation, an owner cannot be identified by the responsible agency, tribes may submit claims based on aboriginal land to the Division. The Director shall make a determination of ownership based upon findings of the Committee and in consultation with the landowner.

KEY: Indian affairs, state lands, Native American remains
July 16, 2008 9-9-104
Notice of Continuation January 31, 2006 9-9-403
9-9-405

R277. Education, Administration.
R277-105. Recognizing Constitutional Freedoms in the Schools.
R277-105-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Conscience" means a standard based upon learned experiences, a personal philosophy or system of belief, religious teachings or doctrine, an absolute or external sense of right and wrong which is felt on an individual basis, a belief in an external Absolute, or any combination of the foregoing.

C. "Discretionary time" for students means school-related time that is not instructional time. It includes free time before and after school, during lunch and between classes or on buses, and private time before athletic and other events or activities.

D. "District" or "school district" means a public school district, the Utah Schools for the Deaf and the Blind, or an Applied Technology Center.

E. "Exercise of religious freedom" means the right to choose or reject religious, theistic, agnostic, or atheistic convictions and to act upon that choice.

F. "Guardian" means a person who has been granted legal guardianship of a child in accordance with state law.

G. "Instructional time" means time during which a school is responsible for a student and the student is required or expected to be actively engaged in a learning activity. It includes instructional activities in the classroom or study hall during regularly scheduled hours, required activities outside the classroom, and counseling, private conferences, or tutoring provided by school employees or volunteers acting in their official capacities during or outside of regular school hours.

H. "Parent" means a biological or adoptive parent who has legal custody of a child.

I. "USOE" means the Utah State Office of Education.

R277-105-2. Authority and Purpose.

A. This rule is adopted pursuant to Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board. The rule is based upon the First Amendment to the Constitution of the United States; Article I, Section 4, Article III, Sections 1 and 4, and Article X, Section 1 of the Utah State Constitution which speak of rights of conscience, perfect toleration of religious sentiment, the free exercise of religion, and prohibitions against the establishment of religion or the imposition of sectarian control in the schools; Section 53A-13-101(4), which directs that curriculum promoting respect for parents and home, morality, qualities of character and respect for and an understanding of the Constitutions of the United States and the State of Utah be taught in connection with regular school work; and Sections 53A-13-101.1 through 53A-13-101.3, which provide direction for the USOE and school districts regarding curriculum, freedom of conscience, exercise of religious freedoms, and student expression.

B. The purpose of this rule is to help public school officials to protect and accommodate individual rights in the operation of Utah's schools.

R277-105-3. Interpretive Context for the Rule.

A. The Board recognizes the importance of religious belief and practice and other expressions of conscience in the lives of many people, the critical role that such beliefs have played in the development of societies and cultures throughout the world, and the influence that these beliefs continue to have on concepts and interpretations relating to school curricula. The Board also recognizes that Utah is becoming a pluralistic society with an increasing diversity of peoples and beliefs, and that this diversity will require the development of greater tolerance and understanding among the people of the state.

B. The Constitution of Utah prohibits the use of the powers of government to encourage or discourage religious beliefs or practices, or to repress rights of conscience. Given their unique relationship to children attending the public schools, school officials must be particularly careful to remain neutral in matters relating to religion, while striving to accommodate the religious beliefs and practices and the freedom of conscience of students and their parents.

C. Court decisions interpreting Constitutional establishment clause provisions are a commonly used source for information about acceptable relationships between government and religion. The Board has attempted to reflect applicable rulings in the development of this rule. Because of the relative absence of court interpretations concerning the meaning of the Utah Constitution as applied to the public schools, this rule places primary reliance upon interpretations of related clauses in the First Amendment to the United States Constitution. In applying the rule, school officials may presume that any accommodation of religion which would be permissible under applicable rulings interpreting the First Amendment to the United States Constitution, and has not been prohibited in a decision interpreting Utah law which is binding upon the Utah public education system, is permissible in the schools of the State of Utah.

R277-105-4. Creation and Implementation of Curriculum.

A. A study, performance, or display which includes examination of or presentations about religion, religious thought or expression, or the influence thereof in music, art, literature, law, politics, history, or any other portion of the curriculum may be undertaken in the public schools so long as it is designed to achieve permissible educational objectives and is presented within the context of the approved curriculum.

B. The objective study of comparative religions is permissible, but no religious tenet, belief, or denomination may be given inappropriate emphasis.

C. No aspect of cultural heritage, political or moral theory, or societal value may be either included or excluded from consideration in the public schools primarily because it explicitly or implicitly contains theistic, agnostic, or atheistic assumptions.

D. An analysis of religion, deity, an absolute moral principle, or any other concept that may contain a theistic, agnostic, or non-theistic assumption, may be presented when included as an appropriate component or aspect of a broader study, display, presentation, or discussion regarding cultural heritage, political theory, moral theory or a societal value.

R277-105-5. Requests for Waiver of Participation in School Activities.

A. A parent, a legal guardian of a student, or a secondary student may request a waiver of participation in any portion of the curriculum or school activity which the requesting party believes to be an infringement upon a right of conscience or the exercise of religious freedom in any of the following ways:

(1) it would require an affirmance or denial of a religious belief or right of conscience;

(2) it would require participation in a practice forbidden by a religious belief or practice, or right of conscience; or

(3) it would bar participation in a practice required by a religious belief or practice, or right of conscience.

B. A claimed infringement under Subsection A must rise to a level of belief that the requested conduct violates a superior duty which is more than personal preference.

C. If a minor student seeks a waiver of participation under Subsection A, the school shall promptly notify the student's parent or legal guardian about the student's choice. In the event of a conflict, a parent's or legal guardian's wishes shall prevail over those of a minor student.

D. A parent, guardian, or secondary student requesting a

waiver of participation under Subsection A may also suggest an alternative that requires reasonably equivalent performance by the student of the objective of the curriculum or activity that is believed to be objectionable.

E. In responding to a request under Subsection A, the school shall:

(1) waive participation by the student in the objectionable curriculum or activity;

(2) provide a reasonable alternative as suggested by the parent or secondary student, or other reasonable alternative developed in consultation with the requesting party, that will achieve the objectives of the portion of the curriculum or activity for which waiver is sought; or

(3) deny the request.

F. A request for waiver of required participation shall not be denied unless the responsible school official finds that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational objective in furtherance of a compelling governmental interest.

G. In responding to a request under Subsection A, the school shall not require an affected student to accept a sub-standard or educationally deficient alternative that is unreasonably burdensome.

H. Permitting the submission of requests for participation waivers, and the provision of reasonable alternatives, is intended to facilitate appropriate protection and accommodation of a requesting party's asserted right of conscience or exercise of religious freedom, and shall not be considered to be an attempt by a school official to endorse, promote or disparage a particular religious or non-religious viewpoint.

R277-105-6. Student Expression.

A. A student participating in a classroom discussion, presentation, or assignment, or in a school sponsored activity, shall not be prohibited from expressing personal beliefs of any kind nor be penalized for so doing, unless the conduct:

(1) unreasonably interferes with order or discipline;

(2) threatens the well-being of persons or property; or

(3) violates concepts of civility or propriety appropriate in a school setting.

B. Students may initiate and conduct voluntary religious activities or otherwise exercise their religious freedom on school grounds during discretionary time. Individuals not currently enrolled as students in the school may neither conduct nor regularly attend the activities. School officials may neither conduct nor actively participate in the activities, but may be present as necessary to ensure proper observance of school rules and may limit or prohibit student activities under this section which:

(1) unreasonably interfere with the ability of school officials to maintain order and discipline;

(2) threaten the well-being of persons or property; or

(3) violate concepts of civility or propriety appropriate in a school setting.

R277-105-7. Religious Services and Church-Owned Facilities.

A. Public school officers and employees may neither authorize nor encourage prayer or devotional activities in connection with any class, program, presentation or other student activity which is under the control, direction, or sponsorship of a public school or school district. This Subsection shall not act to restrict student rights under R277-105-6.

B. No school employee or student may be required to attend or participate in any religious service, whether in an individual capacity or as a member of a performing group, regardless of where or when the service is held. No penalty may be assessed for failure to attend or perform in such an activity.

C. Subject to the requirements of Subsection R277-105-5, students who are members of performing groups such as school choirs may be required to rehearse or otherwise perform in a church-owned or operated facility if the following conditions are met:

(1) the performance is not part of a religious service;

(2) the activity of which the performance is a part is neither intended to further a religious objective nor under the direction of a church official; and

(3) the activity is open to the general public.

D. Students may voluntarily attend and perform during a religious service as individuals or as members of a group, provided all arrangements are made by students or non-school personnel.

E. Religious activities may be conducted on the same basis as any other non-school activity outside of regular school hours.

F. Subject to the requirements of R277-105-5, students may be required to visit church-owned facilities when religious services are not being conducted if the visit is intended solely for the purpose of pursuing permissible educational objectives such as those relating to art, music, architecture, or history.

R277-105-8. Expressions of Personal Belief by Employees.

A. An employee's rights relating to voluntary religious practices and freedom of speech do not include proselytizing of any student regarding atheistic, agnostic, sectarian, religious, or denominational doctrine while the employee is acting in the employee's official capacity, nor may an employee attempt to use his position to influence a student regarding the student's religious beliefs or lack thereof.

B. Even though acting in an official capacity, an employee may respond in an appropriate and restrained manner to a spontaneous question from a student regarding the employee's personal belief or perspective. Nevertheless, because of the special position of trust held by school employees, employees may not advocate or encourage acceptance of a belief or perspective; but may, by exercising due caution, explain or define personal religious beliefs or perspectives, or opinions about the rightfulness or wrongfulness of his/her own, or any other person's religious beliefs or lack thereof.

R277-105-9. Mandatory Responsibilities of School Districts.

A. Supervision and Training

(1) Local school boards and their employees shall cooperate and share responsibilities in implementing Sections 53A-13-101 et seq. U.C.A.

(2) Each local school board shall adopt and implement policies and training in accordance with this rule and the provisions of Sections 53A-13-101 et seq. U.C.A., to include the following:

(a) the person to whom a request for waiver of participation or substitution of another activity is to be directed;

(b) how notice is to be given to the parent of a minor secondary student who makes a request pursuant to an exercise of freedom of conscience or exercise of religious freedom under Sections 53A-13-101.2 and 53A-13-101.3 U.C.A. (1993);

(c) how appeals may be taken from a decision to require participation in any curriculum or activity after a request to either waive participation or allow substitution of another activity has been made by a parent, legal guardian or secondary student, including suspension of participation requirements until a ruling on the appeal is issued;

(d) establish procedures whereby students are not compelled to participate in any curriculum or activity after a request to waive participation or allow substitution of another activity has been submitted unless it is determined that requiring the participation of that particular student is the least restrictive means necessary to achieve a specifically identified educational

objective in furtherance of a compelling governmental interest; and

(e) establish procedures whereby any portion of any curriculum or activity that is repeatedly alleged to interfere with the rights of conscience or exercise of religious freedom of students, parents or legal guardians shall be evaluated to determine whether the educational objectives could be achieved by less intrusive means.

KEY: freedom of religion, public education
1994 Art X Sec 3
Notice of Continuation May 4, 2009 53A-13-101(4)
53A-13-101.1 through 53A-13-101.3

R277. Education, Administration.
R277-438. Dual Enrollment.
R277-438-1. Definitions.

A. "Accredited" means evaluated and approved under the standards of the Northwest Accrediting Association or the accreditation standards of the Board, available from the USOE Accreditation Specialist.

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 by R277-470, or by the Board under Section 53A-1a-505.

D. "Dual enrollment student" means a student who is enrolled simultaneously in public school and in a home school, a Utah charter school, a Utah online school, or a regularly established private school.

E. "Eligibility" means a student's fitness and availability to participate in school activities governed by this rule. Eligibility is determined by a number of factors including residency (of student and legal guardian), scholarship, age, and number of semesters of participation in a particular activity.

F. "Full-time student" means a student earning the school district designated number(s) and type(s) of credits required for participation in extracurricular or interscholastic activities in the school district in which the student's parent or legal guardian resides.

G. "Home school" means a school comprised of one or more students officially excused from compulsory public school attendance under Section 53A-11-102.

H. "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.

I. "Previous academic grading period" means the most recent period as defined by the school district for which a student received a recorded grade.

J. "Private school" means a school satisfying the following criteria:

(1) maintained by private individuals or corporations;

(2) maintained and operated not at public expense;

(3) generally supported, in part at least, by tuition fees or charges;

(4) operated as a substitute for, and giving the equivalent of, instruction required in public schools;

(5) employing teachers able to provide the same quality of education as public school teachers;

(6) established to operate indefinitely and independently, not dependent upon age of the students available or upon individual family situations; and

(7) licensed as a business by the Utah Department of Business Regulations.

K. "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 school activities.

L. "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 school activities consistent with R277-407.

M. "USOE" means the Utah State Office of Education.

R277-438-2. 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 53A-1-402(1)(b) which directs the Board to establish rules and minimum standards for access to programs and by Section 53A-11-102.5 directing the Board to make rules to permit home school, charter and online students and private school students to participate in public school extracurricular or co-curricular school activities.

B. The purpose of this rule is to provide consistent statewide procedures and criteria for home school and private school students' participation in public school activities. A further purpose is to provide procedures and criteria for charter school and online school students to participate in traditional public school activities consistent with R277-494.

R277-438-3. Private and Home School Student Participation in Public School Extracurricular or Co-curricular School Activities.

A. Students exempted from compulsory public school education by the local board for instruction in private or home schools may be eligible for participation in extracurricular or co-curricular public school activities provided they are taking courses comparable to traditional school courses or earning credit under options outlined in R277-700-6 in at least as many of the designated courses as required by the local board of students for participation in that activity.

B. The private or home school student may only participate in extracurricular or co-curricular school day activities at the school within whose boundaries the student's custodial parent(s) or legal guardian resides.

C. Dual enrollment students shall be eligible for extracurricular or co-curricular school activities consistent with eligibility standards for fully enrolled traditional public school students, including providing report cards and citizenship information to activity sponsors and coaches upon request.

R277-438-4. Fees for Private and Home School Students.

A. Private and home school students are responsible for student participation fees in the same manner as full-time public school students.

B. Student participation fees for private, charter, online or home school students shall be waived by the school or school district if students are eligible and parents provide required documentation under Section 53A-12-103 and R277-407, School Fees. The charter or online schools shall be responsible for payment of waived fees to the resident school district.

R277-438-5. Utah Charter and Utah Online School Student Participation in Extracurricular or Co-curricular School Activities.

A. Utah charter school and Utah online school students shall be eligible to participate in extracurricular and co-curricular school activities at their public schools of residence consistent with Section 53A-1a-519, Section 53A-2-214, and R277-494.

B. Charter schools and online schools may determine if the schools shall allow students to participate in extracurricular or co-curricular school activities at the students' resident schools understanding:

(1) That the charter/online school is responsible for the school participation fees associated with the designated activity consistent with Section R277-494-4;

(2) If the charter/online school allows one student to participate in a given activity, the charter/online school shall allow all interested students to participate;

(3) That the charter/online school is responsible for the school participation fee;

(4) That the student shall be allowed to participate only upon payment of the school participation fee by the school;

(5) That the charter/online school shall cooperate fully with all resident schools regarding students' participation in try-outs, practices, pep rallies, team fund raising efforts, scheduled

games and required travel and provision of complete and prompt reports of student academic and citizenship progress or grades, upon request; and

(6) That charter/online students' parents are responsible for the students' transportation to the school with which the student participates; and

(7) That the charter/online school is responsible for any student participation fees required of all student participants in the activity if the participating student is eligible for fee waivers under R277-407.

R277-438-6. Miscellaneous Issues.

A. A student attending activities or a portion of the school day under the provisions of Section 53A-11-102.5 shall be subject to the same behavior and discipline rights and requirements of a full-time resident school student.

B. A student who attends an activity or a portion of the school day shall be subject to administrative scheduling and teacher discretion of the traditional school.

C. A student with disabilities may participate as a dual enrollment student consistent with Utah law, this rule and Code of Federal Regulations (CFR) Vol. 64, No. 48, Section 300.450 through 300.455.

(1) If a student with disabilities who attends a charter or online school desires to participate in dual enrollment, the charter/online school is responsible for accommodations or extra costs to the student's resident school for the student's participation.

(2) The student shall have a services plan in place prior to participation in dual enrollment using comparable procedures to those required for identifying and evaluating public school students;

(3) Students with disabilities seeking dual enrollment shall be entitled to services only in the same proportional amount that the number of private school students residing in the district is to the total number of students with disabilities in the district.

(4) Decisions about the scheduling and manner of services provided shall be the responsibility of school and district personnel.

(5) Schools and districts are not prohibited from providing services to students who are not enrolled full time in excess of those required by R277-438-6.

KEY: public education, dual enrollment
November 10, 2008 **Art X Sec 3**
Notice of Continuation May 4, 2009 **53A-1-402(1)(b)**
53A-11-102.5

R277. Education, Administration.
R277-462. Comprehensive Counseling and Guidance Program.
R277-462-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Comprehensive Counseling and Guidance Program" or "Program" means the organization of resources to meet the priority needs of students and inform and involve parents or guardians through four delivery system components:

(1) school guidance curriculum which means providing guidance content to all students in a systematic way;

(2) individual student planning which means individualized education and career planning, including student educational and occupational planning with all students;

(3) responsive services component designed to meet the immediate concerns of certain students; and

(4) system support component which addresses management of the Program and the needs of the school system itself.

C. "Comprehensive Counseling and Guidance Steering and Advisory Committee" means representatives designated by the USOE comprised of school district counseling supervisors, school district career and technical education directors, PTA, the school counselor professional association, practicing school counselors, and others designated by the USOE.

D. "Counselor to student ratio" means licensed school counselors full time equivalent (FTE), or percentage thereof, who by license and assignment are identified as school counselors for secondary students on October 1 of each year compared to the secondary student enrollment on October 1 of each year.

E. "Direct services" means time spent on the school guidance curriculum, individual student planning, including SEOP, and responsive services activities meeting students' identified needs as discerned by students, school personnel and parents or guardians consistent with school district and charter school policy.

F. "School counselor" means an educator licensed as a school counselor in the state of Utah consistent with R277-506 and assigned to provide counseling services.

G. "Secondary school" means a school providing services to students in grades 7-12.

H. "Secondary student" means a student in grades 7-12.

I. "SEOP" means student education occupation plan. An SEOP is a developmentally organized intervention process that includes:

(1) a written plan, updated annually, for a student's (grade 9-12, at a minimum) education and occupational preparation;

(2) all Board, local board and local charter board graduation requirements;

(3) evidence of parent or guardian, student, and school representative involvement annually;

(4) attainment of approved workplace skill competencies, including job placement when appropriate; and

(5) identification of post secondary goals and approved sequence of courses.

J. "Student achievement" means academic performance, career development, personal/social development, continued student engagement in learning, attendance, SEOP outcomes and other measures of adequate yearly progress.

K. "USOE" means the Utah State Office of Education.

L. "Utah Career and Technical Education Consortium" means representatives of nine Career and Technical Education Regional Planning Areas.

M. "WPU" means weighted pupil unit, the basic unit used to calculate the amount of state funds for which a school district or charter school is eligible.

R277-462-2. 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-1a-106(2)(b) which directs local boards to develop policies for the implementation of student education plans (SEP) or SEOPs, and by Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities.

B. This rule establishes standards and procedures for entities applying for funds appropriated for Comprehensive Counseling and Guidance Programs administered by the Board.

C. This rule establishes counselor to student ratios as a requirement for all secondary schools.

D. This rule establishes provisions for school districts and charter schools not meeting the minimum counselor to student ratios.

E. This rule directs that local school district, charter school and building level policies and practices shall free licensed school counselors for appropriate identified activities with secondary students. School counselors shall not devote significant time to non-school counseling activities, including test coordination and assessment and other activities inconsistent with the Program.

R277-462-3. Comprehensive Counseling and Guidance Program Approval and Qualifying Criteria.

A. Comprehensive Counseling and Guidance disbursement criteria:

(1) In order to qualify for Comprehensive Counseling and Guidance Program funds, secondary schools shall implement SEOP policies and practices, consistent with Section 53A-1a-106(2)(b), local board or charter school governing board policies, and the school improvement plans developed for Northwest Accreditation and required under Section 53A-1a-108.5.

(2) Consistent with the Utah Model for Comprehensive Counseling and Guidance: K-12 Programs, each school district and charter school secondary school, which has a USOE-approved school counseling program shall receive a WPU base for the first 400 students as determined by the October 1 enrollment of the previous fiscal year, and a per student allotment, as funds are available, for each additional student beyond 400, capping at a maximum 1200 students if the local Program maintains Program criteria and ratios required in R277-462-5.

(3) Priority for funding shall be given to grades nine through twelve for career and technical education programs including the Comprehensive Counseling and Guidance Program and any remaining funds shall be allocated to grades seven and eight for the schools which meet Comprehensive Counseling and Guidance Program standards. Funds directed to grades seven and eight shall be distributed according to the formula under R277-462-3A(2) following the distribution of funds for grades nine through twelve.

(4) The charter school or school district Comprehensive Counseling and Guidance Program shall be integrated into the mission of the school and be consistent with the Northwest Accreditation process as defined in R277-413, Accreditation of Secondary Schools, Alternative or Special Purpose Schools. School counselors shall provide evidence that the Comprehensive Counseling and Guidance Program contributes to student achievement included in the local school improvement plan.

(5) Secondary schools shall qualify for Comprehensive Counseling and Guidance Program funds through participation in a regular schedule of on-site reviews by team members determined by the school district or the charter school's authorizing agency. Scheduling of the on-site review process shall be coordinated with the Northwest Accreditation process for secondary schools as defined in R277-413 and shall, at a

minimum, take place every six years with three year interim reviews, in a format determined by the school district or charter school authorizing agency. Successful on-site reviews of the Comprehensive Counseling and Guidance Program shall indicate a balance of activities consistent with Program models and goals in individual student planning, guidance curriculum, responsive services and system support.

(6) If a charter school requires assistance from a school district in conducting the charter school's on-site review, the charter school shall compensate the school district in a reasonable amount agreed upon between the school district and the charter school.

(7) Consistent with Section 53A-17a-113(5), of the monies allocated to Comprehensive Counseling and Guidance Programs, $1,000,000 in grants shall be awarded to school districts and charter schools that:

(a) provide an equal amount of matching funds; and

(b) do not supplant other funds used for Comprehensive Counseling and Guidance Programs.

(8) Comprehensive Counseling and Guidance Program funds shall be distributed to school districts and charter schools for secondary schools that have completed a regular schedule of on-site reviews and that meet all of the following criteria:

(a) Approval of the Comprehensive Counseling and Guidance Program by the local board of education or charter school governing board and on-going communication with the local or governing board regarding Program goals and outcomes supported by data;

(b) Regular participation of guidance team members in USOE sponsored Comprehensive Counseling and Guidance training;

(c) Adequate resources and support for guidance facilities, material, equipment, clerical support, and school improvement processes;

(d) Evidence that eighty percent of aggregate counselors' time is devoted to DIRECT service to students through a balanced program of individual planning, school guidance curriculum, and responsive services consistent with the results of the school needs data;

(e) Communication, collaboration, and coordination within the feeder system regarding the Comprehensive Counseling and Guidance Program;

(f) School-wide student/parent/teacher needs assessment data for the Comprehensive Counseling and Guidance Program gathered and analyzed at least every three years;

(g) Structures and processes to ensure effective Program management including advisory/steering committees functioning effectively, school counselors working as Program leaders, and the Comprehensive Counseling and Guidance Program contributing to school improvement teams;

(h) Available responsive services to address the immediate concerns and identified needs of students through an education-oriented and programmatic approach; services should compliment and coordinate with existing school programs, families, and school and community resources;

(i) Delivery to students of a developmental and sequential school guidance curriculum in harmony with content standards identified in the Utah model for the Comprehensive Counseling and Guidance Program. Guidance curriculum is prioritized according to the results of the school needs assessment process;

(j) Assistance for students in career development, including awareness and exploration, job seeking and finding skills, and post high school placement;

(k) Facilitation by school counselors of Student Education Occupation Planning (SEOP), both as a process and a product;

(l) Involvement of parents/guardians in all available Comprehensive Counseling and Guidance Program steering/advisory committees; and

(m) Program elements that are designed to recognize and address the needs of diverse students.

B. All school districts and local charter governing boards that receive Comprehensive Counseling and Guidance Program funds shall provide written certification that all Program standards are met by each school consistent with USOE cycles, and using USOE forms. All schools and charter schools receiving Comprehensive Counseling and Guidance Program funds shall provide school-based data projects demonstrating program or intervention effectiveness as required by the USOE.

R277-462-4. Student Education Occupation Planning.

A. School district and charter school secondary schools that receive Comprehensive Counseling and Guidance funds shall complete written SEOPs for all students.

B. Plans shall be signed by parents/guardians.

C. Four year plans shall be completed for students prior to the beginning of their ninth grade years.

D. Plans shall be maintained by the student's school.

E. Students' course registration and class changes shall be consistent with their written SEOPs.

F. The SEOP process shall be carried out consistent with the policies and goals of the school districts' or charter schools' Comprehensive Counseling and Guidance Program models.

R277-462-5. School Counselor to Student Ratios.

A. All school districts and charter schools shall certify to the USOE by October 1 annually:

(1) the full time equivalent licensed school counselors employed and assigned to each school;

(2) that secondary school counselor to secondary student ratios at the school district or charter school level are one (counselor) to 350 (students) or better; and

(3) that variations requiring less than a .25 full time equivalent licensed school counselor shall be permitted at the school level.

B. May 1 annually, school districts and charter schools not meeting the ratio required under R277-462-5A(2), shall submit to the Board a plan to be approved for meeting established ratios in a reasonable time frame to continue to receive Comprehensive Counseling and Guidance Program and Minimum School Program funding.

C. School districts and charter schools that do not satisfy required counselor to student ratios shall receive reasonable notice and reasonable time periods and opportunities to explain and remedy the failure to comply.

D. As additional funds for Comprehensive Counseling and Guidance Programs become available, lower counselor to student ratios may be required following Board approval and adequate notice to schools districts and charter schools.

R277-462-6. Use of Comprehensive Counseling and Guidance Program Funds.

A. School districts and charter schools shall satisfy all provisions of R277-462 including established counselor to student ratios, in order to receive Comprehensive Counseling and Guidance Program funds.

B. Funds shall be used for students in grades 7-12.

C. Funds may be used to provide a school guidance curriculum.

D. Funds may be used to provide student activities that support the SEOP process.

E. Funds may be used for personnel costs including clerical positions that support the SEOP process.

F. Funds may be used for Career Center equipment or materials such as computers, media equipment, computer software, occupational information, SEOP folders or educational information.

G. Funds may be used for professional development for personnel involved in the Comprehensive Counseling and

Guidance Program.

H. Funds may be used for the expenses of extended days or years which are required to run the Program.

I. Funds may be used for guidance curriculum materials for use in classrooms.

J. Funds may be used at a minimum for one secondary school counselor, per school, per year to pay for membership in the American School Counselor Association (ASCA) to facilitate accessing research and resources for effective Program implementation and effective student interventions and outcomes.

R277-462-7. Variances, Accountability and Reporting.

A. New schools that are created from schools that have Northwest accreditation and USOE Comprehensive Counseling and Guidance Program approval may qualify for Comprehensive Counseling and Guidance Program funding under this rule in the schools' first year of operation.

B. Charter schools and other new school district schools not meeting the requirements of R277-462-5A may receive Comprehensive Counseling and Guidance Program funding following two years of planning, training and Program implementation.

C. USOE Data Gathering

(1) The USOE shall gather data annually in October from school districts and charter schools regarding the number and assignments of school counselors.

(2) The data shall be used to determine secondary school district and charter school compliance with this rule, including required ratios.

D. The USOE shall monitor the Program statewide and prepare an annual report for the Legislature and the Board including data and compliance information.

E. School districts or charter schools shall certify on an annual basis that previously qualified schools continue to meet the Program criteria and provide the USOE with data and information on the Program upon request.

KEY: public education, counselors
May 8, 2009 **Art X Sec 3**
Notice of Continuation September 7, 2004 **53A-15-201**
53A-17a-131.8

R277. Education, Administration.
R277-470. Charter Schools.
R277-470-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Charter schools" means schools acknowledged as charter schools by local boards of education under Section 53A-1a-515 and this rule or by the Board under Section 53A-1a-505.

C. "Charter school application" means the official chartering document by which a prospective charter school seeks recognition and funding under Section 53A-1a-505. The application includes the basic elements of the charter to be established between the charter school and the chartering board.

D. "Charter school deficiencies" means the following information:

(1) a charter school is not satisfying financial obligations as required by Section 53A-1a-505 in the charter school's written contractual agreement;

(2) a charter school is not providing required documentation following reasonable warning;

(3) compelling evidence of fraud or misuse of funds by charter school governing board members or employees.

E. "Charter school founding member" or "founding member" means an individual who had a significant role in the initial development of the charter school up until the first instructional day of school, the first year of operation, as submitted in writing to the State Charter School Board the first day of operation.

F. "Charter school governing board" means the board designated by the charter school to make decisions for the operation of the school similar to a local board of education.

G. "Days" means calendar days, unless specifically designated.

H. "Expansion" means a proposed ten percent increase of students or grade level(s) in an operating charter school at a single location.

I. "Local education agency (LEA)" means a local board of education, combination of school districts, other legally constituted local school authority having administrative control and direction of free public education within the state, or other entities as designated by the Board, and includes any entity with state-wide responsibility for directly operating and maintaining facilities for providing public education.

J. "NAAS accreditation" means the formal process for evaluation and approval under the Standards for Accreditation of the Northwest Association of Accredited Schools or the accreditation standards of the Board, available from the Utah State Office of Education Accreditation Specialist.

K. "Neighborhood or traditional school" for purposes of this rule, means a public, non-charter school.

L. "New charter school" as provided in Section 53A-21-401(5)(d) means any charter school through the first day of its second year with students, or a satellite school that requires a new location/campus.

M. "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.

N. "On-going funds" means funds that are appropriated annually by the Legislature with the expectation that the funds shall continue to be appropriated annually.

O. "Satellite school" means a charter school affiliated with an operating charter school having a common governing board and a similar program of instruction, but located at a different site or in a different geographical area.

P. "State Charter School Board" means the board designated in Section 53A-1a-501.5.

Q. "Subaccount" means the Charter School Building Subaccount consisting of funds provided under 53A-21-401(5)(b).

R. "Subaccount Committee" means the committee established by the Superintendent under Section 53A-21-401(6).

S. "Superintendent" means the State Superintendent of Public Instruction as designated under 53A-1-301.

T. "Urgent facility need" as provided in Section 53A-21-401(5)(d) means an unexpected exigency that affects the health and safety of students such as:

(1) to satisfy an unforeseen condition that precludes a school's qualification for an occupancy permit; or

(2) to address an unforeseen circumstance that keeps the school from satisfying provisions of public safety, public health or public school code.

U. "USOE" means the Utah State Office of Education.

V. "Weighted Pupil Unit (WPU)" means the unit of measure that is computed in accordance with the Minimum School Program Act for the purpose of distributing revenue on a uniform basis for each pupil.

R277-470-2. Authority and Purpose.

A. This rule is authorized under Utah Constitution Article X, Section 3 which vests general control and supervision over public education in the Board, Section 53A-1a-513 which directs the Board to distribute funds for charter school students directly to the charter school, Section 53A-1-401(3) which allows the Board to adopt rules in accordance with its responsibilities, and 20 U.S.C., Section 8063(3) which directs the Board to submit specific information prior to charter schools' receipt of federal funds.

B. The purpose of this rule is to establish procedures for authorizing, funding, and monitoring charter schools and for repealing charter school authorizations. The rule also establishes timelines as required by law to provide for adequate training for beginning charter schools and to ensure parent involvement on charter school boards.

R277-470-3. Maximum Authorized Charter School Students.

A. Local school boards may not approve district-chartered schools unless they notify the State Charter School Board by August 15 two years prior to opening of proposed district-chartered schools and estimated numbers of students.

B. The Board, in consultation with the State Charter School Board, may approve schools, expansions and satellite charter schools for the total number of students authorized under 53A-1a-502.5

C. District-chartered schools submitting applications shall be considered with all new charters.

R277-470-4. Charter School Orientation and Training.

A. Beginning with the 2006-2007 school year, all charter school applicants shall attend orientation/training sessions designated by the State Charter School Board.

B. Orientation meetings shall be scheduled at least quarterly and be held regionally or be available electronically, as determined by the State Charter School Board.

C. Charter schools and applicants that attend orientation/training sessions shall be eligible for additional funds, upon approval, in an amount to be determined by the State Charter School Board provided through federal charter school funds or a General Fund appropriation to the extent of funds available. Charter school applicants that attend training and orientation sessions may receive priority for approval from the State Charter School Board and the Board.

D. Orientation/training sessions shall provide information including:

(1) charter school implementation requirements;

(2) charter school statutory and Board requirements;

(3) charter school financial and data management requirements;

(4) charter school legal requirements;

(5) federal requirements for charter school funding; and
(6) other items as determined by the State Charter School Board.

R277-470-5. New or Expanding Charter School Notification to Prospective Students and Parents.

A. All charter schools opening or expanding by at least ten percent of overall enrollment or adding one or more grade levels after July 1, 2007 shall notify all families consistent with the schools' outreach plans described in the charter agreements of:

(1) a new or expanding charter school's purpose, focus and governance structure, including names and contact information of governing board members;

(2) the number of new students that will be admitted into the school;

(3) the proposed school calendar for the charter school;

(4) the charter school's timelines for acceptance or rejection of new students;

(5) a State-approved student charter school application (beginning with the 2008-09 school year);

(6) procedures for transferring to or from a charter school, together with applicable timelines; and

(7) provide for payment, if required, of a one-time fee per secondary school enrollment, not to exceed $5.00, consistent with Section 53A-12-103.

B. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall provide written notice of the information in R277-470-5A consistent with the school's outreach plan and at least 150 days before the proposed opening day of school beginning with the 2008-09 school year; or

C. Beginning with charter schools that are opening or expanding for the 2007-08 school year, charter schools shall have an operative and readily accessible electronic website providing information required under R277-470-5A in place, and for schools opening after the 2007-08 school year at least 150 days before the proposed first day of school. The completed charter school website shall be provided to the State Charter School Board at least 170 days prior to the proposed opening day of school. The State Charter School Board shall require new charter schools to have websites that may be reviewed by the State Charter School Board prior to the schools posting the websites publicly.

R277-470-6. Transfer Student Criteria.

A. Charter schools shall allow students to transfer from one charter school to another and enroll students only consistent with Sections 53A-1a-506.5(2) through (6), including timelines.

B. Charter schools shall provide notice to a withdrawing student's school of residence consistent with Section 53A-1a-506.5(5) and using USOE-designated transfer forms.

C. Both charter schools and neighborhood schools shall enroll students and exchange student information consistent with 53A-1a-506.5(2)(c) and 53A-11-504 and using USOE-designated transfer forms.

D. Both charter schools and neighborhood schools shall have policies that provide procedures for properly excluding students and notifying students and parents under 53A-11-903 and 53A-11-904.

E. Neither neighborhood schools nor charter schools may discourage students from attending schools of choice in violation of state or federal law.

F. Neither charter schools nor neighborhood schools shall be required to enroll students who have been properly excluded from public schools under 53A-11-903 and 53A-11-904.

R277-470-7. Timelines - Charter School Starting Date.

A. The State Charter School Board shall accept a proposed starting date from a charter school applicant, or the State Charter School Board shall negotiate and recommend a starting date prior to recommending final charter approval to the Board.

B. A local or state-chartered school shall be approved by November 30, two years prior to the school year it intends to serve students in order to be eligible for state funds.

C. A local or state-chartered school shall acquire a facility and enter into a written agreement, or begin construction on a new or existing facility no later than January 1 of the year the school is scheduled to open.

D. If students are not enrolled and attending classes by October 1, a charter school shall not receive funding from the state for that school year.

E. Despite a charter school meeting starting dates, a charter school shall be required to satisfy R277-419 requirements of 180 days and 990 hours of instruction time, unless otherwise exempted by the Board under 53A-1a-511.

F. The Board may, following review of information, approve the recommended starting date or determine a different charter school starting date after giving consideration to the State Charter School Board recommendation.

R277-470-8. Remedying Charter School Financial Deficiencies.

A. Upon receiving credible information of charter school financial deficiencies, the State Charter School Board shall immediately direct a review or audit through the charter school governing board, by State Charter School Board staff, or by an independent auditor hired by the State Charter School Board.

B. The State Charter School Board or the Board through the State Charter School Board may direct a charter school governing board or the charter school administration to take reasonable action to protect state or federal funds consistent with Section 53A-1a-510.

C. The State Charter School Board or the Board in absence of the State Charter School Board action may:

(1) allow a charter school governing board to hold a hearing to determine financial responsibility and assist the charter school governing board with the hearing process;

(2) immediately terminate the flow of state funds; or

(3) recommend cessation of federal funding to the school;

(4) take immediate or subsequent corrective action with employees who are responsible for financial deficiencies; or

(5) any combination of the foregoing (1), (2), (3) and (4).

D. The recommendation by the State Charter School Board shall be made within 20 school days of receipt of complaint of deficiency(ies).

E. The State Charter School Board may exercise flexibility for good cause in making recommendation(s) regarding deficiency(ies).

F. The Board shall consider and affirm or modify the State Charter School Board's recommendation(s) for remedying a charter school's financial deficiency(ies) within 60 days of receipt of information from the State Charter School Board.

G. In addition to remedies provided for in Section 53A-1a-509, the State Charter School Board may provide for a remediation team to work with the school.

R277-470-9. Charter School Financial Practices and Training.

A. Charter school business and financial staff shall attend USOE required business meetings for charter schools.

B. Local charter school board members and directors shall be invited to all applicable Board-sponsored training, meetings, and sessions for traditional school district financial personnel/staff if charter schools supply current staff information and addresses and indicate the desire to attend.

C. The Board shall work with other education agencies to encourage their inclusion of charter school representatives at training and professional development sessions.

D. A charter school shall appoint a business administrator consistent with Sections 53A-3-302 and 303. The business administrator shall be responsible for the submission of all financial and statistical information required by the Board.

E. The Board may interrupt disbursements to charter schools for failure to comply with financial and statistical information required by law or Board rules.

F. Charter schools are not eligible for necessarily existent small schools funding under Section 53A-17a-109(2) and R277-445.

G. Charter schools shall comply with R277-471, Oversight of School Inspections.

R277-470-10. Procedures and Timelines for Schools Chartered by Local Boards to Convert to Board-Chartered Schools.

A. A charter school chartered initially by a local board of education shall notify the local board that it will seek Board approval for a state conversion to its charter with adequate notice for the local board to make staffing decisions.

B. A locally chartered school shall operate successfully for at least nine months prior to applying for conversion to a Board chartered school, consistent with R277-470-4.

C. A charter school shall submit an application to convert from a locally chartered school to a Board chartered school to the State Charter School Board; the State Charter School Board shall provide an application for schools seeking to convert.

D. The application may require some or all of the following, depending upon the school's longevity, successful operation and existing documentation at the USOE:

(1) current board members and founding members;

(2) audit and financial records:

(a) record of state payments received;

(b) record of contributions received by the school from inception to date;

(c) test scores, including calendar of testing;

(d) current employees: identifying assignments and licensing status, if applicable;

(e) student lists, including home addresses or uniform student identifiers for current students;

(f) school calendar for previous school year and prospective school year;

(g) course offerings, if applicable;

(h) affidavits, signed by all board members providing or certifying (documentation may be required):

(i) the school's nondiscrimination toward students and employees;

(ii) the school's compliance with all state and federal laws;

(iii) that all information on application provided is complete and accurate;

(iv) that school meets/complies with all health and safety codes/laws;

(v) that the school is current with all required policies (personnel, salaries, and fees), including board minutes for the most recent three months;

(vi) that the school is operating consistent with the school's charter;

(vii) the school's Annual Yearly Progress status under No Child Left Behind;

(viii) that there are no outstanding lawsuits or judgments or identifying outstanding lawsuits filed or judgments against the school;

(ix) that the previous local board of education supports or does not support conversion;

E. Applications for conversion from locally chartered to Board chartered shall be considered by the State Charter School Board within 60 days of submission of complete applications, including all required documentation.

F. Following approval by the State Charter School Board, proposals of charter schools seeking conversion approval shall be submitted to the Board for review.

G. If an applicant is not accepted for conversion, the State Charter School Board shall provide adequate information for the charter school to review and revise its proposal and reapply no sooner than nine months from the previous conversion application.

H. The Board shall consider the conversion application within 45 days of State Charter School Board approval, or next possible monthly Board meeting, whichever is sooner.

I. Final approval or denial of conversion is final administrative action by the Board.

R277-470-11. Charter Schools and NCLB Funds.

A. Charter schools that desire to receive NCLB funds shall comply with the requirements of R277-470-11.

B. To obtain its allocation of NCLB formula funds, a charter school shall complete all appropriate sections of the Consolidated Utah Student Achievement Plan (CUSAP) and identify its economically disadvantaged students in the October upload of the Data Clearinghouse.

C. If the school does not operate a federal school lunch program, the school:

(1) shall determine the economically disadvantaged status for its students on the basis of criteria no less stringent than those established by the U.S. Department of Agriculture for identifying students who qualify for reduced price lunch for the fiscal year in question; or

(2) may use the Charter School Declaration of Household Income form provided by the USOE for this purpose.

D. A school which does not use the form shall maintain equivalent documentation in its records, which may be subject to audit.

R277-470-12. Charter School Parental Involvement.

A. Charter schools shall encourage and maintain active involvement of parents of current charter school students.

B. Charter schools that apply for School LAND Trust funds shall have a majority of parents elected from parents of students currently attending the charter school on the committee designated to make decisions about School LAND Trust funds consistent with R277-477-3D.

R277-470-13. Charter School Oversight and Monitoring.

A. The State Charter School Board shall provide direct oversight to the state's board chartered schools, including:

(1) creation of an accountability review process which shall include:

(a) approval of first year charter school accountability plans which may consist of:

(i) revised charter effectiveness goals or accountability plan for elementary schools; or

(ii) revised charter effectiveness goals or accountability plan and official application for NAAS accreditation.

(b) visit to charter school at least once during its first year of operation;

(c) visit(s) to charter school as determined in the review process; and

(d) written reports to charter schools after each visit.

(2) annual review of student achievement indicators for all schools, disaggregated for various student subgroups;

(3) quarterly review of summary financial records and disbursements and student enrollment;

(4) annual review conducted through site visits or random audits of personnel matters such as employee licensure and evaluations;

(5) review and approval of first year charter school accountability plans, which may be the charter effectiveness goals or official application for NAAS accreditation;

(6) regular review of other matters specific to effective charter school operations as determined by the USOE charter school staff; and

(7) audits and investigations of claims of fraud or misuse of public assets or funds.

B. The Board retains the right to review or repeal charter school authorization based upon factors that may include:

(1) financial deficiencies or irregularities; or

(2) persistently low student achievement inconsistent with comparable schools; or

(3) failure of the charter school to comply with state law, Board rules, or directives; or

(4) failure to comply with currently approved charter commitments.

C. All charter schools shall amend their charters to include the following statement:

To the extent that any charter school's charter conflicts with applicable federal or state law or rule, the charter shall be interpreted and enforced to comply with such law or rule and all other provisions of the charter school shall remain in full force and effect.

D. District charter school authorizers shall:

(1) visit a charter school at least once during its first year of operation;

(2) visit a charter school as determined in the review process; and

(3) provide written reports to the charter schools after the visits.

R277-470-14. Approved Charter School Expansion.

A. The following shall apply to requests for expansion for approved and operating charter schools:

(1) The school satisfies all requirements of state law and Board rule.

(2) The approved Charter Agreement shall provide for an expansion consistent with the request; or

(3) The charter school governing board has submitted a formal amendment request to the State Charter School Board that provides documentation that:

(a) the school district in which the charter school is located has been notified of the proposed expansion in the same manner as required in Section 53A-1s-505(1);

(b) the school can accommodate the expansion within existing facilities or that necessary structures will be completed, meeting all requirements of law and Board rule, by the proposed date of operation;

(c) the school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(d) students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(e) adequate qualified administrators and staff shall be available to meet the needs of the increased number of students at the time the expansion is implemented.

B. The charter school governing board shall file a request with the State Charter School Board for an expansion no later than April 1 two years prior to the date of the proposed implementation of the expansion.

C. Expansion requests shall be considered by the State Charter School Board as part of the total number of charter school students allowed under 53A-1a-502.5(1).

R277-470-15. Satellite School for Approved Charter Schools.

A. An existing charter school may submit an amendment request to the State Charter School Board for a satellite school no later than April 1 two years prior to the date of the proposed implementation of the satellite if the charter school fully satisfies the following:

(1) The school currently satisfies all requirements of state law and Board rule including adequate insurance, adequate parental involvement, compliance with all fiscal requirements, and adequate services for all special education students at the school;

(2) The school has operated successfully for at least three years;

(3) Students at the school are performing on standardized assessments at an acceptable level with stable scores or scores showing an upward trend;

(4) The proposed satellite school will provide educational services, assessment, and curriculum consistent with the services, assessment, and curriculum currently being offered at the existing charter school;

(5) The school shall be financially stable; there have been no repeat findings of deficiencies on required outside audits for at least two consecutive years;

(6) Adequate qualified administrators, including at least one onsite administrator, and staff are available to meet the needs of the proposed student population at the satellite site school;

(7) The school has had an audit by Charter School Section staff regarding performance of the current charter agreement, contractual agreements, and financial records; and

(8) The school provides any additional information or documentation requested by the Charter School Section staff or the Board.

(9) A satellite school that receives School LAND Trust funds shall have a School LAND Trust committee and satisfy all requirements for School LAND Trust committees consistent with R277-477.

B. The satellite school amendment request shall include the following:

(1) Written certification from the charter school governing board that the charter school currently satisfies all requirements of state law and Board rule;

(2) A detailed explanation of the governance structure for the satellite school, including appointed, elected and parent representation on the governing board, parental involvement and professional staff involvement in implementing the educational plan. The applicant charter school shall include at least two voting parent members representing the parents of students at the satellite school on its governing board; at least one parent shall be elected by parents of students attending the satellite school;

(3) Information detailing the grades to be served, the number of students to be served and general information regarding the physical facilities anticipated to serve the school;

(4) A detailed financial plan for the satellite school;

(5) A signed acknowledgment by the charter school governing board certifying board members' understanding that a physical site for the building must be secured no later than January 1 of the year the satellite school is scheduled to open;

(a) the securing of the building site must be verified by a real estate closing document, signed lease agreement, or other contract indicating a right of occupancy;

(b) failure to secure a site by the required date may, at the discretion of the State Charter School Board, delay the opening of the satellite school for at least one academic year.

(6) Notification to both the school district in which the charter school is located and the school district of the proposed satellite school location in the same manner as required in Section 53A-1a-505(1);

(7) Written certification that no later than 15 days after securing a building site, the charter school governing board shall notify the school district in which the charter school

satellite school is located of the school location, grades served, and anticipated enrollment by grade with a copy of the notification sent to the State Charter School Board; and

(8) A signed acknowledgment by the charter school governing board that the board understands the satellite school shall be held accountable for its own AYP report and disaggregated financial data and reports.

C. The approval of the satellite school by the State Charter School Board requires ratification by the State Board of Education and will expire 24 months following such ratification if a building site has not been secured for the satellite school.

D. A charter school may not apply for more than three satellite locations.

R277-470-16. Transportation.

A. Charter schools are not eligible for to-and-from school transportation funds.

B. A charter school that provides transportation to students shall comply with Utah law Section 53-8-211.

C. A school district may provide transportation for charter school students on a space-available basis on approved routes.

(1) School districts may not incur increased costs or displace eligible students to transport charter school students.

(2) A charter school student shall board and leave the bus only at existing designated stops on approved bus routes or at identified destination schools.

(3) A charter school student shall board and leave the bus at the same stop each day.

(4) Charter school students and their parents who participate in transportation by the school district as guests shall receive notice of applicable district transportation policies and may forfeit with no recourse the privilege of transportation for violation of the policies.

R277-470-17. Charter School Building Subaccount.

A. The Board shall establish or reauthorize a Subaccount Committee consistent with 53A-21-401(6) by July 15 annually.

(1) The Superintendent, on behalf of the Board, may annually accept nominations of individuals who meet the qualifications of 53A-21-401(6)(a) from interested parties, including individuals nominating themselves, before June 1. The Board shall appoint five Subaccount Committee members; the Committee shall consider the Governor's nomination as one of the five appointees.

(2) Per Section 53A-21-401(6)(a), the governor shall nominate one individual who meets the qualifications of 53A-21-401(6)(a) before the Board appoints Committee members.

(3) Subaccount Committee members shall be appointed by the Board to terms that do not exceed three years.

(a) In order to stagger terms, terms of appointed Committee members shall be determined by the Board, upon the effective date of this rule.

(b) Future Committee members shall serve three year terms.

(c) The USOE Charter School Director or designee shall be a non-voting Subaccount Committee member.

B. The Subaccount Committee shall develop and the USOE shall make available a loan application that includes criteria designated under Sections 53A-21-401(6)(b) and (8).

C. The Subaccount Committee shall include other criteria or information from loan applicants that the committee or the Board determines to be necessary and helpful in making final recommendations to the Superintendent, the State Charter School Board and the Board. The Subaccount Committee shall also establish terms and conditions for loan repayment.

D. Applications for loans shall be accepted on an ongoing basis, subject to eligibility criteria and availability of funding.

(1) To apply for a loan, a charter school shall submit the information requested on the Board's most current loan application form together with the requested supporting documentation.

(2) The application shall include a resolution from the governing board of the charter school that the governing board, at a minimum:

(a) agrees to enter into the loan as provided in the application materials;

(b) agrees to the interest established by the Subaccount Committee and repayment schedule of the loan designated by the Subaccount Committee and the Board;

(c) agrees that loan funds shall only be used consistent with the purposes of Section 53A-21-401(5)(c) and the purpose of the approved charter;

(d) agrees to any and all audits or financial reviews ordered by the Subaccount Committee or the Board;

(e) agrees to any and all inspections or reviews ordered by the Subaccount Committee or the Board;

(f) understands that repayment, including interest, shall be deducted automatically from the charter school's monthly fund transfers, as appropriate.

E. The Subaccount Committee shall not make recommendations to the Superintendent, the State Charter School Board or the Board until the committee receives complete and satisfactory information from the applicant and the Subaccount Committee has reached a majority recommendation.

F. The submission of intentionally false, incomplete or inaccurate information from a loan applicant shall result in immediate cancellation of any previous loan(s), the requirement for immediate repayment of any funds received, denial of subsequent applications for a 12 month period from the date of the initial application, and possible Board revocation of a charter.

G. The Superintendent, in consultation with USOE and State Charter Board staff, shall review recommendations from the Subaccount Committee and make final recommendations to the Board.

H. The Superintendent shall submit final recommendations from the Subaccount Committee to the Board no more than 60 days after submission of all information and materials from the loan applicant to the Subaccount Committee.

I. The Board may request additional information from loan applicants or a reconsideration of a recommendation by the Subaccount Committee.

J. The Board's approval or denial of loan applications constitutes the final administrative action in the charter school building revolving loan process.

R277-470-18. Appeals Criteria and Procedures.

A. Only an operating charter school, a charter school that has been recommended by the State Charter School Board to the Board, or a charter school applicant that has met State Charter School Board requirements for review by the full State Charter School Board, may appeal State Charter School Board administrative decisions or recommendations to the Board.

B. Only the following State Charter School Board administrative decisions or recommendations may be appealed to the Board:

(1) recommendation for termination of a charter;

(2) recommendation for denial of expansions or satellite schools;

(3) recommendation for denial of local charter board proposed changes to approved charters;

(4) recommendation for denial or withholding of funds from local charter boards; and

(5) recommendation for denial of a charter.

C. No other issues may be appealed.

D. Appeals procedures and timelines

(1) The State Charter School Board shall, upon taking any of the administrative actions under R277-470-17A:

(a) provide written notice of denial to the charter school or approved charter school;

(b) provide written notice of appeal rights and timelines to the local charter board chair or authorized agent; and

(c) post information about the appeals process on the State Charter School Board website and provide training to prospective charter school board members and staff regarding the appeals procedure.

(2) A local charter school board chair or authorized agent (appellant) may submit a written appeal to the State Superintendent within 14 calendar days of the State Charter School Board administrative action or recommendation.

(3) The Superintendent shall, in consultation with the Board chair, designate three to five Board members and a hearing officer, who is not a Board member, to act as an objective hearing panel.

(4) The hearing officer, in consultation with the Superintendent, shall set a hearing date and provide notice to all parties, including the State Charter School Board staff and State Charter School Board.

(5) The Hearing shall be held no more than 45 days following receipt of the written appeal.

(6) The hearing officer shall establish procedures that provide fairness for all parties, which may include:

(a) a request for parties to provide a written explanation of the appeal and related information and evidence;

(b) a determination of time limits and scope of testimony and witnesses;

(c) a determination for recording the hearing;

(d) preliminary decisions about evidence; and

(e) decisions about representation of parties.

(7) The hearing panel shall make written findings and provide an appeal recommendation to the Board no more than 10 calendar days following the hearing.

(8) The Board shall take action on the hearing report findings at the next regularly scheduled Board meeting.

(9) The recommendation of the State Charter School Board shall be in place pending the conclusion of the appeals process, unless the Superintendent in her sole discretion, determines that the State Charter School Board's recommendation or failure to act presents a serious threat to students or an imminent threat to public property or resources.

(10) All parties shall work to schedule and conclude hearings as fairly and expeditiously as possible.

(11) The Board's acceptance or rejection of the hearing report is the final administrative action on the issue.

R277-470-19. Miscellaneous Provisions.

A. The State Charter School Board and the Board shall, in the recommendation and approval process, consider and may give priority to charter school applications that target underserved student populations, among traditional public schools and operating charter schools.

(1) Underserved student populations may include low income students, students with disabilities, English Language Learners (ELL), or students in remote areas of the state who have limited access to the full range of academic courses;

(2) Priority may also be given to charter school applicants for proposed schools that do not have other charter schools within the school district; and

(3) To be given priority, the charter school application and proposed employee and site information shall support the school's designated focus.

B. The State Charter School Board shall provide a form on its website for individuals to report threats to health, safety, or welfare of students consistent with 53A-1a-510(3).

(1) Individuals making reports shall be directed to report suspected criminal activity to local law enforcement and suspected child abuse to local law enforcement or the Division of Child and Family Services consistent with 62A-4a-403 and 53A-11-605(4).

(2) Additionally, Individuals may report threats to the health, safety, or welfare of students to the local charter board.

(a) reports shall be made in writing;

(b) reports shall be timely;

(c) anonymous reports shall not be reviewed further.

(3) Local charter boards shall verify that potential criminal activity or suspected child abuse has been reported consistent with state law and this rule.

(4) Local charter boards shall act promptly to investigate disciplinary action, if appropriate, against students who may be participants in threatening activities or take appropriate and reasonable action to protect students or both.

KEY: education, charter schools

May 12, 2009	**Art X, Sec 3**
Notice of Continuation October 10, 2008	**53A-1a-515**
	53A-1a-505
	53A-1a-513
	53A-1a-502
	53A-1-401(3)
	53A-1a-510
	53A-1a-509
	41-6-115
	53A-1a-506
	53A-21-401
	53A-1a-519
	53A-1a-520

R277. Education, Administration.
R277-477. Distribution of Funds from the Interest and Dividend Account (School LAND Trust Funds) and Administration of the School LAND Trust Program.
R277-477-1. Definitions.

A. "Board" means the Utah State Board of Education. The Board is the representative and advocate for beneficiaries of the School Trust corpus and the School LAND Trust Program.

B. "Critical academic needs" for purposes of this rule means a school's weakness(es) in academic areas for which there is a Utah Core curriculum.

C. "Fall Enrollment Report" means the audited census of students registered in Utah public schools as reported in the audited October 1 Fall Enrollment Report from the previous year.

D. "Funds" means interest and dividend income as defined under Section 53A-16-101.5(2).

E. "Interest and Dividends Account" means an account created under Section 53A-16-101 established to collect interest and dividends from the permanent State School Fund until the end of the fiscal year at which time the funds are distributed to school districts through the School LAND Trust Program.

F. "Local board of education" means the locally-elected board designated in Section 53A-3-101 that makes decisions and directs the actions of local school districts and is directed in Section 53A-16-101.5(5)(b) to approve School LAND Trust plans for schools under the local board's authority.

G. School Children's Trust Section" means employees designated by the Superintendent who have responsibility for overseeing the use of School LAND Trust Program funds.

H. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

I. "State Charter School Board (SCSB)" means the board designated under Section 53A-1a-501.5 that has responsibility for making recommendations regarding the welfare of charter schools to the Board and the board that has responsibility to approve School LAND Trust plans for charter schools. The SCSB has primary responsibility to provide training and oversight for charter school School LAND Trust plans.

J. "State Superintendent of Public Instruction (Superintendent)" means the individual appointed by the Board as provided for in Section 53A-1-301(1) to administer all programs assigned to the Board in accordance with the policies and the standards established by the Board.

K. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report of the school district, charter school, or USDB.

L. "USDB" means the Utah Schools for the Deaf and the Blind.

M. "USOE" means the Utah State Office of Education.

R277-477-2. 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 Section 53A-16-101.5(3)(c) which allows the Board to adopt rules regarding the time and manner in which the student count shall be made for allocation of school trust land funds, 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:

(1) provide direction in the distribution of interest and dividends from the Interest and Dividends Account created in Section 53A-16-101 and funded in Section 53A-16-101.5(2) through school districts;

(2) provide for appropriate and adequate oversight of the expenditure and use of School LAND Trust monies by designated local boards of education, the SCSB, and the Board;

(3) provide for review and monitoring of funds and revenue generated by school trust lands; and

(4) determine the time and manner in which the student count shall be made for allocation of the monies as provided in Section 53A-16-101.5(3)(c).

R277-477-3. Distribution of Funds -- Determination of Proportionate Share.

A. Funds shall be distributed to school districts and charter schools as provided under Section 53A-16-101.5(3)(a). The distribution shall be based on the state's total fall enrollment as reflected in the audited October 1 Fall Enrollment Report from the previous school year.

B. Each school district and the USOE, with regard to charter schools and the USDB, shall distribute funds received under R277-477-3A to each school within each school district or to each charter school and USDB on an equal per student basis.

C. Local boards of education and the USOE may adjust distributions, maintaining an equal per student distribution within a school district for school openings and closures and for boundary changes occurring after the audited October 1 Fall Enrollment Report of the prior year.

D. All public non-charter schools receiving funds shall have a school community council as required by Sections 53A-1a-108 and R277-491; funds shall be used to enhance or improve a school's academic excellence consistent with Section 53A-16-101.5. Plans shall be approved by the local board of education. Required school community council-generated plans or programs include:

(1) School Improvement Plan;
(2) School LAND Trust Program;
(3) Reading Achievement Plan (for elementary schools)
(4) Professional Development Plan;
(5) Child Access Routing Plan; and
(6) Recommendations regarding school/school district programs and community environment.

E. All charter schools that elect to receive School LAND Trust funds shall have a committee consisting of a majority of parents elected from parents of students currently attending the charter school that is designated to make decisions about the School LAND Trust funds, and a current school plan for enhancing or improving academic excellence consistent with Section 53A-16-101.5 approved by the SCSB for state chartered schools.

F. The plan shall be electronically submitted to the USOE on the School LAND Trust Program website.

G. All charter schools shall be considered collectively as a school district to receive a base amount under Section 53A-16-101.5(3)(a)(i).

H. The USDB shall receive the average statewide per pupil base amount as the school's base allocation.

I. In order to receive its allocation, a school shall satisfy the requirements of Section 53A-16-101.5(4-7).

J. Plans shall include specific academic goals, steps to meet those goals, measurements to assess improvement and specific expenditures to implement plans that may include purchase of workbooks, textbooks, professional development, computer hardware and software, library and media supplies, or supplement funding for aides, teachers and specialists, and other tools for student academic improvement consistent with Section 53A-16-101.5(5).

K. Income from the Interest and Dividends Account shall be distributed to school districts, USDB, and charter schools after the close of the state fiscal year as the USOE receives the funds in the Interest and Dividends Account within the Uniform School Fund.

L. Local boards of education or the SCSB shall approve plans annually and shall ensure timely distribution of the funds to schools with approved plans.

M. When approving school plans on the School LAND Trust Program website, school district and charter school personnel shall report the meeting date(s) when the local board of education or the SCSB approved the plans.

N. Funds not used in the school approved plan may be carried over by the school to the next school year and added to the School LAND Trust Program funds available for expenditure in that school the following year. Schools shall provide an explanation for any carry over that exceeds one-third of the school's allocation in the school plan or report.

O. School LAND Trust Program funds shall be focused on the school's critical academic needs.

P. School LAND Trust Program funds shall be focused on implementing a recommended course of action to enhance or improve student academic achievement and implement a component of the school improvement plan focused on the school's identified critical academic needs, as explained in Section 53A-1a-108.5 and Section 53A-16-101.5(5).

Q. Examples of successful programs with School LAND Trust monies may include activities such as:

(1) credit recovery courses and programs;

(2) study skills classes;

(3) college entrance exam preparation classes;

(4) academic field trips;

(5) classroom equipment and materials such as flashcards, math manipulatives, calculators, microscopes, maps, books, or student planners;

(6) teachers and teacher aides;

(7) professional development directly tied to school academic goals;

(8) computer labs, software, LCDs, smart boards;

(9) books and textbooks.

R. Schools serving students with disabilities may use funds as needed to directly influence and improve student performance according to the student Individual Education Plans (IEPs).

S. The School Children's Trust Section of the USOE shall create and electronically post model plans for elementary and secondary schools.

T. Funds from the School LAND Trust Program that are expended inconsistent with the requirements and academic intent of the law, inconsistent with R277-477, or inconsistent with the original school board/charter board approval shall be withheld by the USOE in subsequent years until the misappropriated funds have been restored.

U. Schools serving only youth in custody may form committees and submit plans to the district serving the students. Youth in custody schools shall receive the same per pupil distribution as other schools in the district providing services.

V. Plans submitted by charter schools shall be prepared, submitted and approved by the charter school committee established in R277-470-9D, requiring a majority of elected parents to serve on the committee, and then submitted first to the local charter school board, then to the local board of education for approval, if the school is chartered by the district, or to the SCSB if the school is chartered by the Board.

W. Plans submitted by the USDB governing board shall be reviewed and approved by the State Superintendent or designee.

R277-477-4. Administration of School LAND Trust Program.

A. The School Children's Trust Section of the USOE shall provide support to local boards of education, to the SCSB and to local charter trust land committees, as directed by the Superintendent.

B. Support services shall include:

(1) Regional training and, to the extent of resources available, school district or school training for school community councils, as requested by local boards of education or the SCSB;

(2) Training materials;

(3) Model plans for school improvement, reading achievement, School LAND Trust, professional development assistance, and child access routing plans for both elementary and secondary schools.

(4) Materials, suggested practices and plans for use by community councils and charter school trust land committees to:

(a) increase community and parent awareness and knowledge of community councils;

(b) increase community and parent knowledge about school trust lands and their history and purpose in generating funds for public schools;

(c) encourage parent participation in developing plans for local board approval for the use of School LAND Trust allotments.

C. The School Children's Trust Section shall monitor development of School LAND Trust plans and assist local community councils and charter school trust land committees with plan development as requested, and monitor expenditures and compliance with statutory requirements. Assistance/monitoring may include:

(1) timely notification of annual School LAND Trust allotments to public schools;

(2) clear and timely notification of required timelines for plan submission;

(3) periodic, cost-effective and scheduled review of submitted school plan consistency and plan expenditures and results;

(4) verifying web postings and other information regarding school community council and charter school trust land committees compliance with the Utah Public and Open Meetings Act.

D. The School Children's Trust Section shall receive direction from the Superintendent as it provides monitoring and review.

E. Monitoring and review shall be accomplished primarily through written/electronic assurances from school community councils and charter school trust land committees, written/electronic submission of information from local school boards and charter schools and random and selective paper audits of School LAND Trust expenditures and the execution of School LAND Trust plans.

F. The School Children's Trust Section shall, under the direction of the Superintendent, provide oversight and expertise regarding the School LAND Trust account and all related activities. Oversight and activities may include:

(1) attending meetings where school trust land, permanent fund, and school community council issues are discussed and voted on;

(2) providing information to other state agencies, general public, and the Legislature regarding school trust lands and revenues;

(3) reviewing and providing information as representatives of the Superintendent to boards, state agencies and employees that have responsibility for managing school trust lands, maximizing trust land revenues, and investing the permanent State School Fund prudently;

(4) increase and strengthen beneficiary monitoring; and

(5) other activities or assignments as directed by the Superintendent.

R277-477-5. Information to USOE.

A. Information on each school's plan to address critical academic needs shall be completed via the School LAND Trust Program website maintained through the USOE for accurate and uniform reporting.

B. To facilitate submission of information by schools, each school board shall establish a timeline for timely submission of information and a district submission date for the district schools not later than May 15 of each year.

C. Timelines shall allow for school committee reconsideration and editing of the school plan following local board of education or SCSB requested changes.

D. USOE staff may visit schools receiving funds from the School LAND Trust Program as directed by the Superintendent to discuss the program, receive information and suggestions, provide training, and answer questions.

E. School districts and charter schools wishing to submit information to the School LAND Trust website through a comprehensive electronic plan shall meet the parameters for programming and data entry required by the USOE. They shall review School LAND Trust plans on the USOE website prior to local board of education or SCSB approval to ensure information consistent with the law has been downloaded by individual schools into the electronic plan visible on the School LAND Trust Program website.

F. Charter school and school district business administrators shall enter financial data relating to the School LAND Trust Program on the School LAND Trust Program website at the time they prepare and submit Annual Program Report (APR) data to the USOE. The appropriate data shall appear in the final reports submitted online by school community councils for reporting to parents as required in Section 53A-1a-108.

G. The financial data shall include:

(1) the annual distribution received by each school (the sum of the distributions to schools within a school district equals the total distributed to the school district by the USOE);

(2) expenditures made by each school from revenues received from the School LAND Trust in the prior fiscal year.

H. Expenditures made after the close of the fiscal year shall be accounted for as expenditures in the following fiscal year.

I. The financial report in each school final report shall be consistent with the narrative submitted by that school community council or charter committee.

KEY: schools, trust lands funds
May 8, 2009 **Art X Sec 3**
Notice of Continuation November 23, 2005 **53A-16-101.5(3)(c)**
53A-1-401(3)

R277. Education, Administration.
R277-484. Data Standards.
R277-484-1. Definitions.

A. "Annual Financial Report" means an account of LEA revenue and expenditures by source and fund sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

B. "Annual Program Report" means an account of LEA revenue and expenditures by source and program sufficient to meet the reporting requirements specified in Section 53A-1-301(3)(d) and (e).

C. "Board" means the Utah State Board of Education.

D. "Computer Aided Credentials of Teachers in Utah System (CACTUS)" means the database maintained on all licensed Utah educators. The database includes information such as:

(1) personal directory information;
(2) educational background;
(3) endorsements;
(4) employment history;
(5) professional development information;
(6) completion of employee background checks; and
(7) a record of disciplinary action taken against the educator.

E. "Data Clearinghouse File" means the electronic file of student level data submitted by LEAs to the USOE in the layout specified by the USOE. This definition is effective until July 1, 2010.

F. "Data Warehouse" means the database of demographic information, course taking, and test results maintained by the USOE on all students enrolled in Utah schools.

G. "EDEN" means the Education Data Exchange Network, the mechanism by which state education agencies are mandated as of the 2008-09 school year to submit data to the U.S. Department of Education.

H. "ESEA" means the federal Elementary and Secondary Education Act, also known as the No Child Left Behind Act.

I. "LEA" means local education agency, which may be either a public school district or a charter school.

J. "MSP" means Minimum School Program, the set of state support K-12 public school funding programs.

K. "MST" means Mountain Standard Time.

L. "USOE" means Utah State Office of Education.

M. "Utah eTranscript and Record Exchange (UTREx)" means a system that allows individual detailed student records to be exchanged electronically among Utah public schools and LEAs and the USOE, and allows electronic transcripts to be sent to any participating post-secondary institution. This definition becomes effective on July 1, 2010.

N. "Year" means both the school year and the fiscal year for LEAs in Utah, which runs from July 1 through June 30.

O. "YICSIS" means the Youth In Custody Student Information System.

R277-484-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board, and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities and specifically allows the Board to interrupt disbursements of state aid to any LEA which fails to comply with rules.

B. The Board, through its chief executive officer, the State Superintendent of Public Instruction, is required to perform certain data collection related duties essential to the operation of statewide educational accountability and financial systems as mandated in state and federal law.

C. The purpose of this rule is to support the operation of required educational accountability and financial systems by ensuring timely submission of data by LEAs.

R277-484-3. Deadlines for Data Submission.

For the purpose of submission of student level data, each LEA shall participate in UTREx as of July 1, 2010. LEAs shall submit data to the USOE through the following reports by 5:00 p.m. MST on the date and in the format specified by the USOE:

A. February 28 - Community Development and Renewal Agency and/or Redevelopment Agency Taxing Entity Committee Representative List - Business Services.

B. June 15

(1) Immunization Status Report (to Utah Department of Health) - final;
(2) Safe School Incidents Report - for current year.

C. June 29 - CACTUS - final update for current year.

D. July 15

(1) Adult Education - final report for prior year;
(2) Bus Driver Credentials Report - for current year - Business Services;
(3) Classified Personnel Report - for prior year - Business Services;
(4) Data Clearinghouse File - final comprehensive update for prior year - Data Assessment, and Accountability - effective until July 1, 2010;
(5) UTREx - final comprehensive update for prior year - Data Assessment, and Accountability - effective on July 1, 2010;
(6) Driver Education Report - for prior year - Educator Quality;
(7) ESEA Choice and Supplemental Services Report - for prior year;
(8) Fee Waivers Report - for prior year;
(9) Fire Drill Compliance Statement - for prior year;
(10) Home Schooled Students Report - for prior year;
(11) Teacher Benefits Report - for prior year;
(12) Pupil Transportation Statistics - for prior year:
(a) Bus Inventory Report;
(b) Year End Pupil Transportation Statistics Reports.

E. September 15

(1) Membership Audit Report - for prior year;
(2) Adult Education - Financial Audit for prior year.

F. October 1

(1) Annual Financial Report (AFR) - for prior year;
(2) Annual Program Report (APR) - for prior year.

G. October 15

(1) Data Clearinghouse File - update as of October 1 for current year - effective until July 1, 2010.
(1) UTREx - update as of October 1 for current year - effective on July 1, 2010.
(2) YICSIS - update as of October 1 for current year.

H. November 1

(1) Enrollment and Transfer Student Documentation Audit Report - for current year;
(2) Immunization Status Report - for current year;
(3) Pupil Transportation Statistics for state funding:
(a) Schedule A1 (Miles, Minutes, Students Report) - projected for current year;
(b) Schedule B (Miscellaneous Expenditure Report) - for prior year;
(4) Negotiations report - for current year.

I. November 15

(1) CACTUS - update for current year; and
(2) Free and Reduced Price Lunch Enrollment Survey - as of October 31 for current year.

J. November 30 - Financial Audit Report - for prior year.

K. December 15 - Data Clearinghouse File - update as of December 1 for current year - effective until July 1, 2010.

L. December 15 - UTREx - update as of December 1 for current year - effective on July 1, 2010.

R277-484-4. Adjustments to Deadlines.

A. Deadlines that fall on a weekend or state holiday in a given year shall be moved to the date of the first workday after the date specified in Section 3 for that year.

B. An LEA may seek an extension of a deadline to ensure continuation of funding and provide more accurate input to allocation formulas by submitting a written request to the USOE. The request shall be received by the USOE State Director of School Finance and Statistics at least 24 hours before the specified deadline in Section 3 and include:

(1) The reason(s) why the extension is needed;

(2) The signatures of the LEA business administrator and the district superintendent or charter school director; and

(3) The date by which the LEA shall submit the report.

C. In processing the request for the extension, the USOE State Director of School Finance and Statistics shall:

(1) Take into consideration the pattern of LEA compliance with reporting deadlines and the urgency of the use which depends on the data to be submitted, consult with other USOE staff who have knowledge relevant to the situation of the LEA; and either

(2) Approve the request and allow the MSP fund transfer process to continue; or

(3) Recommend denial of the request and forward it the USOE Associate Superintendent for Business Services for a final decision on whether to stop the MSP fund transfer process.

D. If, after receiving an extension, the LEA fails to submit the report by the agreed date, the MSP fund transfer process shall be stopped and the procedure described in Section 8 shall apply.

E. Extensions shall apply only to the report(s) and date(s) specified in the request.

F. Exceptions - Deadlines for the following reports may not be extended:

(1) June 29 CACTUS Update;

(2) July 15 Final Data Clearinghouse File - final comprehensive update for prior year- Data Assessment, and Accountability - effective until July 1, 2010;

(3) July 15 UTREx - final comprehensive update for prior year - Data Assessment, and Accountability - effective on July 1, 2010;

(4) November 15 CACTUS - update for current year.

R277-484-5. Official Data Source and Required LEA Compatibility.

A. The USOE shall load operational data collections into the Data Warehouse as of the submission deadlines specified.

B. The Data Warehouse shall be the sole official source of data for annual:

(1) school performance reports required under Section 53A-3a-602.5;

(2) determination of adequate yearly progress as required under the ESEA; and

(3) submission of data files to the U.S. Department of Education via EDEN.

C. Prior to an LEA acquiring a student information system, replacing an existing student information system, or modifying data elements in an existing student information system, an LEA shall have USOE approval to ensure that the LEA's new or modified student information system maintains compatibility with UTREx.

R277-484-6. Use of Data for Allocation of Funds.

The USOE School Finance and Statistics Section shall publish after each general legislative session by June 30 on its website an explicit description of how data shall be used to allocate funds to LEAs in each MSP program in the following fiscal year.

R277-484-7. Adjustments to Summary Statistics Based on Compliance Audits.

A. For the purpose of allocating MSP funds and projecting enrollment, LEA level aggregate membership and fall enrollment counts may be modified by the USOE on the basis of the values in the Membership and Enrollment audit reports, respectively, when an audit report review team comprising at least three members of the Finance and Statistics and Charter School sections agree that an adjustment is warranted by the evidence of an audit:

(1) the audit report review team shall make its determination within five working days of the authorized audit report deadline;

(2) values can only be adjusted downward when audit reports are received after the authorized deadlines.

R277-484-8. Financial Consequences of Failure to Submit Reports on Time.

A. If an LEA fails to submit a report by its deadline as specified in Section 3, the USOE shall stop the MSP fund transfer process on the day after the deadline, unless the LEA has obtained an extension of the deadline in accordance with the procedure described in Section 7, to the following extent:

(1) 10% of the total monthly MSP transfer amount in the first month, 25% in the second month, and 50% in the third and subsequent months for any report other than June 15 Immunization Status report.

(2) Loss of up to 1.0 WPU from Kindergarten or Grades 1-12 programs, depending on the grade level and aggregate membership of the student, in the current year Mid Year Update for each student whose prior year immunization status was not accounted for in accordance with Utah Code 53A-11-301 as of June 15.

B. If the USOE has stopped the MSP fund transfer process for an LEA, the USOE shall:

(1) upon receipt of a late report from that LEA, restart the transfer process within the month (if the report is submitted by 10:00 a.m. on or before the tenth working day of the month) or in the following month (if the report is submitted after 10:00 a.m. on or after the tenth working day of the month); and

(2) inform the appropriate Board Committee at its next regularly scheduled Committee meeting.

(3) inform the chair of the governing board if LEA staff are not responsive in correcting ongoing problems with data.

R277-484-9. Disclosure of Data for Research.

A. The USOE may provide limited or extensive data sets for research and analysis purposes to qualified researchers or organizations.

(1) A reasonable method shall be used to qualify researchers or organizations to receive data, such as evidence that a research proposal has been approved by a federally recognized Institutional Review Board (IRB).

(2) A standardized, de-identified research data package shall be prepared each year by the USOE for qualified researchers to systematically protect individual student data.

(3) The USOE is not obligated to fill every data request and may develop procedures to determine which requests will be filled or to assign priorities to multiple requests. The USOE/Board understands that it will respond in a timely manner to all requests submitted under Section 63G-2-101 et seq., Government Records Access and Management Act.

(a) In filling data requests, higher priority shall be given to requests that will help improve instruction in Utah's public schools.

(b) In filling data requests, higher priority shall be given to requests from universities, colleges, schools, faculty, students and government entities residing in Utah.

(4) A fee may be charged to prepare data or to deliver data,

particularly if the preparation requires original work. The USOE shall comply with Section 63G-2-203 in assessing fees.

(5) The researcher or organization shall provide a copy of the report or publication produced using USOE data to USOE at least 10 business days prior to the public release.

B. Student information

(1) Requests for data that disclose student information shall be provided in accordance with the Family Educational Rights and Privacy Act (FERPA), 34 CFR 99-31(a)(6), so that:

(a) the individual data is de-identified, meaning it is not possible to trace the data to an actual student.

(b) the recipient of student data shall agree to not report or publish data in a manner that discloses a student's identity. For example, reporting test scores for a race subgroup that has a count, also known as n-size, less than 10 could enable someone to identify the actual students and shall not be published.

C. Licensed educator information

(1) The USOE shall provide information about licensed educators maintained in the CACTUS database that is required under Section 63G-2-301(2).

(2) Additional information/data may be released by the USOE consistent with the purposes of CACTUS, the confidentiality protections accepted by requester(s), and the benefit that the research may provide for public education in Utah, as determined by the USOE.

D. Recipients of USOE research data shall sign a USOE non-disclosure agreement if required by the USOE.

E. The Board or the USOE may commission research or may approve research requests.

F. The USOE may provide personally identifiable data about students or licensed educators consistent with state and federal law. Some data may be provided only if the researcher or contractor agrees to preserve the confidentiality of private and protected data.

KEY: data standards, reports, deadlines, research data requests

May 8, 2009 **Art X Sec 3**

Notice of Continuation June 2, 2008 **53A-1-401(3)**

53A-1-301(3)(d) and (e)

R277. Education, Administration.
R277-491. School Community Councils.
R277-491-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "Candidate" means a parent or school employee who has filed for election to the school community council.

C. "Contested race" means the election of members to a school community council when there are more candidates than open positions.

D. "Critical academic needs" for purposes of this rule means a school's weakness(es) in academic areas for which there is a Utah Core curriculum.

E. "Days" means calendar days unless otherwise specifically designated.

F. "Develop school improvement plan and school trust program and other programs" means to participate actively in the creation of plans, including analysis of school assessment data, development of School LAND Trust budgets, and review of School LAND Trust expenditures under Section 53A-16-101.5(5)(a)(iv) and 53A-16-101.5(6)(b)(ii). This may include establishing subcommittees where needed or assigning work to individuals.

G. "Parent" means the parent or legal guardian of a student attending the non-charter public school or of a student who will be enrolled at the school in the next school year.

H. "Parent member" means a parent or guardian of a student who is attending the school or of a student who will be enrolled at the school in the next school year if the election is held in the spring. A parent member of a school community council may not include a person who meets the definition of a school employee member unless the person's employment at the school does not exceed an average of six hours per week, consistent with Section 53A-1a-108(1)(a)(ii).

I. "School administrator" means a school principal, school assistant principal or designee as specifically assigned by the school administrator.

J. "School community" means the geographic area designated by the school district as the attendance area with reasonable inclusion of the parents or legal guardians of additional students who are attending the school.

K. "School employee member" means a person employed at the school for more than an average of six hours per week by the school or school district; the principal is one school employee member.

L. "Secure ballot box" means a closed container prepared by the school for the deposit of secret ballots for the school community council elections.

M. "Student" means a child in public school grades kindergarten through twelve counted on the audited October 1 Fall Enrollment Report.

N. "Students attending the school" for purposes of this rule means students currently attending the school and those officially enrolled to attend the school in the next school year.

O. "USDB" means the Utah Schools for the Deaf and the Blind.

P. "USOE" means the Utah State Office of Education.

R277-491-2. Authority and Purpose.

A. This rule is authorized by Utah Constitution Article X, Section 3 which vests general control and supervision of public education in the Board and by Section 53A-1-401(3) which permits the Board to adopt rules in accordance with its responsibilities.

B. Local boards of education for school districts and the State Charter School Board for state-sponsored charter schools are responsible for school community council operations, plans, oversight, and training.

C. The purpose of this rule is to:

(1) provide procedures and clarifying information to school community councils to assist them in fulfilling school community council responsibilities consistent with Section 53A-1a-108(3);

(2) provide direction to school districts and schools in establishing and maintaining school community councils whose primary focus is to develop, approve, and assist in implementing school improvement plans, and advise school/school district administrators consistent with Sections 53A-1a-108(3) and 53A-16-101.5;

(3) provide a framework and support for improved academic achievement of students that is locally driven from within individual schools, through critical review of testing results and other indicators of student success, by establishing meaningful, measurable goals and implementing research-based programs and processes to reach the goals;

(4) encourage increased participation of the parents, school employees and others that support the purposes of the school community councils; and

(5) encourage compliance with the law in the election of school community councils, in meeting reporting requirements, in complying with open and public meetings requirements.

R277-491-3. School Community Council Member Election Provisions.

A. Parents may stand for election as parent members of a school community council at a school if their child(ren) are attending the school or will be enrolled at the school in the next school year if the community council election is held in the spring.

B. Parents may vote for the school community council parent members if their child(ren) are enrolled or will be attending the school in the next school year, consistent with the intent to encourage the greatest participation possible of all available parents.

C. School community councils may establish procedures that allow for ballots to be clearly marked and mailed to the school in the case of geography or school distances that would otherwise discourage parent participation. Hand-delivered or mailed ballots shall meet the same timelines for voters voting in person.

D. Entire school districts or schools may allow parents to vote by electronic ballot. If school districts/schools allow voting by electronic means, the opportunity shall be clearly explained on the school district/school website including:

(1) directions for electronic voting;

(2) security provisions for electronic voting;

(3) statement to parents and community members that violations of a school district's/school's voting procedures may disqualify a parent's vote or invalidate a specific school election, or both.

E. Ballots and voting are required only in the event of a school community council contested race.

F. School community councils are encouraged to establish clear and written:

(1) procedures that are consistent with state law, Board rules, and local board policies;

(2) procedures for the selection of school community council chairs and vice chairs;

(3) timelines and procedures for school community council elections that may include receiving information from applicants in a timely manner; and

(4) additional clarification and procedures to assist in the efficient operation of school community councils consistent with the law.

R277-491-4. School Community Council School/School Administrator Responsibilities.

A. A school administrator may not serve as chair or co-chair of the school community council.

B. The school community council chair shall provide the following information to the school community, with assistance from the school administration:

(1) Notice of dates and times of school community council elections at least 14 days before the elections are held;

(2) Timely notice of school community council positions that are up for election;

(3) Instructions for applying to become a school community council member together with timelines for submitting information and applications;

(4) Notice of the school community council meeting schedule, provided in the first 14 days of the school year;

(5) A summary of the school community council's actions and activities for the first half of the school year, provided midway through the school year;

(6) A summary of the annual expenditure report of all School LAND Trust Program funds provided to the school community and to the local board of education or State Charter School Board in the fall of the school year following the school year that the school plans were implemented; and

(7) Posting the school community council meeting information (time, place and date of meeting; meeting agenda and previous meeting minutes) on the school's website at least one week prior to each meeting, and on the access door(s) of the school on the day of the meeting.

B. The school community council chair, assisted by the school administrator, shall provide information on the school website and in at least one other direct delivery method ensuring that all parents are notified as provided in Section 53A- 1a-108(7)(a).

C. The school community council chair, assisted by the school administrator, shall act in compliance with the Utah Open and Public Meetings Act, Section 52-4-101 et seq., including:

(1) posting upcoming agendas and meeting locations;

(2) posting minutes of the most recent meeting;

(3) posting the agenda and location of the upcoming meeting on the school's website at least one week prior to the meeting;

(4) posting the agenda and location of the upcoming meeting on the school's access door on the day of the meeting;

(5) providing timely written minutes of the meeting; and

(6) recording the meeting, and other required or appropriate activities.

D. School community council responsibilities do not allow for closed meetings, consistent with the purposes of Section 52-4-205.

E. School community councils shall become familiar with and consider the following:

(1) Satisfying the meeting recording process with sensitivity for parents and community members whose primary language is not English; and

(2) The limitations of open and public meetings in secure or locked school settings and facilities.

R277-491-5. Parent Rights and Responsibilities.

A. Parents of students attending a school and to the extent possible, parents whose children will attend the school in the next school year (for spring community council elections) shall receive notice of open school community council positions and of elections consistent with Section 53A-1a-108.

B. Parents of students attending a school shall have access to schedules, agendas, minutes and decisions consistent with Sections 53A-1a-108(7) and (8).

C. School community council parent members shall participate fully in the development of various school plans described in Section 53A-1a-108(3) including, at a minimum:

(1) School Improvement Plan;

(2) School LAND Trust Plan;

(3) Reading Achievement Plan (for elementary schools);

(4) Professional Development Plan;

(5) Child Access Routing Plan; and

(6) Review of School Health Plans required under Section 53A-11-204.

D. Parents shall receive timely notice of school community council timelines and procedures that affect parent member elections, school community council meeting information and other parent rights or opportunities, consistent with state law, Board rules, and local board policy.

R277-491-6. Additional School Community Council Information and Provisions.

A. School community councils shall set the beginning terms for school community council members consistent with Section 53A-1a-108(5)(g).

B. School community councils shall report on plans, programs, and expenditures, including detailed descriptions of expenditures for professional development, at least annually to local boards of education and cooperate with the legislative and USOE monitoring, and audits.

C. School community councils may establish procedures and requirements for parent notification and election timelines that are not inconsistent with Sections 53A-1a-108, 53A-16-101.5, 52-4-101 et. seq., this rule, or local board policy.

D. Public schools that are secure facilities, juvenile detention facilities, hospital program schools, and other small special programs may receive all funds available to schools with school community councils if the schools demonstrate and document a good faith effort to recruit members, have meetings and publicize results as recognized and affirmed by local boards of education.

E. School community councils may designate districts, areas or grade levels in order to recruit school community council members from all areas of the school community. If parents from designated areas do not apply for the school community council positions, positions shall be filled with interested parents who do apply.

F. Local boards of education may ask school community councils to address local issues at the school community council level for discussion before bringing the issues to local boards of education. School community councils may be asked for information to inform local board decisions.

G. Local boards of education, and the State Charter School Board for state-sponsored charter schools, shall report approval dates of required plans to the USOE. School community councils are encouraged to advise and inform elected local board members.

H. Local boards of education make decisions in governing school districts with superintendents and principals acting under the direction and in behalf of local board of education in all areas of governance, including implementing approved School Improvement and School LAND Trust Program plans.

KEY: school community councils
May 8, 2009 **Art X Sec 3**
53A-1-401(3)

R277. Education, Administration.
R277-502. Educator Licensing and Data Retention.
R277-502-1. Definitions.

A. "Accredited" means a teacher preparation program accredited by the National Council for Accreditation of Teacher Education (NCATE), the Teacher Education Accreditation Council (TEAC) or one of the major regional accrediting associations as defined under R277-503-1L.

B. "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 or 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.

(3) A Level 3 license may be renewed if the holder maintains National Board Professional Teaching Standards Certification status or maintains a current Certificate of Clinical Competence from the American Speech-Language-Hearing Association.

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
May 8, 2009 **Art X Sec 3**
Notice of Continuation September 6, 2007 **53A-6-104**
53A-1-401(3)

R277. Education, Administration.
R277-916. Technology, Life, and Careers, and Work-Based Learning Programs.
R277-916-1. Definitions.

A. "Board" means the Utah State Board of Education.

B. "TLC" means Technology, Life, and Careers which is a middle/junior high school curriculum comprised of activities encouraging students to explore careers in Agriculture, Business, Family and Consumer Sciences, Health Science and Health Technology, Information Technology, Marketing, Economics, and Technology Education. Career development activities are integrated throughout the TLC curriculum. The TLC course is coordinated with the Comprehensive Guidance program.

C. "New TLC" means an advanced curriculum from the TLC program with additional practical activities. These standards apply to funding support, inservice training, curriculum development and refinement associated with the new TLC curriculum.

D. "Cone" means a group of schools whose students feed a high school and schools and agencies which interact with the high school.

E. "Work-Based Learning" (WBL) means activities that involve actual work experience or connect classroom learning to work.

G. "Geographical Region" means one of the nine educational planning units: Bear River, Ogden/Weber, Davis/Morgan, Wasatch Front South, Mountainland, Uintah Basin, Central, Southeast, and Southwest.

H. "USOE" means the Utah State Office of Education.

I. "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.

R277-916-2. 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 applied technology education programs in the public education system, and Section 53A-17a-113 which directs the Board to distribute specific amounts of funds to school districts.

B. This rule establishes standards and procedures for school districts seeking to qualify for Technology, Life, and Careers, and WBL Programs funds administered by the Board.

R277-916-3. Disbursement of Funds - Technology, Life, and Careers II Funds.

A. TLC funds shall be utilized to update the TLC curriculum, purchase and maintain needed equipment and supplies, field test new TLC program modifications, and provide ongoing inservice training for teachers, counselors, and administrators.

B. Schools shall meet all TLC requirements in order to receive funding.

C. TLC funds shall be allocated to school districts for approved schools using a base of $4,000 per school.

D. Funds remaining after funds are distributed for Section R277-916-3C, above, shall be distributed based on enrollment in grade 7 of the approved schools based on the October 1 enrollment report for the previous year.

E. School districts shall annually complete a funding application with assurances of each school meeting TLC standards.

F. Personnel from each of the selected schools shall participate in USOE training.

G. Schools shall receive continued USOE support and funding based on meeting established standards.

R277-916-4. Technology, Life, and Careers - Standards.

A. The Technology, Life, and Careers funds may be used to:

(1) update the TLC curriculum;

(2) purchase and maintain equipment and supplies, including consumables;

(3) field test and implement new TLC program modifications; and

(4) provide regular inservice training for teachers, counselors, and administrators.

B. School districts may qualify for Technology, Life, and Careers funds based on the following:

(1) TLC program funds shall not be used to pay personnel costs;

(2) TLC schools shall teach 180 days of TLC core curriculum which includes the components and objectives of Agriculture, Business, Family and Consumer Sciences, Information Technology, Health Science and Health Technology, Marketing, Economics, Technology Education, and Career Guidance and Development;

(3) All TLC teachers and counselors at the schools shall have appropriate licenses and endorsements;

(4) All TLC team members shall agree to assist in the development and implementation of new TLC activities and materials;

(5) Schools shall utilize the services of the WBL coordinator, where available, to integrate grade level appropriate work-based learning activities into TLC;

(6) Schools shall integrate grade level appropriate career development content into the TLC activities and use the services of the counselor in the program;

(7) The school district/school shall utilize the full allocation of funds as provided under R277-916-4. The school district/school shall support inservice training activities necessary to the Core TLC content as adopted by the Board; and

(8) All TLC-related personnel in the school shall participate fully in evaluating the current program, recommending changes or modifications, field testing and implementing new activities, materials, and resources.

R277-916-5. Work-Based Learning - Disbursement of Funds.

A. All public elementary, secondary, and postsecondary/adult schools shall be aligned by cone and grouped within the school district.

B. The proportion of total WBL funding allocated for each participating school district shall remain the same as the previous year unless the school district discontinues the program or school district proportions are adjusted by the Board.

C. State appropriated WBL funds require an equal match of funds provided by participating school districts.

R277-916-6. Work-Based Learning - Standards.

A. WBL shall be integrated into all levels of the educational delivery system and shall be coordinated within the cones of the school district and among regions.

B. To be eligible for WBL funds, school districts/schools shall, upon request:

(1) have the program approved by the local board.

(2) employ licensed WBL coordination personnel with salaries/benefits matched by the local recipient of funds.

(3) document that a WBL committee representing all schools within the cone has been created, is functioning effectively and regularly addresses WBL issues.

(4) complete a cone-wide student/parent/teacher WBL needs assessment.

(5) develop work-based preparation, participation, and evaluation activities for students and teachers involved in all

WBL cone activities.

(6) maintain evidence that WBL components have been integrated and coordinated with elementary career awareness, secondary career exploration, integrated core curriculum activities, Technology, Life, and Careers, comprehensive guidance and skills certification.

(7) maintain evidence of WBL activities developed in coordination with IEP/SEP/SEOP/504 requirements in each cone.

(8) require the inclusion of all student groups within the cone in career development and preparation.

(9) demonstrate WBL coordination with employers and with other school/community development activities.

(10) verify sufficient budget for a WBL coordinator, facilities, materials, equipment, and support staff is available.

(11) participate in initial state-sponsored WBL Coordination Training and in periodic ongoing coordination and inservice activities.

(12) require that the WBL team utilize a statewide database system to be developed by the USOE.

KEY: public schools, work-based learning programs*
April 23, 2002 **Art X Sec 3**
Notice of Continuation May 4, 2009 **53A-15-202**
53A-17a-113

R307. Environmental Quality, Air Quality.
R307-101. General Requirements.
R307-101-1. Foreword.

Chapter 19-2 and the rules adopted by the Air Quality Board constitute the basis for control of air pollution sources in the state. These rules apply and will be enforced throughout the state, and are recommended for adoption in local jurisdictions where environmental specialists are available to cooperate in implementing rule requirements.

National Ambient Air Quality Standards (NAAQS), National Standards of Performance for New Stationary Sources (NSPS), National Prevention of Significant Deterioration of Air Quality (PSD) standards, and the National Emission Standards for Hazardous Air Pollutants (NESHAPS) apply throughout the nation and are legally enforceable in Utah.

R307-101-2. Definitions.

Except where specified in individual rules, definitions in R307-101-2 are applicable to all rules adopted by the Air Quality Board.

"Actual Emissions" means the actual rate of emissions of a pollutant from an emissions unit determined as follows:

(1) In general, actual emissions as of a particular date shall equal the average rate, in tons per year, at which the unit actually emitted the pollutant during a two-year period which precedes the particular date and which is representative of normal source operations. The Executive Secretary shall allow the use of a different time period upon a determination that it is more representative of normal source operation. Actual emissions shall be calculated using the unit's actual operating hours, production rates, and types of materials processed, stored, or combusted during the selected time period.

(2) The Executive Secretary may presume that source-specific allowable emissions for the unit are equivalent to the actual emissions of the unit.

(3) For any emission unit, other than an electric utility steam generating unit specified in (4), which has not begun normal operations on the particular date, actual emissions shall equal the potential to emit of the unit on that date.

(4) For an electric utility steam generating unit (other than a new unit or the replacement of an existing unit) actual emissions of the unit following the physical or operational change shall equal the representative actual annual emissions of the unit, provided the source owner or operator maintains and submits to the executive secretary, on an annual basis for a period of 5 years from the date the unit resumes regular operation, information demonstrating that the physical or operational change did not result in an emissions increase. A longer period, not to exceed 10 years, may be required by the executive secretary if the executive secretary determines such a period to be more representative of normal source post-change operations.

"Acute Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2007)."

"Air Contaminant" means any particulate matter or any gas, vapor, suspended solid or any combination of them, excluding steam and water vapors (Section 19-2-102(1)).

"Air Contaminant Source" means any and all sources of emission of air contaminants whether privately or publicly owned or operated (Section 19-2-102(2)).

"Air Pollution" means the presence in the ambient air of one or more air contaminants in such quantities and duration and under conditions and circumstances, as is or tends to be injurious to human health or welfare, animal or plant life, or property, or would unreasonably interfere with the enjoyment of life or use of property as determined by the standards, rules and regulations adopted by the Air Quality Board (Section 19-2-104).

"Allowable Emissions" means the emission rate of a source calculated using the maximum rated capacity of the source (unless the source is subject to enforceable limits which restrict the operating rate, or hours of operation, or both) and the emission limitation established pursuant to R307-401-8.

"Ambient Air" means the surrounding or outside air (Section 19-2-102(4)).

"Appropriate Authority" means the governing body of any city, town or county.

"Atmosphere" means the air that envelops or surrounds the earth and includes all space outside of buildings, stacks or exterior ducts.

"Authorized Local Authority" means a city, county, city-county or district health department; a city, county or combination fire department; or other local agency duly designated by appropriate authority, with approval of the state Department of Health; and other lawfully adopted ordinances, codes or regulations not in conflict therewith.

"Board" means Air Quality Board. See Section 19-2-102(6)(a).

"Breakdown" means any malfunction or procedural error, to include but not limited to any malfunction or procedural error during start-up and shutdown, which will result in the inoperability or sudden loss of performance of the control equipment or process equipment causing emissions in excess of those allowed by approval order or Title R307.

"BTU" means British Thermal Unit, the quantity of heat necessary to raise the temperature of one pound of water one degree Fahrenheit.

"Calibration Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is the same known upscale value.

"Carbon Adsorption System" means a device containing adsorbent material (e.g., activated carbon, aluminum, silica gel), an inlet and outlet for exhaust gases, and a system for the proper disposal or reuse of all VOC adsorbed.

"Carcinogenic Hazardous Air Pollutant" means any hazardous air pollutant that is classified as a known human carcinogen (A1) or suspected human carcinogen (A2) by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2007)."

"Chargeable Pollutant" means any regulated air pollutant except the following:

(1) Carbon monoxide;

(2) Any pollutant that is a regulated air pollutant solely because it is a Class I or II substance subject to a standard promulgated or established by Title VI of the Act, Stratospheric Ozone Protection;

(3) Any pollutant that is a regulated air pollutant solely because it is subject to a standard or regulation under Section 112(r) of the Act, Prevention of Accidental Releases.

"Chronic Hazardous Air Pollutant" means any noncarcinogenic hazardous air pollutant for which a threshold limit value - time weighted average (TLV-TWA) having no threshold limit value - ceiling (TLV-C) has been adopted by the American Conference of Governmental Industrial Hygienists (ACGIH) in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, (2007)."

"Clean Air Act" means federal Clean Air Act as amended in 1990.

"Clean Coal Technology" means any technology, including technologies applied at the precombustion, combustion, or post

combustion stage, at a new or existing facility which will achieve significant reductions in air emissions of sulfur dioxide or oxides of nitrogen associated with the utilization of coal in the generation of electricity, or process steam which was not in widespread use as of November 15, 1990.

"Clean Coal Technology Demonstration Project" means a project using funds appropriated under the heading "Department of Energy-Clean Coal Technology," up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency. The Federal contribution for a qualifying project shall be at least 20 percent of the total cost of the demonstration project.

"Clearing Index" means an indicator of the predicted rate of clearance of ground level pollutants from a given area. This number is provided by the National Weather Service.

"Commence" as applied to construction of a major source or major modification means that the owner or operator has all necessary pre-construction approvals or permits and either has:

(1) Begun, or caused to begin, a continuous program of actual on-site construction of the source, to be completed within a reasonable time; or

(2) Entered into binding agreements or contractual obligations, which cannot be canceled or modified without substantial loss to the owner or operator, to undertake a program of actual construction of the source to be completed within a reasonable time.

"Compliance Schedule" means a schedule of events, by date, which will result in compliance with these regulations.

"Construction" means any physical change or change in the method of operation including fabrication, erection, installation, demolition, or modification of a source which would result in a change in actual emissions.

"Control Apparatus" means any device which prevents or controls the emission of any air contaminant directly or indirectly into the outdoor atmosphere.

"Department" means Utah State Department of Environmental Quality. See Section 19-1-103(1).

"Electric Utility Steam Generating Unit" means any steam electric generating unit that is constructed for the purpose of supplying more than one-third of its potential electric output capacity and more than 25 MW electrical output to any utility power distribution system for sale. Any steam supplied to a steam distribution system for the purpose of providing steam to a steam-electric generator that would produce electrical energy for sale is also considered in determining the electrical energy output capacity of the affected facility.

"Emission" means the act of discharge into the atmosphere of an air contaminant or an effluent which contains or may contain an air contaminant; or the effluent so discharged into the atmosphere.

"Emissions Information" means, with reference to any source operation, equipment or control apparatus:

(1) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics related to air quality of any air contaminant which has been emitted by the source operation, equipment, or control apparatus;

(2) Information necessary to determine the identity, amount, frequency, concentration, or other characteristics (to the extent related to air quality) of any air contaminant which, under an applicable standard or limitation, the source operation was authorized to emit (including, to the extent necessary for such purposes, a description of the manner or rate of operation of the source operation), or any combination of the foregoing; and

(3) A general description of the location and/or nature of the source operation to the extent necessary to identify the source operation and to distinguish it from other source operations (including, to the extent necessary for such purposes, a description of the device, installation, or operation constituting the source operation).

"Emission Limitation" means a requirement established by the Board or the Administrator, EPA, which limits the quantity, rate or concentration of emission of air pollutants on a continuous emission reduction including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction (Section 302(k)).

"Emissions Unit" means any part of a stationary source which emits or would have the potential to emit any pollutant subject to regulation under the Clean Air Act.

"Enforceable" means all limitations and conditions which are enforceable by the Administrator, including those requirements developed pursuant to 40 CFR Parts 60 and 61, requirements within the State Implementation Plan and R307, any permit requirements established pursuant to 40 CFR 52.21 or R307-401.

"EPA" means Environmental Protection Agency.

"EPA Method 9" means 40 CFR Part 60, Appendix A, Method 9, "Visual Determination of Opacity of Emissions from Stationary Sources," and Alternate 1, "Determination of the opacity of emissions from stationary sources remotely by LIDAR."

"Executive Director" means the Executive Director of the Utah Department of Environmental Quality. See Section 19-1-103(2).

"Executive Secretary" means the Executive Secretary of the Board.

"Existing Installation" means an installation, construction of which began prior to the effective date of any regulation having application to it.

"Facility" means machinery, equipment, structures of any part or accessories thereof, installed or acquired for the primary purpose of controlling or disposing of air pollution. It does not include an air conditioner, fan or other similar device for the comfort of personnel.

"Fireplace" means all devices both masonry or factory built units (free standing fireplaces) with a hearth, fire chamber or similarly prepared device connected to a chimney which provides the operator with little control of combustion air, leaving its fire chamber fully or at least partially open to the room. Fireplaces include those devices with circulating systems, heat exchangers, or draft reducing doors with a net thermal efficiency of no greater than twenty percent and are used for aesthetic purposes.

"Fugitive Dust" means particulate, composed of soil and/or industrial particulates such as ash, coal, minerals, etc., which becomes airborne because of wind or mechanical disturbance of surfaces. Natural sources of dust and fugitive emissions are not fugitive dust within the meaning of this definition.

"Fugitive Emissions" means emissions from an installation or facility which are neither passed through an air cleaning device nor vented through a stack or could not reasonably pass through a stack, chimney, vent, or other functionally equivalent opening.

"Garbage" means all putrescible animal and vegetable matter resulting from the handling, preparation, cooking and consumption of food, including wastes attendant thereto.

"Gasoline" means any petroleum distillate, used as a fuel for internal combustion engines, having a Reid vapor pressure of 4 pounds or greater.

"Hazardous Air Pollutant (HAP)" means any pollutant listed by the EPA as a hazardous air pollutant in conformance with Section 112(b) of the Clean Air Act. A list of these pollutants is available at the Division of Air Quality.

"Household Waste" means any solid or liquid material normally generated by the family in a residence in the course of ordinary day-to-day living, including but not limited to garbage, paper products, rags, leaves and garden trash.

"Incinerator" means a combustion apparatus designed for high temperature operation in which solid, semisolid, liquid, or gaseous combustible wastes are ignited and burned efficiently and from which the solid and gaseous residues contain little or no combustible material.

"Installation" means a discrete process with identifiable emissions which may be part of a larger industrial plant. Pollution equipment shall not be considered a separate installation or installations.

"LPG" means liquified petroleum gas such as propane or butane.

"Maintenance Area" means an area that is subject to the provisions of a maintenance plan that is included in the Utah state implementation plan, and that has been redesignated by EPA from nonattainment to attainment of any National Ambient Air Quality Standard.

(a) The following areas are considered maintenance areas for ozone:

(i) Salt Lake County, effective August 18, 1997; and

(ii) Davis County, effective August 18, 1997.

(b) The following areas are considered maintenance areas for carbon monoxide:

(i) Salt Lake City, effective March 22, 1999;

(ii) Ogden City, effective May 8, 2001; and

(iii) Provo City, effective January 3, 2006.

(c) The following areas are considered maintenance areas for PM10:

(i) Salt Lake County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(ii) Utah County, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005; and

(iii) Ogden City, effective on the date that EPA approves the maintenance plan that was adopted by the Board on July 6, 2005.

(d) The following area is considered a maintenance area for sulfur dioxide: all of Salt Lake County and the eastern portion of Tooele County above 5600 feet, effective on the date that EPA approves the maintenance plan that was adopted by the Board on January 5, 2005.

"Major Modification" means any physical change in or change in the method of operation of a major source that would result in a significant net emissions increase of any pollutant. A net emissions increase that is significant for volatile organic compounds shall be considered significant for ozone. Within Salt Lake and Davis Counties or any nonattainment area for ozone, a net emissions increase that is significant for nitrogen oxides shall be considered significant for ozone. Within areas of nonattainment for PM10, a significant net emission increase for any PM10 precursor is also a significant net emission increase for PM10. A physical change or change in the method of operation shall not include:

(1) routine maintenance, repair and replacement;

(2) use of an alternative fuel or raw material by reason of an order under section 2(a) and (b) of the Energy Supply and Environmental Coordination Act of 1974, or by reason of a natural gas curtailment plan pursuant to the Federal Power Act;

(3) use of an alternative fuel by reason of an order or rule under section 125 of the federal Clean Air Act;

(4) use of an alternative fuel at a steam generating unit to the extent that the fuel is generated from municipal solid waste;

(5) use of an alternative fuel or raw material by a source:

(a) which the source was capable of accommodating before January 6, 1975, unless such change would be prohibited under any enforceable permit condition; or

(b) which the source is otherwise approved to use;

(6) an increase in the hours of operation or in the production rate unless such change would be prohibited under any enforceable permit condition;

(7) any change in ownership at a source

(8) the addition, replacement or use of a pollution control project at an existing electric utility steam generating unit, unless the executive secretary determines that such addition, replacement, or use renders the unit less environmentally beneficial, or except:

(a) when the executive secretary has reason to believe that the pollution control project would result in a significant net increase in representative actual annual emissions of any criteria pollutant over levels used for that source in the most recent air quality impact analysis in the area conducted for the purpose of Title I of the Clean Air Act, if any, and

(b) the executive secretary determines that the increase will cause or contribute to a violation of any national ambient air quality standard or PSD increment, or visibility limitation.

(9) the installation, operation, cessation, or removal of a temporary clean coal technology demonstration project, provided that the project complies with:

(a) the Utah State Implementation Plan; and

(b) other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Major Source" means, to the extent provided by the federal Clean Air Act as applicable to R307:

(1) any stationary source of air pollutants which emits, or has the potential to emit, one hundred tons per year or more of any pollutant subject to regulation under the Clean Air Act; or

(a) any source located in a nonattainment area for carbon monoxide which emits, or has the potential to emit, carbon monoxide in the amounts outlined in Section 187 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 187 of the federal Clean Air Act; or

(b) any source located in Salt Lake or Davis Counties or in a nonattainment area for ozone which emits, or has the potential to emit, VOC or nitrogen oxides in the amounts outlined in Section 182 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 182 of the federal Clean Air Act; or

(c) any source located in a nonattainment area for PM10 which emits, or has the potential to emit, PM10 or any PM10 precursor in the amounts outlined in Section 189 of the federal Clean Air Act with respect to the severity of the nonattainment area as outlined in Section 189 of the federal Clean Air Act.

(2) any physical change that would occur at a source not qualifying under subpart 1 as a major source, if the change would constitute a major source by itself;

(3) the fugitive emissions and fugitive dust of a stationary source shall not be included in determining for any of the purposes of these R307 rules whether it is a major stationary source, unless the source belongs to one of the following categories of stationary sources:

(a) Coal cleaning plants (with thermal dryers);

(b) Kraft pulp mills;

(c) Portland cement plants;

(d) Primary zinc smelters;

(e) Iron and steel mills;

(f) Primary aluminum or reduction plants;

(g) Primary copper smelters;

(h) Municipal incinerators capable of charging more than 250 tons of refuse per day;

(i) Hydrofluoric, sulfuric, or nitric acid plants;

(j) Petroleum refineries;

(k) Lime plants;

(l) Phosphate rock processing plants;

(m) Coke oven batteries;

(n) Sulfur recovery plants;

(o) Carbon black plants (furnace process);

(p) Primary lead smelters;

(q) Fuel conversion plants;
(r) Sintering plants;
(s) Secondary metal production plants;
(t) Chemical process plants;
(u) Fossil-fuel boilers (or combination thereof) totaling more than 250 million British Thermal Units per hour heat input;
(v) Petroleum storage and transfer units with a total storage capacity exceeding 300,000 barrels;
(w) Taconite ore processing plants;
(x) Glass fiber processing plants;
(y) Charcoal production plants;
(z) Fossil fuel-fired steam electric plants of more than 250 million British Thermal Units per hour heat input;
(aa) Any other stationary source category which, as of August 7, 1980, is being regulated under section 111 or 112 of the federal Clean Air Act.

"Modification" means any planned change in a source which results in a potential increase of emission.

"National Ambient Air Quality Standards (NAAQS)" means the allowable concentrations of air pollutants in the ambient air specified by the Federal Government (Title 40, Code of Federal Regulations, Part 50).

"Net Emissions Increase" means the amount by which the sum of the following exceeds zero:

(1) any increase in actual emissions from a particular physical change or change in method of operation at a source; and

(2) any other increases and decreases in actual emissions at the source that are contemporaneous with the particular change and are otherwise creditable. For purposes of determining a "net emissions increase":

(a) An increase or decrease in actual emissions is contemporaneous with the increase from the particular change only if it occurs between the date five years before construction on the particular change commences; and the date that the increase from the particular change occurs.

(b) An increase or decrease in actual emissions is creditable only if it has not been relied on in issuing a prior approval for the source which approval is in effect when the increase in actual emissions for the particular change occurs.

(c) An increase or decrease in actual emission of sulfur dioxide, nitrogen oxides or particulate matter which occurs before an applicable minor source baseline date is creditable only if it is required to be considered in calculating the amount of maximum allowable increases remaining available. With respect to particulate matter, only PM10 emissions will be used to evaluate this increase or decrease.

(d) An increase in actual emissions is creditable only to the extent that the new level of actual emissions exceeds the old level.

(e) A decrease in actual emissions is creditable only to the extent that:

(i) The old level of actual emissions or the old level of allowable emissions, whichever is lower, exceeds the new level of actual emissions;

(ii) It is enforceable at and after the time that actual construction on the particular change begins; and

(iii) It has approximately the same qualitative significance for public health and welfare as that attributed to the increase from the particular change.

(iv) It has not been relied on in issuing any permit under R307-401 nor has it been relied on in demonstrating attainment or reasonable further progress.

(f) An increase that results from a physical change at a source occurs when the emissions unit on which construction occurred becomes operational and begins to emit a particular pollutant. Any replacement unit that requires shakedown becomes operational only after a reasonable shakedown period, not to exceed 180 days.

"New Installation" means an installation, construction of which began after the effective date of any regulation having application to it.

"Nonattainment Area" means an area designated by the Environmental Protection Agency as nonattainment under Section 107, Clean Air Act for any National Ambient Air Quality Standard. The designations for Utah are listed in 40 CFR 81.345.

"Offset" means an amount of emission reduction, by a source, greater than the emission limitation imposed on such source by these regulations and/or the State Implementation Plan.

"Opacity" means the capacity to obstruct the transmission of light, expressed as percent.

"Open Burning" means any burning of combustible materials resulting in emission of products of combustion into ambient air without passage through a chimney or stack.

"Owner or Operator" means any person who owns, leases, controls, operates or supervises a facility, an emission source, or air pollution control equipment.

"PSD" Area means an area designated as attainment or unclassifiable under section 107(d)(1)(D) or (E) of the federal Clean Air Act.

"PM10" means particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers as measured by an EPA reference or equivalent method.

"PM10 Precursor" means any chemical compound or substance which, after it has been emitted into the atmosphere, undergoes chemical or physical changes that convert it into particulate matter, specifically PM10.

"Part 70 Source" means any source subject to the permitting requirements of R307-415.

"Person" means an individual, trust, firm, estate, company, corporation, partnership, association, state, state or federal agency or entity, municipality, commission, or political subdivision of a state. (Subsection 19-2-103(4)).

"Pollution Control Project" means any activity or project at an existing electric utility steam generating unit for purposes of reducing emissions from such unit. Such activities or projects are limited to:

(1) The installation of conventional or innovative pollution control technology, including but not limited to advanced flue gas desulfurization, sorbent injection for sulfur dioxide and nitrogen oxides controls and electrostatic precipitators;

(2) An activity or project to accommodate switching to a fuel which is less polluting than the fuel used prior to the activity or project, including, but not limited to natural gas or coal reburning, or the cofiring of natural gas and other fuels for the purpose of controlling emissions;

(3) A permanent clean coal technology demonstration project conducted under Title II, sec. 101(d) of the Further Continuing Appropriations Act of 1985 (sec. 5903(d) of title 42 of the United States Code), or subsequent appropriations, up to a total amount of $2,500,000,000 for commercial demonstration of clean coal technology, or similar projects funded through appropriations for the Environmental Protection Agency; or

(4) A permanent clean coal technology demonstration project that constitutes a repowering project.

"Potential to Emit" means the maximum capacity of a source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the source to emit a pollutant including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed shall be treated as part of its design if the limitation or the effect it would have on emissions is enforceable. Secondary emissions do not count in determining the potential to emit of a stationary source.

"Process Level" means the operation of a source, specific to the kind or type of fuel, input material, or mode of operation.

"Process Rate" means the quantity per unit of time of any raw material or process intermediate consumed, or product generated, through the use of any equipment, source operation, or control apparatus. For a stationary internal combustion unit or any other fuel burning equipment, this term may be expressed as the quantity of fuel burned per unit of time.

"Reactivation of a Very Clean Coal-Fired Electric Utility Steam Generating Unit" means any physical change or change in the method of operation associated with the commencement of commercial operations by a coal-fired utility unit after a period of discontinued operation where the unit:

(1) Has not been in operation for the two-year period prior to the enactment of the Clean Air Act Amendments of 1990, and the emissions from such unit continue to be carried in the emission inventory at the time of enactment;

(2) Was equipped prior to shutdown with a continuous system of emissions control that achieves a removal efficiency for sulfur dioxide of no less than 85 percent and a removal efficiency for particulates of no less than 98 percent;

(3) Is equipped with low-NOx burners prior to the time of commencement of operations following reactivation; and

(4) Is otherwise in compliance with the requirements of the Clean Air Act.

"Reasonable Further Progress" means annual incremental reductions in emission of an air pollutant which are sufficient to provide for attainment of the NAAQS by the date identified in the State Implementation Plan.

"Refuse" means solid wastes, such as garbage and trash.

"Regulated air pollutant" means any of the following:

(a) Nitrogen oxides or any volatile organic compound;

(b) Any pollutant for which a national ambient air quality standard has been promulgated;

(c) Any pollutant that is subject to any standard promulgated under Section 111 of the Act, Standards of Performance for New Stationary Sources;

(d) Any Class I or II substance subject to a standard promulgated under or established by Title VI of the Act, Stratospheric Ozone Protection;

(e) Any pollutant subject to a standard promulgated under Section 112, Hazardous Air Pollutants, or other requirements established under Section 112 of the Act, including Sections 112(g), (j), and (r) of the Act, including any of the following:

(i) Any pollutant subject to requirements under Section 112(j) of the Act, Equivalent Emission Limitation by Permit. If the Administrator fails to promulgate a standard by the date established pursuant to Section 112(e) of the Act, any pollutant for which a subject source would be major shall be considered to be regulated on the date 18 months after the applicable date established pursuant to Section 112(e) of the Act;

(ii) Any pollutant for which the requirements of Section 112(g)(2) of the Act (Construction, Reconstruction and Modification) have been met, but only with respect to the individual source subject to Section 112(g)(2) requirement.

"Repowering" means replacement of an existing coal-fired boiler with one of the following clean coal technologies: atmospheric or pressurized fluidized bed combustion, integrated gasification combined cycle, magnetohydrodynamics, direct and indirect coal-fired turbines, integrated gasification fuel cells, or as determined by the Administrator, in consultation with the Secretary of Energy, a derivative of one or more of these technologies, and any other technology capable of controlling multiple combustion emissions simultaneously with improved boiler or generation efficiency and with significantly greater waste reduction relative to the performance of technology in widespread commercial use as of November 15, 1990.

(1) Repowering shall also include any oil and/or gas-fired unit which has been awarded clean coal technology demonstration funding as of January 1, 1991, by the Department of Energy.

(2) The executive secretary shall give expedited consideration to permit applications for any source that satisfies the requirements of this definition and is granted an extension under section 409 of the Clean Air Act.

"Representative Actual Annual Emissions" means the average rate, in tons per year, at which the source is projected to emit a pollutant for the two-year period after a physical change or change in the method of operation of unit, (or a different consecutive two-year period within 10 years after that change, where the executive secretary determines that such period is more representative of source operations), considering the effect any such change will have on increasing or decreasing the hourly emissions rate and on projected capacity utilization. In projecting future emissions the executive secretary shall:

(1) Consider all relevant information, including but not limited to, historical operational data, the company's own representations, filings with the State of Federal regulatory authorities, and compliance plans under title IV of the Clean Air Act; and

(2) Exclude, in calculating any increase in emissions that results from the particular physical change or change in the method of operation at an electric utility steam generating unit, that portion of the unit's emissions following the change that could have been accommodated during the representative baseline period and is attributable to an increase in projected capacity utilization at the unit that is unrelated to the particular change, including any increased utilization due to the rate of electricity demand growth for the utility system as a whole.

"Residence" means a dwelling in which people live, including all ancillary buildings.

"Residential Solid Fuel Burning" device means any residential burning device except a fireplace connected to a chimney that burns solid fuel and is capable of, and intended for use as a space heater, domestic water heater, or indoor cooking appliance, and has an air-to-fuel ratio less than 35-to-1 as determined by the test procedures prescribed in 40 CFR 60.534. It must also have a useable firebox volume of less than 6.10 cubic meters or 20 cubic feet, a minimum burn rate less than 5 kilograms per hour or 11 pounds per hour as determined by test procedures prescribed in 40 CFR 60.534, and weigh less than 800 kilograms or 362.9 pounds. Appliances that are described as prefabricated fireplaces and are designed to accommodate doors or other accessories that would create the air starved operating conditions of a residential solid fuel burning device shall be considered as such. Fireplaces are not included in this definition for solid fuel burning devices.

"Road" means any public or private road.

"Salvage Operation" means any business, trade or industry engaged in whole or in part in salvaging or reclaiming any product or material, including but not limited to metals, chemicals, shipping containers or drums.

"Secondary Emissions" means emissions which would occur as a result of the construction or operation of a major source or major modification, but do not come from the major source or major modification itself.

Secondary emissions must be specific, well defined, quantifiable, and impact the same general area as the source or modification which causes the secondary emissions. Secondary emissions include emissions from any off-site support facility which would not be constructed or increase its emissions except as a result of the construction or operation of the major source or major modification. Secondary emissions do not include any emissions which come directly from a mobile source such as emissions from the tailpipe of a motor vehicle, from a train, or from a vessel.

Fugitive emissions and fugitive dust from the source or modification are not considered secondary emissions.

"Significant" means:

(1) In reference to a net emissions increase or the potential of a source to emit any of the following pollutants, a rate of emissions that would equal or exceed any of the following rates:

Carbon monoxide: 100 ton per year (tpy);

Nitrogen oxides: 40 tpy;

Sulfur dioxide: 40 tpy;

PM10: 15 tpy;

Particulate matter: 25 tpy;

Ozone: 40 tpy of volatile organic compounds;

Lead: 0.6 tpy.

"Solid Fuel" means wood, coal, and other similar organic material or combination of these materials.

"Solvent" means organic materials which are liquid at standard conditions (Standard Temperature and Pressure) and which are used as dissolvers, viscosity reducers, or cleaning agents.

"Source" means any structure, building, facility, or installation which emits or may emit any air pollutant subject to regulation under the Clean Air Act and which is located on one or more continuous or adjacent properties and which is under the control of the same person or persons under common control. A building, structure, facility, or installation means all of the pollutant-emitting activities which belong to the same industrial grouping. Pollutant-emitting activities shall be considered as part of the same industrial grouping if they belong to the same "Major Group" (i.e. which have the same two-digit code) as described in the Standard Industrial Classification Manual, 1972, as amended by the 1977 Supplement (US Government Printing Office stock numbers 4101-0065 and 003-005-00176-0, respectively).

"Stack" means any point in a source designed to emit solids, liquids, or gases into the air, including a pipe or duct but not including flares.

"Standards of Performance for New Stationary Sources" means the Federally established requirements for performance and record keeping (Title 40 Code of Federal Regulations, Part 60).

"State" means Utah State.

"Temporary" means not more than 180 calendar days.

"Temporary Clean Coal Technology Demonstration Project" means a clean coal technology demonstration project that is operated for a period of 5 years or less, and which complies with the Utah State Implementation Plan and other requirements necessary to attain and maintain the national ambient air quality standards during the project and after it is terminated.

"Threshold Limit Value - Ceiling (TLV-C)" means the airborne concentration of a substance which may not be exceeded, as adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Threshold Limit Value - Time Weighted Average (TLV-TWA)" means the time-weighted airborne concentration of a substance adopted by the American Conference of Governmental Industrial Hygienists in its "Threshold Limit Values for Chemical Substances and Physical Agents and Biological Exposure Indices, pages 15 - 72 (2000)."

"Total Suspended Particulate (TSP)" means minute separate particles of matter, collected by high volume sampler.

"Toxic Screening Level" means an ambient concentration of an air contaminant equal to a threshold limit value - ceiling (TLV- C) or threshold limit value -time weighted average (TLV-TWA) divided by a safety factor.

"Trash" means solids not considered to be highly flammable or explosive including, but not limited to clothing, rags, leather, plastic, rubber, floor coverings, excelsior, tree leaves, yard trimmings and other similar materials.

"Volatile Organic Compound (VOC)" means VOC as defined in 40 CFR 51.100(s)(1), effective as of the date referenced in R307-101-3, is hereby adopted and incorporated by reference.

"Waste" means all solid, liquid or gaseous material, including, but not limited to, garbage, trash, household refuse, construction or demolition debris, or other refuse including that resulting from the prosecution of any business, trade or industry.

"Zero Drift" means the change in the instrument meter readout over a stated period of time of normal continuous operation when the VOC concentration at the time of measurement is zero.

R307-101-3. Version of Code of Federal Regulations Incorporated by Reference.

Except as specifically identified in an individual rule, the version of the Code of Federal Regulations (CFR) incorporated throughout R307 is dated July 1, 2008.

KEY: air pollution, definitions
May 7, 2009 **19-2-104(1)(a)**
Notice of Continuation February 8, 2008

R307. Environmental Quality, Air Quality.
R307-840. Lead-Based Paint Accreditation, Certification and Work Practice Standards.
R307-840-1. Purpose and Applicability.

(1) Rule R307-840 establishes procedures and requirements for the accreditation of lead-based paint activities training programs, procedures and requirements for the certification of individuals and firms engaged in lead-based paint activities, and work practice standards for performing such activities. This rule also requires that, except as outlined in (2), all lead-based paint activities, as defined in this rule, must be performed by certified individuals and firms.

(2) R307-840 applies to all individuals and firms who are engaged in lead-based paint activities as defined in R307-840-2, except persons who perform these activities within residential dwellings that they own, unless the residential dwelling is occupied by a person or persons other than the owner or the owner's immediate family while these activities are being performed, or a child residing in the building has been identified as having an elevated blood lead level.

(3) Each department, agency, and instrumentality of the executive, legislative and judicial branches of the Federal Government having jurisdiction over any property or facility, or engaged in any activity resulting, or which may result, in a lead-based paint hazard, and each officer, agent, or employee thereof shall be subject to, and comply with, all Federal, State, interstate, and local requirements, both substantive and procedural, including the requirements of R307-840 regarding lead-based paint, lead-based paint activities, and lead-based paint hazards.

(4) While Rule R307-840 establishes specific requirements for performing lead-based paint activities should they be undertaken, nothing in R307-840 requires that the owner or occupant undertake any particular lead-based paint activity.

R307-840-2. Definitions.

(1) Definitions found in 40 CFR 745.63, 40 CFR 745.83, and 40 CFR 745.223, effective as of July 1, 2007, are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below.

(2) Substitutions.

(a) Substitute "the Executive Secretary" for all references to "EPA" except in the definition of "Pamphlet" found in 40 CFR 745.83 and in the definition of "Recognized laboratory" found in 40 CFR 745.223.

(b) Substitute "the Executive Secretary" for all references to "Administrator".

(3) Modifications.

(a) Delete the definition of "Administrator" found in 40 CFR 745.83.

(b) Modify the definition of "Pamphlet" found in Sec. 745.83 by deleting ", or any State or Tribal pamphlet approved by EPA pursuant to 40 CFR 745.326 that is developed for the same purpose".

(c) Delete the definition of "Lead-based paint hazard" found in 40 CFR 745.223.

(d) Modify the definition of "Business day" found in Sec. 745.223 by including "and State of Utah" before "holidays".

R307-840-3. Accreditation, Certification and Work Standards: Target Housing and Child-Occupied Facilities.

(1) The following requirements, effective as of July 1, 2007, are hereby adopted and incorporated by reference, with the substitutions found in (2) below and the modifications found in (3) below:

(a) 40 CFR 745.61, 745.65, 745.80, 745.81, 745.82, 745.85, 745.86, 745.88, 745.225(a) through (g) and (i), 745.226 (a) through (h), 745.227, and 745.233.

(2) Substitutions.

(a) Substitute "the Executive Secretary" for all references to "EPA" with the following exceptions:

(i) Sec. 745.65(d).

(ii) Sec. 745.86(b)(1).

(iii) Sec. 745.225(b)(1)(iii), Sec. 745.225(b)(1)(iv), Sec. 745.225(c)(2)(ii), Sec. 745.225(c)(10), Sec. 745.225(e)(5)(iii), and Sec. 745.225(e)(5)(iv).

(iv) The last reference to EPA in Sec. 745.226(a)(1)(ii) and the second reference to EPA in Sec. 745.226(d)(1).

(v) The first three references to EPA in Sec. 745.227(a)(3), and the reference to EPA in Sec. 745.227(a)(4), Sec. 745.227(e)(4)(vi)(D), Sec. 745.227(e)(4)(vi)(I), and Sec. 745.227(f)(2).

(b) Substitute "the Executive Secretary or the Executive Secretary's authorized representative" for references to "EPA" in Sec. 745.225(c)(12), Sec. 745.225(f)(4), and Sec. 745.225(i)(1).

(c) Substitute "the Executive Secretary" for all references to "Administrator".

(d) Substitute "R307-840" for "either Federal regulations at Sec. 745.226 or a State or Tribal certification program authorized pursuant to Sec. 745.324" in Sec. 745.82(b)(3).

(e) Substitute "R307-840" for "either Federal regulations at Sec. 745.226 or an EPA-authorized State or Tribal certification program" in Sec. 745.86(b)(1).

(f) Substitute "Sec. 745.82(b)(3)" for "Sec. 745.82(b)(iv)" in 40 CFR 745.86(b)(1).

(g) Substitute sample certification language found in Sec. 745.88(b)(2)(ii) with that found in Sec. 745.88(b)(2)(i).

(h) Substitute sample certification language found in Sec. 745.88(b)(2)(i) with that found in Sec. 745.88(b)(2)(ii).

(i) Substitute "the current Department of Environmental Quality Fee Schedule" for references to "Sec. 745.238" in Sec. 745.225(b)(4), Sec. 745.225(f)(3)(v), Sec. 745.226(a)(6), Sec. 745.226(e)(3), Sec. 745.226(f)(6), and Sec. 745.226(f)(7).

(j) Substitute "Utah Division of Air Quality electronic notification system" for "Agency's central data exchange (CDX)" in Sec. 745.225(c)(13)(vi), Sec. 745.225(c)(14)(iii), and Sec. 745.227(e)(4)(vii).

(k) Substitute "Notification Form" for "Schedule" in Sec. 745.225(c)(13)(vi).

(l) Substitute "Utah Division of Air Quality Lead-Based Paint Program web site" for "NLIC at 1-800-424-LEAD(5323), or on the Internet at http://www.epa.gov/lead" in Sec. 745.225(c)(13)(vi), Sec. 745.225(c)(14)(iii), and Sec. 745.227(e)(4)(vii).

(m) Substitute "Verification Form" for "Course Follow-up" in Sec. 745.225(c)(14)(iii).

(n) Substitute "Utah lead-based paint firm" for "EPA" in Sec. 745.227(e)(4)(vi)(D).

(o) Substitute "Utah lead-based paint individual" for "EPA" in Sec. 745.227(e)(4)(vi)(I).

(p) Substitute "Lead-Based Paint Abatement Project Notification" for "Notification of Lead-Based Paint Abatement Activities" in Sec. 745.227(e)(4)(vii).

(q) Substitute "Sec 745.65(b)" for "Sec 745.227(b)" in 40 CFR 745.227(h)(2)(i).

(3) Modifications.

(a) Change the date in Sec. 745.81 to October 1, 2005.

(b) Change the date in Sec. 745.226(a)(5), Sec. 745.226(d)(2), Sec. 745.226(f)(1), and Sec. 745.227(a)(1) to August 30, 1999.

(c) Modify Sec. 745.225(b)(1)(iii) by deleting "or training materials approved by a State or Indian Tribe that has been authorized by EPA under subpart Q of this part,".

(d) Modify Sec. 745.225(b)(1)(iv) by deleting "or training materials approved by an authorized State or Indian Tribe".

(e) Modify Sec. 745.225(c)(2)(ii) by including "Executive Secretary-accredited," before "EPA-accredited".

(f) Modify Sec. 745.225(c)(13)(v)(B) and Sec. 745.225(c)(14)(ii)(A) by deleting "EPA accreditation number,".

(g) Modify Sec. 745.225(c)(14)(ii)(F) to include "Utah Division of Air Quality Lead-Based Paint Program training verification statement".

(h) Modify Sec. 745.225(e)(5)(iii) by deleting "or training materials approved by a State or Indian Tribe that has been authorized by EPA under Sec. 745.324 to develop its refresher training course materials,".

(i) Modify Sec. 745.225 (e)(5)(iv) by deleting "or training materials approved by an authorized State or Indian Tribe".

(j) Modify Sec. 745.226 (a)(1)(ii) by including "EPA or" after the word "from".

(k) Modify Sec. 745.226(f)(7) by deleting "every 3 years".

(l) Modify Sec. 745.227 (a)(3) by deleting "Regulations, guidance, methods, or protocols issued by States and Indian Tribes that have been authorized by EPA;".

KEY: air pollution, paint, lead-based paint
May 7, 2009 **19-2-104(1)(i)**
Notice of Continuation May 7, 2009

R309. Environmental Quality, Drinking Water.
R309-105. Administration: General Responsibilities of Public Water Systems.
R309-105-1. Purpose.

The purpose of this rule is to set forth the general responsibilities of public water systems, water system owners and operators.

R309-105-2 Authority.
R309-105-3 Definitions.
R309-105-4 General.
R309-105-5 Exemptions from Monitoring Requirements.
R309-105-6 Construction of Public Drinking Water Facilities.
R309-105-7 Source Protection Plans.
R309-105-8 Existing Water System Facilities.
R309-105-9 Minimum Pressure.
R309-105-10 Operation and Maintenance Procedures.
R309-105-11 Operator Certification.
R309-105-12 Cross Connection Control.
R309-105-13 Finished Water Quality.
R309-105-14 Operational Reports.
R309-105-15 Annual Reports.
R309-105-16 Reporting Test Results.
R309-105-17 Record Maintenance.
R309-105-18 Emergencies.

R309-105-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-105-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-105-4. General.

Water suppliers are responsible for the quality of water delivered to their customers. In order to give the public reasonable assurance that the water which they are consuming is satisfactory, the Board has established rules for the design, construction, water quality, water treatment, contaminant monitoring, source protection, operation and maintenance of public water supplies.

R309-105-5. Exemptions from Monitoring Requirements.

(1) The applicable requirements specified in R309-205, R309-210 and R309-215 for monitoring shall apply to each public water system, unless the public water system meets all of the following conditions:

(a) Consists only of distribution and storage facilities (and does not have any collection and treatment facilities);

(b) Obtains all of its water from, but is not owned or operated by, a public water system to which such regulations apply;

(c) Does not sell water to any person; and

(d) Is not a carrier which conveys passengers in interstate commerce.

(2) When a public water system supplies water to one or more other public water systems, the Executive Secretary may modify the monitoring requirements imposed by R309-205, R309-210 and R309-215 to the extent that the interconnection of the systems justifies treating them as a single system for monitoring purposes.

(3) In no event shall the Executive Secretary authorize modifications in the monitoring requirements which are less stringent than requirements established by the Federal Safe Drinking Water Act.

R309-105-6. Construction of Public Drinking Water Facilities.

The following requirements pertain to the construction of public water systems.

(1) Approval of Engineering Plans and Specifications

(a) Complete plans and specifications for all public drinking water projects, as described in R309-500-5, shall be approved in writing by the Executive Secretary prior to the commencement of construction. A 30-day review time should be assumed.

(b) Appropriate engineering reports, supporting information and master plans may also be required by the Executive Secretary as needed to evaluate the proposed project. A certificate of convenience and necessity or an exemption therefrom, issued by the Public Service Commission, shall be filed with the Executive Secretary prior to approval of any plans or specifications for projects described in R309-500-4(1) as new or previously un-reviewed water system.

(2) Acceptable Design and Construction Methods

(a) The design and construction methods of all public drinking water facilities shall conform to the applicable standards contained in R309-500 through R309-550 of these rules. The Executive Secretary may require modifications to plans and specifications before approval is granted.

(b) There may be times in which the requirements of the applicable standards contained in R309-500 through R309-550 are not appropriate. Thus, the Executive Secretary may grant an "exception" to portions of these standards if it can be shown that the granting of such an exception will not jeopardize the public health. In order for the Executive Secretary to consider such a request, the Division asks that it receive a written request directly from the management of the public dinking water system, preferably on system letterhead, that includes the following:

(i) citation of the specific rule for which the "exception" is being requested;

(ii) a detailed explanation, drawings may be included, of why the conditions of rule cannot be met;

(iii) what the system proposes, drawings may be included, in lieu of rule;

(iv) justification the proposed alternative will protect the public health to a similar or better degree than required by rule.

Physical conditions as well as cost may be justification for requesting an "exception-to-rule."

(c) Alternative or new treatment techniques may be developed which are not specifically addressed by the applicable standards contained in R309-500 through R309-550. These treatment techniques may be accepted by the Executive Secretary if it can be shown that:

(i) They will result in a finished water meeting the requirements of R309-200 of these regulations.

(ii) The technique will produce finished water which will protect public health to the same extent provided by comparable treatment processes outlined in the applicable standards contained in R309-204 and R309-500 through R309-550.

(iii) The technique is as reliable as any comparable treatment process governed by the applicable standards contained in R309-204 and R309-500 through R309-550.

(3) Description of "Public Drinking Water Project"

Refer to R309-500-5 for the description of a public drinking water project and R309-500-6 for required items to be submitted for plan approval.

(4) Specifications for the drilling of a public water supply well may be prepared and submitted by a licensed well driller holding a current Utah Well Driller's Permit if authorized by the Executive Secretary.

(5) Drawing Quality and Size

Drawings which are submitted shall be compatible with Division of Drinking Water Document storage. Drawings

which are illegible or of unusual size will not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(6) Requirements After Approval of Plans for Construction

After the approval of plans for construction, and prior to operation of any facilities dealing with drinking water, the items required by R309-500-9 shall be submitted and an operating permit received.

R309-105-7. Source Protection.

(1) Public Water Systems are responsible for protecting their sources of drinking water from contamination. R309-600 and R309-605 sets forth minimum requirements to establish a uniform, statewide program for implementation by PWSs to protect their sources of drinking water. PWSs are encouraged to enact more stringent programs to protect their sources of drinking water if they decide they are necessary.

(2) R309-600 applies to ground-water sources and to ground-water sources which are under the direct influence of surface water which are used by PWSs to supply their systems with drinking water.

(3) R309-605 applies to PWSs which obtain surface water prior to treatment and distribution and to PWSs obtaining water from ground-water sources which are under the direct influence of surface water. However, compliance with this rule is voluntary for public transient non-community water systems to the extent that they are using existing surface water sources of drinking water.

R309-105-8. Existing Water System Facilities.

(1) All public water systems shall deliver water meeting the applicable requirements of R309-200 of these rules.

(2) Existing facilities shall be brought into compliance with R309-500 through R309-550 or shall be reliably capable of delivering water meeting the requirements of R309-200.

(3) In situations where a water system is providing water of unsatisfactory quality, or when the quality of the water or the public health is threatened by poor physical facilities, the water system management shall solve the problem(s).

R309-105-9. Minimum Water Pressure.

(1) Unless otherwise specifically approved by the Executive Secretary, no water supplier shall allow any connection to the water system where the dynamic water pressure at the point of connection will fall below 20 psi during the normal operation of the water system. Water systems approved prior to January 1, 2007, are required to maintain the above minimum dynamic water pressure at all locations within their distribution system. Existing public drinking water systems, approved prior to January 1, 2007, which expand their service into new areas or supply new subdivisions shall meet the minimum dynamic water pressure requirements in R309-105-9(2) at any point of connection in the new service areas or new subdivisions.

(2) Unless otherwise specifically approved by the Executive Secretary, new public drinking water systems constructed after January 1, 2007 shall be designed and shall meet the following minimum water pressures at points of connection:

(a) 20 psi during conditions of fire flow and fire demand experienced during peak day demand;

(b) 30 psi during peak instantaneous demand; and

(c) 40 psi during peak day demand.

(3) Individual home booster pumps are not allowed as indicated in R309-540-5(4)(c).

R309-105-10. Operation and Maintenance Procedures.

All routine operation and maintenance of public water supplies shall be carried out with due regard for public health and safety. The following sections describe procedures which shall be used in carrying out some common operation and maintenance procedures.

(1) Chemical Addition

(a) Water system operators shall determine that all chemicals added to water intended for human consumption are suitable for potable water use and comply with ANSI/NSF Standard 60.

(b) No chemicals or other substances shall be added to public water supplies unless the chemical addition facilities and chemical type have been reviewed and approved by the Division of Drinking Water.

(c) Chlorine, when used in the distribution system, shall be added in sufficient quantity to achieve either "breakpoint" and yield a detectable free chlorine residual or a detectable combined chlorine residual in the distribution system at points to be determined by the Executive Secretary. Residual checks shall be taken daily by the operator of any system using disinfectants. The Executive Secretary may, however, reduce the frequency of residual checks if he determines that this would be an unwarranted hardship on the water system operator and, furthermore, the disinfection equipment has a verified record of reliable operation. Suppliers, when checking for residuals, shall use test kits and methods which meet the requirements of the U.S. EPA. The "DPD" test method is recommended for free chlorine residuals. Information on the suppliers of this equipment is available from the Division of Drinking Water.

(2) New and Repaired Mains

(a) All new water mains shall meet the requirements of R309-550-6 with regard to materials of construction. All products in contact with culinary water shall comply with ANSI/NSF Standard 61.

(b) All new and repaired water mains or appurtenances shall be disinfected in accordance with AWWA Standard C651-92. The chlorine solution shall be flushed from the water main with potable water prior to the main being placed in use.

(c) All products used to recoat the interiors of storage structures and which may come in contact with culinary water shall comply with ANSI/NSF Standard 61.

(3) Reservoir Maintenance and Disinfection

After a reservoir has been entered for maintenance or re-coating, it shall be disinfected prior to being placed into service. Procedures given in AWWA Standard C651-92 shall be followed in this regard.

(4) Spring Collection Area Maintenance

(a) Spring collection areas shall be periodically cleared of deep rooted vegetation to prevent root growth from clogging collection lines. Frequent hand or mechanical clearing of spring collection areas is strongly recommended. It is advantageous to encourage the growth of grasses and other shallow rooted vegetation for erosion control and to inhibit the growth of more detrimental flora.

(b) No pesticide (e.g., herbicide) may be applied on a spring collection area without the prior written approval of the Executive Secretary. Such approval shall be given 1) only when acceptable pesticides are proposed; 2) when the pesticide product manufacturer certifies that no harmful substance will be imparted to the water; and 3) only when spring development meets the requirements of these rules (see R309-515-7).

(5) Security

All water system facilities such as spring junction boxes, well houses, reservoirs, and treatment facilities shall be secure.

(6) Seasonal Operation

Water systems operated seasonally shall be disinfected and flushed according to the techniques given in AWWA Standard C651-92 and C652-92 prior to each season's use. A satisfactory bacteriologic sample shall be achieved prior to use. During the non-use period, care shall be taken to close all openings into the system.

(7) Pump Lubricants

All oil lubricated pumps for culinary wells shall utilize mineral oils suitable for human consumption as determined by the Executive Secretary. To assure proper performance, and to prevent the voiding of any warranties which may be in force, the water supplier should confirm with individual pump manufacturers that the oil which is selected will have the necessary properties to perform satisfactorily.

R309-105-11. Operator Certification.

All community and non-transient non-community water systems or any public system that employs treatment techniques for surface water or ground water under the direct influence of surface water shall have an appropriately certified operator in accordance with the requirements of these rules. Refer to R309-300, Certification Rules for Water Supply Operators, for specific requirements.

R309-105-12. Cross Connection Control.

(1) The water supplier shall not allow a connection to his system which may jeopardize its quality and integrity. Cross connections are not allowed unless controlled by an approved and properly operating backflow prevention assembly. The requirements of Chapter 6 of the 2006 International Plumbing Code and its amendments as adopted by the Department of Commerce under R156-56 shall be met with respect to cross connection control and backflow prevention.

(2) Each water system shall have a functioning cross connection control program. The program shall consist of five designated elements documented on an annual basis. The elements are:

(a) a legally adopted and functional local authority to enforce a cross connection control program (i.e., ordinance, bylaw or policy);

(b) providing public education or awareness material or presentations;

(c) an operator with adequate training in the area of cross connection control or backflow prevention;

(d) written records of cross connection control activities, such as, backflow assembly inventory; and

(e) test history and documentation of on-going enforcement (hazard assessments and enforcement actions) activities.

(3) Suppliers shall maintain, as proper documentation, an inventory of each pressure atmospheric vacuum breaker, double check valve, reduced pressure zone principle assembly, and high hazard air gap used by their customers, and a service record for each such assembly.

(4) Backflow prevention assemblies shall be inspected and tested at least once a year, by an individual certified for such work as specified in R309-305. Suppliers shall maintain, as proper documentation, records of these inspections. This testing responsibility may be borne by the water system or the water system management may require that the customer having the backflow prevention assembly be responsible for having the device tested.

(5) Suppliers serving areas also served by a pressurized irrigation system shall prevent cross connections between the two. Requirements for pressurized irrigation systems are outlined in Section 19-4-112 of the Utah Code.

R309-105-13. Finished Water Quality.

All public water systems are required to monitor their water according to the requirements of R309-205, R309-210 and R309-215 to determine if the water quality standards of R309-200 have been met. Water systems are also required to keep records and, under certain circumstances, give public notice as required in R309-220.

R309-105-14. Operational Reports.

(1) Treatment techniques for acrylamide and epichlorohydrin.

(a) Each public water system shall certify annually in writing to the Executive Secretary (using third party or manufacturer's certification) that when acrylamide and epichlorohydrin are used in drinking water systems, the combination (or product) of dose and monomer level does not exceed the levels specified in R309-215-8(2)(c).

(b) Certifications may rely on manufacturers data.

(2)(a) All water systems using chemical addition or specialized equipment for the treatment of drinking water shall regularly complete operational reports. This information shall be evaluated to confirm that the treatment process is being done properly, resulting in successful treatment.

(b) The information to be provided, and the frequency at which it is to be gathered and reported, will be determined by the Executive Secretary.

R309-105-15. Annual Reports.

All community water systems shall be required to complete annual report forms furnished by the Division of Drinking Water. The information to be provided should include: the status of all water system projects started during the previous year; water demands met by the system; problems experienced; and anticipated projects.

R309-105-16. Reporting Test Results.

(1) If analyses are made by certified laboratories other than the state laboratory, these results shall be forwarded to the Division as follows:

(a) The supplier shall report to the Division the analysis of water samples which fail to comply with the Primary Drinking Water Standards of R309-200. Except where a different reporting period is specified in R309-205, R309-210 or R309-215, this report shall be submitted within 48 hours after the supplier receives the report from his lab. The Division may be reached at (801)536-4200.

(b) Monthly summaries of bacteriologic results shall be submitted within ten days following the end of each month.

(c) All results of TTHM samples shall be reported to the Division within 10 days of receipt of analysis for systems monitoring pursuant to R309-210-9.

(d) For all samples other than samples showing unacceptable results, bacteriologic samples or TTHM samples, the time between the receipt of the analysis and the reporting of the results to the Division shall not exceed 40 days.

(e) Arsenic sampling results shall be reported to the nearest 0.001 mg/L.

(2) Disinfection byproducts, maximum residual disinfectant levels and disinfection byproduct precursors and enhanced coagulation or enhanced softening. This section applies to the reporting requirements of R309-210-8, R309-215-12 and R309-215-13. For the reporting requirements of R309-210-9, R309-210-10 and R309-215-15 are contained within R309-210-9, R309-210-10 and R309-215-15, respectively.

(a) Systems required to sample quarterly or more frequently shall report to the State within 10 days after the end of each quarter in which samples were collected. Systems required to sample less frequently than quarterly shall report to the State within 10 days after the end of each monitoring period in which samples were collected. The Executive Secretary may choose to perform calculations and determine whether the MCL was exceeded, in lieu of having the system report that information.

(b) Disinfection byproducts. Systems shall report the information specified.

(i) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) on a quarterly or more frequent

basis shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of all samples taken in the last quarter.

(D) The annual arithmetic average of the quarterly arithmetic averages of this section for the last four quarters.

(E) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(ii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than quarterly (but at least annually) shall report:

(A) The number of samples taken during the last year.

(B) The location, date, and result of each sample taken during the last monitoring period.

(C) The arithmetic average of all samples taken over the last year.

(D) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iii) Systems monitoring for TTHMs and HAA5 under the requirements of R309-210-8(2) less frequently than annually shall report:

(A) The location, date, and result of the last sample taken.

(B) Whether, based on R309-210-8(6)(b)(i), the MCL was violated.

(iv) Systems monitoring for chlorite under the requirements of R309-210-8(2) shall report:

(A) The number of entry point samples taken each month for the last 3 months.

(B) The location, date, and result of each sample (both entry point and distribution system) taken during the last quarter.

(C) For each month in the reporting period, the arithmetic average of all samples taken in each three sample set taken in the distribution system.

(D) Whether, based on R309-210-8(6)(b)(ii), the MCL was violated.

(v) System monitoring for bromate under the requirements of R309-210-8(2) shall report:

(A) The number of samples taken during the last quarter.

(B) The location, date, and result of each sample taken during the last quarter.

(C) The arithmetic average of the monthly arithmetic averages of all samples taken in the last year.

(D) Whether, based on R309-210-8(6)(b)(iii), the MCL was violated.

(c) Disinfectants. Systems shall report the information specified to the Executive Secretary within ten days after the end of each month the system serves water to the public, except as otherwise noted:

(i) Systems monitoring for chlorine or chloramines under the requirements of R309-210-8(3)(a) shall report and certify, by signing the report form provided by the Executive Secretary, that all the information provided is accurate and correct and that any chemical introduced into the drinking water complies with ANSI/NSF Standard 60:

(A) The number of samples taken during each month of the last quarter.

(B) The monthly arithmetic average of all samples taken in each month for the last 12 months.

(C) The arithmetic average of all monthly averages for the last 12 months.

(D) The additional data required in R309-210-8(3)(a)(ii).

(E) Whether, based on R309-210-8(6)(c)(i), the MRDL was violated.

(ii) Systems monitoring for chlorine dioxide under the requirements of R309-210-8(3) shall report:

(A) The dates, results, and locations of samples taken during the last quarter.

(B) Whether, based on R309-210-8(6)(c)(ii), the MRDL was violated.

(C) Whether the MRDL was exceeded in any two consecutive daily samples and whether the resulting violation was acute or nonacute.

(d) Disinfection byproduct precursors and enhanced coagulation or enhanced softening. Systems shall report the information specified.

(i) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and required to meet the enhanced coagulation or enhanced softening requirements in R309-215-13(2)(b) or (c) shall report:

(A) The number of paired (source water and treated water) samples taken during the last quarter.

(B) The location, date, and results of each paired sample and associated alkalinity taken during the last quarter.

(C) For each month in the reporting period that paired samples were taken, the arithmetic average of the percent reduction of TOC for each paired sample and the required TOC percent removal.

(D) Calculations for determining compliance with the TOC percent removal requirements, as provided in R309-215-13(3)(a).

(E) Whether the system is in compliance with the enhanced coagulation or enhanced softening percent removal requirements in R309-215-13(2) for the last four quarters.

(ii) Systems monitoring monthly or quarterly for TOC under the requirements of R309-215-12 and meeting one or more of the alternative compliance criteria in R309-215-13(1)(b) or (c) shall report:

(A) The alternative compliance criterion that the system is using.

(B) The number of paired samples taken during the last quarter.

(C) The location, date, and result of each paired sample and associated alkalinity taken during the last quarter.

(D) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water TOC for systems meeting a criterion in R309-215-13(1)(b)(i) or (iii) or of treated water TOC for systems meeting the criterion in R309-215-13(1)(b)(ii).

(E) The running annual arithmetic average based on monthly averages (or quarterly samples) of source water SUVA for systems meeting the criterion in R309-215-13(1)(b)(v) or of treated water SUVA for systems meeting the criterion in R309-215-13(1)(b)(vi).

(F) The running annual average of source water alkalinity for systems meeting the criterion in R309-215-13(1)(b)(iii) and of treated water alkalinity for systems meeting the criterion in R309-215-13(1)(c)(i).

(G) The running annual average for both TTHM and HAA5 for systems meeting the criterion in R309-215-13(1)(b)(iii) or (iv).

(H) The running annual average of the amount of magnesium hardness removal (as $CaCO_3$, in mg/L) for systems meeting the criterion in R309-215-13(1)(c)(ii).

(I) Whether the system is in compliance with the particular alternative compliance criterion in R309-215-13(1)(b) or (c).

(3) The public water system, within 10 days of completing the public notification requirements under R309-220 for the initial public notice and any repeat notices, shall submit to the Division a certification that it has fully complied with the public notification regulations. The public water system shall include with this certification a representative copy of each type of notice distributed, published, posted, and made available to the persons served by the system and to the media.

(4) All samples taken in accordance with R309-215-6 shall be submitted within 10 days following the end of the

operational period specified for that particular treatment. Finished water samples results for the contaminant of concern that exceed the Primary Drinking Water Standards of R309-200, shall be reported to the Division within 48 hours after the supplier receives the report. The Division may be reached at (801) 536-4000.

(5) Documentation of operation and maintenance for point-of-use or point-of -entry treatment units shall be provided to the Division annually. The Division shall receive the documentation by January 31 annually.

R309-105-17. Record Maintenance.

All public water systems shall retain on their premises or at convenient location near their premises the following records:

(1) Records of microbiological analyses and turbidity analyses made pursuant to this Section shall be kept for not less than five years. Records of chemical analyses made pursuant to this Section shall be kept for not less than ten years. Actual laboratory reports may be kept, or data may be transferred to tabular summaries, provided that the following information is included:

(a) The date, place and time of sampling, and the name of the person who collected the sample;

(b) Identification of the sample as to whether it was a routine distribution system sample, check sample, raw or process water sample or other special purpose sample.

(c) Date of analysis;

(d) Laboratory and person responsible for performing analysis;

(e) The analytical technique/method used; and

(f) The results of the analysis.

(2) Lead and copper recordkeeping requirements.

(a) Any water system subject to the requirements of R309-210-6 shall retain on its premises original records of all sampling data and analyses, reports, surveys, letters, evaluations, schedules, Executive Secretary determinations, and any other information required by R309-210-6.

(b) Each water system shall retain the records required by this section for no fewer than 12 years.

(3) Records of action taken by the system to correct violations of primary drinking water regulations shall be kept for a period not less than three years after the last action taken with respect to the particular violation involved.

(4) Copies of any written reports, summaries or communications relating to sanitary surveys of the system conducted by the system itself, by a private consultant, or by any local, State or Federal agency, shall be kept for a period not less than ten years after completion of the sanitary survey involved.

(5) Records concerning a variance or exemption granted to the system shall be kept for a period ending not less than five years following the expiration of such variance or exemption.

(6) Records that concern the tests of a backflow prevention assembly and location shall be kept by the system for a minimum of not less than five years from the date of the test.

(7) Copies of public notices issued pursuant to R309-220 and certifications made to the Executive Secretary agency pursuant to R309-105-16 shall be kept for three years after issuance.

(8) Copies of monitoring plans developed pursuant to these rules shall be kept for the same period of time as the records of analyses taken under the plan are required to be kept under R309-105-17(1), except as otherwise specified. In all cases the monitoring plans shall be kept as long as the any associated report.

(9) A water system must retain a complete copy of your IDSE report submitted under this section for 10 years after the date that you submitted your IDSE report. If the Executive Secretary modifies the R309-210-10 monitoring requirements that you recommended in your IDSE report or if the Executive Secretary approves alternative monitoring locations, you must keep a copy of the Executive Secretary's notification on file for 10 years after the date of the Executive Secretary's notification. You must make the IDSE report and any Executive Secretary notification available for review by the Executive Secretary or the public.

(10) A water system must retain a complete copy of its 40/30 certification submitted under this R309-210-9 for 10 years after the date that you submitted your certification. You must make the certification, all data upon which the certification is based, and any Executive Secretary notification available for review by the Executive Secretary or the public.

(11) A water subject to the disinfection profiling requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

(12) A water system subject to the disinfection benchmarking requirements of R309-215-14 shall keep must keep results of profile (raw data and analysis) indefinitely.

R309-105-18. Emergencies.

(1) The Executive Secretary or the local health department shall be informed by telephone by a water supplier of any "emergency situation". The term "emergency situation" includes the following:

(a) The malfunction of any disinfection facility such that a detectable residual cannot be maintained at all points in the distribution system.

(b) The malfunction of any "complete" treatment plant such that a clearwell effluent turbidity greater than 5 NTU is maintained longer than fifteen minutes.

(c) Muddy or discolored water (which cannot be explained by air entrainment or re-suspension of sediments normally deposited within the distribution system) is experienced by a significant number of individuals on a system.

(d) An accident has occurred which has, or could have, permitted the entry of untreated surface water and/or other contamination into the system (e.g. break in an unpressurized transmission line, flooded spring area, chemical spill, etc.)

(e) A threat of sabotage has been received by the water supplier or there is evidence of vandalism or sabotage to any public drinking water supply facility which may affect the quality of the delivered water.

(f) Any instance where a consumer reports becoming sick by drinking from a public water supply and the illness is substantiated by a doctor's diagnosis (unsubstantiated claims should also be reported to the Division of Drinking Water, but this is not required).

(2) If an emergency situation exists, the water supplier shall then contact the Division in Salt Lake City within eight hours. Division personnel may be reached at all times through 801-536-4123.

(3) All suppliers are advised to develop contingency plans to cope with possible emergency situations. In many areas of the state the possibility of earthquake damage shall be realistically considered.

KEY: drinking water, watershed management
May 12, 2009 19-4-104
Notice of Continuation May 16, 2005 63-46b-4

R309. Environmental Quality, Drinking Water.
R309-110. Administration: Definitions.
R309-110-1. Purpose.

The purpose of this rule is to define certain terms and expressions that are utilized throughout all rules under R309. Collectively, those rules govern the administration, monitoring, operation and maintenance of public drinking water systems as well as the design and construction of facilities within said systems.

R309-110-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104 of the Utah Code and in accordance with 63-46a of the same, known as the Administrative Rulemaking Act.

R309-110-3. Acronyms.

As used in R309:
"AF" means Acre Foot.
"AWOP" means Area Wide Optimization Program.
"AWWA" means American Water Works Association.
"BAT" means Best Available Technology.
"C" means Residual Disinfectant Concentration.
"CCP" means Composite Correction Program.
"CCR" means Consumer Confidence Report.
"CEU" means Continuing Education Unit.
"CFE" means Combined Filter Effluent.
"CFR" means Code of Federal Regulations.
"cfs" means Cubic Feet Per Second.
"CPE" means Comprehensive Performance Evaluation.
"CT" means Residual Concentration multiplied by Contact Time.
"CTA" means Comprehensive Technical Assistance.
"CWS" means Community Water System.
"DBPs" means Disinfection Byproducts.
"DE" means Diatomaceous Earth.
"DTF" means Data Transfer Format.
"DWSP" means Drinking Water Source Protection.
"EP" means Entry Point.
"EPA" means Environmental Protection Agency.
"ERC" means Equivalent Residential Connection.
"FBRR" means Filter Backwash Recycling Rule.
"fps" means Feet Per Second
"FR" means Federal Register.
"gpd" means Gallons Per Day.
"gpm" means Gallons Per Minute.
"gpm/sf" means Gallons Per Minute Per Square Foot.
"GWR" means Ground Water Rule.
"GWUDI" means Ground Water Under Direct Influence of Surface Water.
"HAA5s" means Haloacetic Acids (Five).
"HPC" means Heterotrophic Plate Count.
"ICR" means Information Collection Rule of 40 CRF 141 subpart M.
"IESWTR" means Interim Enhanced Surface Water Treatment Rule.
"IFE" means Individual Filter Effluent.
"LT1ESWTR" means Long Term 1 Enhanced Surface Water Treatment Rule.
"LT2ESWTR" means Long Term 2 Enhanced Surface Water Treatment Rule.
"MCL" means Maximum Contaminant Level.
"MCLG" means Maximum Contaminant Level Goal.
"M and R" means Monitoring and Reporting.
"MDBP" means Microbial-Disinfection Byproducts.
"M/DBP Cluster" means Microbial-Disinfectants/Disinfection Byproducts Cluster.
"MG" means Million Gallons.
"MGD" means Million Gallons Per Day.
"mg/L" means Milligrams Per Liter
"MRDL" means Maximum Residual Disinfectant Level.
"MRDLG" means Maximum Residual Disinfectant Level Goal.
"NCWS" means Non-Community Water System.
"NTNC" means Non-Transient Non-Community.
"NTU" means Nephelometric Turbidity Unit.
"PN" means Public Notification.
"POE" means Point-of-Entry.
"POU" means Point-of-Use.
"PWS" means Public Water System.
"PWS-ID" means Public Water System Identification Number.
"RTC" means Return to Compliance.
"SDWA" means Safe Drinking Water Act.
"SDWIS/FED" means Safe Drinking Water Information System/Federal Version.
"SDWIS/STATE" means Safe Drinking Water Information System/State Version.
"SNC" means Significant Non-Compliance.
"Stage 1 DBPR" means Stage 1 Disinfectants and Disinfection Byproducts Rule.
"Stage 2 DBPR" means Stage 2 Disinfectants and Disinfection Byproducts Rule.
"Subpart H" means A PWS using SW or GWUDI.
"Subpart P" means A PWS using SW or GWUDI and serving at least 10,000 people.
"Subpart S" means Provisions of 40 CRF 141 subpart S commonly referred to as the Information Collection Rule.
"Subpart T" means A PWS using SW or GWUDI and serving less than 10,000 people.
"SUVA" means Specific Ultraviolet Absorption.
"SW" means Surface Water.
"SWAP" means Source Water Assessment Program.
"SWTR" means Surface Water Treatment Rule.
"T" means Contact Time.
"TA" means Technical Assistance.
"TCR" means Total Coliform Rule.
"TNCWS" means Transient Non-Community Water System.
"TNTC" means Too Numerous To Count.
"TOC" means Total Organic Carbon.
"TT" means Treatment Technique.
"TTHM" means Total Trihalomethanes.
"UAC" means Utah Administrative Code.
"UPDWR" means Utah Public Drinking Water Rules (R309 of the UAC).
"WCP" means Watershed Control Program.
"WHP" means Wellhead Protection.

R309-110-4. Definitions.

As used in R309:
"Action Level" means the concentration of lead or copper in drinking water tap samples (0.015 mg/l for lead and 1.3 mg/l for copper) which determines, in some cases, the corrosion treatment, public education and lead line replacement requirements that a water system is required to complete.
"AF" means acre foot and is the volume of water required to cover an acre to a depth of one foot (one AF is equivalent to 325,851 gallons).
"Air gap" The unobstructed vertical distance through the free atmosphere between the lowest opening from any pipe or faucet supplying water to a tank, catch basin, plumbing fixture or other device and the flood level rim of the receptacle. This distance shall be two times the diameter of the effective opening for openings greater than one inch in diameter where walls or obstructions are spaced from the nearest inside edge of the pipe opening a distance greater than three times the diameter of the

effective openings for a single wall, or a distance greater than four times the diameter of the effective opening for two intersecting walls. This distance shall be three times the diameter of the effective opening where walls or obstructions are closer than the distances indicated above.

"ANSI/NSF" refers to the American National Standards Institute and NSF International. NSF International has prepared at least two health effect standards dealing with treatment chemicals added to drinking water and system components that will come into contact with drinking water, these being Standard 60 and Standard 61. The American National Standards Institute acts as a certifying agency, and determines which laboratories may certify to these standards.

"Approval" unless indicated otherwise, shall be taken to mean a written statement of acceptance from the Executive Secretary.

"Approved" refers to a rating placed on a system by the Division and means that the public water system is operating in substantial compliance with all the Rules of R309.

"Average Yearly Demand" means the amount of water delivered to consumers by a public water system during a typical year, generally expressed in MG or AF.

"AWWA" refers to the American Water Works Association located at 6666 West Quincy Avenue, Denver, Colorado 80235. Reference within these rules is generally to a particular Standard prepared by AWWA and which has completed the ANSI approval process such as ANSI/AWWA Standard C651-92 (AWWA Standard for Disinfecting Water Mains).

"Backflow" means the undesirable reversal of flow of water or mixtures of water and other liquids, gases, or other substances into the distribution pipes of the potable water supply from any source. Also see backsiphonage, backpressure and cross-connection.

"Backpressure" means the phenomena that occurs when the customer's pressure is higher than the supply pressure, This could be caused by an unprotected cross connection between a drinking water supply and a pressurized irrigation system, a boiler, a pressurized industrial process, elevation differences, air or steam pressure, use of booster pumps or any other source of pressure. Also see backflow, backsiphonage and cross connection.

"Backsiphonage" means a form of backflow due to a reduction in system pressure which causes a subatmospheric or negative pressure to exist at a site or point in the water system. Also see backflow and cross-connection.

"Bag Filters" are pressure-driven separation devices that remove particle matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed of a non-rigid, fabric filtration media housed in a pressure vessel in which the direction of flow is from the inside of the bag to outside.

"Bank Filtration" is a water treatment process that uses a well to recover surface water that has naturally infiltrated into ground water through a river bed or bank(s). Infiltration is typically enhanced by the hydraulic gradient imposed by a nearby pumping water supply or other well(s).

"Best Available Technology" (BAT) means the best technology, treatment techniques, or other means which the Executive Secretary finds, after examination under field conditions and not solely under laboratory conditions, are available (taking cost into consideration). For the purposes of setting MCLs for synthetic organic chemicals, any BAT must be at least as effective as granular activated carbon for all these chemicals except vinyl chloride. Central treatment using packed tower aeration is also identified as BAT for synthetic organic chemicals.

"Board" means the Drinking Water Board.

"Body Politic" means the State or its agencies or any political subdivision of the State to include a county, city, town, improvement district, taxing district or any other governmental subdivision or public corporation fo the State.

"Breakpoint Chlorination" means addition of chlorine to water until the chlorine demand has been satisfied. At this point, further addition of chlorine will result in a free residual chlorine that is directly proportional to the amount of chlorine added beyond the breakpoint.

"C" is short for "Residual Disinfectant Concentration."

"Capacity Development" means technical, managerial, and financial capabilities of the water system to plan for, achieve, and maintain compliance with applicable drinking water standards.

"Cartridge filters" are pressure-driven separation devices that remove particulate matter larger than 1 micrometer using an engineered porous filtration media. They are typically constructed as rigid or semi-rigid, self-supporting filter elements housed in pressure vessels in which flow is from the outside of the cartridge to the inside.

"cfs" means cubic feet per second and is one way of expressing flowrate (one cfs is equivalent to 448.8 gpm).

"Class" means the level of certification of Backflow Prevention Technician (Class I, II or III).

"Coagulation" is the process of destabilization of the charge (predominantly negative) on particulates and colloids suspended in water. Destabilization lessens the repelling character of particulates and colloids and allows them to become attached to other particles so that they may be removed in subsequent processes. The particulates in raw waters (which contribute to color and turbidity) are mainly clays, silt, viruses, bacteria, fulvic and humic acids, minerals (including asbestos, silicates, silica, and radioactive particles), and organic particulate.

"Collection area" means the area surrounding a ground-water source which is underlain by collection pipes, tile, tunnels, infiltration boxes, or other ground-water collection devices.

"Combined distribution system" is the interconnected distribution system consisting of the distribution systems of wholesale systems and of the consecutive systems that receive finished water.

"Commission" means the Operator Certification Commission.

"Community Water System" (CWS) means a public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents.

"Compliance cycle" means the nine-year calendar year cycle during which public water systems must monitor. Each compliance cycle consists of three three-year compliance periods. The first calendar year cycle began January 1, 1993 and ends December 31, 2001; the second begins January 1, 2002 and ends December 31, 2010; the third begins January 1, 2011 and ends December 31, 2019.

"Compliance period" means a three-year calendar year period within a compliance cycle. Each compliance cycle has three three-year compliance periods. Within the first compliance cycle, the first compliance period ran from January 1, 1993 to December 31, 1995; the second from January 1, 1996 to December 31, 1998; and the third is from January 1, 1999 to December 31, 2001.

"Comprehensive Performance Evaluation" (CPE) is a thorough review and analysis of a treatment plant's performance-based capabilities and associated administrative, operation and maintenance practices. It is conducted to identify factors that may be adversely impacting a plant's capability to achieve compliance and emphasizes approaches that can be implemented without significant capital improvements. For purposes of compliance with these rules, the comprehensive performance evaluation must consist of at least the following

components: Assessment of plant performance; evaluation of major unit processes; identification and prioritization of performance limiting factors; assessment of the applicability of comprehensive technical assistance; and preparation of a CPE report.

"Confirmed SOC contamination area" means an area surrounding and including a plume of SOC contamination of the soil or water which previous monitoring results have confirmed. The area boundaries may be determined by measuring 3,000 feet horizontally from the outermost edges of the confirmed plume. The area includes deeper aquifers even though only the shallow aquifer is the one contaminated.

"Confluent growth" means a continuous bacterial growth covering the entire filtration area of a membrane filter, or a portion of the filtration area in which discrete bacterial colonies can not be distinguished.

"Consecutive system" is a public water system that receives some or all of its finished water from one or more wholesale systems. Delivery may be through a direct connection or through the distribution system or one or more consecutive systems.

"Contaminant" means any physical, chemical biological, or radiological substance or matter in water.

"Continuing Education Unit" (CEU) means ten contact hours of participation in, and successful completion of, an organized and approved continuing education experience under responsible sponsorship, capable direction, and qualified instruction. College credit in approved courses may be substituted for CEUs on an equivalency basis.

"Conventional Surface Water Treatment" means a series of processes including coagulation, flocculation, sedimentation, filtration and disinfection resulting in substantial particulate removal and inactivation of pathogens.

"Controls" means any codes, ordinances, rules, and regulations that a public water system can cite as currently in effect to regulate potential contamination sources; any physical conditions which may prevent contaminants from migrating off of a site and into surface or ground water; and any site with negligible quantities of contaminants.

"Corrective Action" refers to a rating placed on a system by the Division and means a provisional rating for a public water system not in compliance with the Rules of R309, but making all the necessary changes outlined by the Executive Secretary to bring them into compliance.

"Corrosion inhibitor" means a substance capable of reducing the corrosiveness of water toward metal plumbing materials, especially lead and copper, by forming a protective film on the interior surface of those materials.

"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.

"Criteria" means the conceptual standards that form the basis for DWSP area delineation to include distance, ground-water time of travel, aquifer boundaries, and ground-water divides.

"Criteria threshold" means a value or set of values selected to represent the limits above or below which a given criterion will cease to provide the desired degree of protection.

"Cross-Connection" means any actual or potential connection between a drinking (potable) water system and any other source or system through which it is possible to introduce into the public drinking water system any used water, industrial fluid, gas or substance other than the intended potable water. For example, if you have a pump moving non-potable water and hook into the drinking water system to supply water for the pump seal, a cross-connection or mixing may lead to contamination of the drinking water. Also see backsiphonage, backpressure and backflow.

"Cross Connection Control Program" means the program administered by the public water system in which cross connections are either eliminated or controlled.

"Cross Connection Control Commission" means the duly constituted advisory subcommittee appointed by the Board to advise the Board on Backflow Technician Certification and the Cross Connection Control Program of Utah.

"CT" or "CT_{calc}" is the product of "residual disinfectant concentration" (C) in mg/l determined before or at the first customer, and the corresponding "disinfectant contact time" (T) in minutes, i.e., "C" x "T." If a public water system applies disinfectant at more than one point prior to the first customer, the summation of each CT value for each disinfectant sequence before or at the first customer determines the total percent inactivation or "Total Inactivation Ratio." In determining the Total Inactivation Ratio, the public water system must determine the residual disinfectant concentration of each disinfection sequence and corresponding contact time before any subsequent disinfection application point(s).

"$CT_{req'd}$" is the CT value required when the log reduction credit given the filter is subtracted from the (3-log) inactivation requirement for Giardia lamblia or the (4-log) inactivation requirement for viruses.

"$CT_{99.9}$" is the CT value required for 99.9 percent (3-log) inactivation of Giardia lamblia cysts. $CT_{99.9}$ for a variety of disinfectants and conditions appear in Tables 1.1-1.6, 2.1, and 3.1 of Section 141.74(b)(3) in the code of Federal Regulations (also available from the Division).

"Designated person" means the person appointed by a public water system to ensure that the requirements of their Drinking Water Source Protection Plan(s) for ground water sources and/or surface water sources are met.

"Desired Design Discharge Rate" means the discharge rate selected for the permanent pump installed in a public drinking water well source. This pumping rate is selected by the water system owner or engineer and can match or be the same rate utilized during the constant rate pump test required by R309-515 and R309-600 to determine delineated protection zones. For consideration of the number of permanent residential connections or ERC's that a well source can support (see Safe Yield) the Division will consider 2/3 of the test pumping rate as the safe yield.

"Direct Employment" means that the operator is directly compensated by the drinking water system to operate that drinking water system.

"Direct Filtration" means a series of processes including coagulation and filtration, but excluding sedimentation, resulting in substantial particulate removal.

"Direct Responsible Charge" means active on-site control and management of routine maintenance and operation duties. A person in direct responsible charge is generally an operator of a water treatment plant or distribution system who independently makes decisions during normal operation which can affect the sanitary quality, safety, and adequacy of water delivered to customers. In cases where only one operator is employed by the system, this operator shall be considered to be in direct responsible charge.

"Disadvantaged Communities" are defined as those communities located in an area which has a median adjusted gross income which is 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 exemptions returns.

"Discipline" means type of certification (Distribution or Treatment).

"Disinfectant Contact Time" ("T" in CT calculations) means the time in minutes that it takes water to move from the point of disinfectant application or the previous point of

disinfectant residual measurement to a point before or at the point where residual disinfectant concentration ("C") is measured. Where only one "C" is measured, "T" is the time in minutes that it takes water to move from the point of disinfectant application to a point before or at where residual disinfectant concentration ("C") is measured. Where more than one "C" is measured, "T" is (a) for the first measurement of "C," the time in minutes that it takes water to move from the first or only point of disinfectant application to a point before or at the point where the first "C" is measured and (b) for subsequent measurements of "C," the time in minutes that it takes for water to move from the previous "C" measurement point to the "C" measurement point for which the particular "T" is being calculated. Disinfectant contact time in pipelines must be calculated by dividing the internal volume of the pipe by the maximum hourly flow rate through that pipe. Disinfectant contact time within mixing basins and storage reservoirs must be determined by tracer studies or an equivalent demonstration.

"Disinfection" means a process which inactivates pathogenic organisms in water by chemical oxidants or equivalent agents (see also Primary Disinfection and Secondary Disinfection).

"Disinfection profile" is a summary of daily Giardia lamblia inactivation through the treatment plant.

"Distribution System" means the use of any spring or well source, distribution pipelines, appurtenances, and facilities which carry water for potable use to consumers through a public water supply. Systems which chlorinate groundwater are in this discipline.

"Distribution System Manager" means the individual responsible for all operations of a distribution system.

"Division" means the Utah Division of Drinking Water, who acts as staff to the Board and is also part of the Utah Department of Environmental Quality.

"Dose Equivalent" means the product of the absorbed dose from ionizing radiation and such factors as account for differences in biological effectiveness due to the type of radiation and its distribution in the body as specified by the International Commission of Radiological Units and Measurements (ICRU).

"Drinking Water" means water that is fit for human consumption and meets the quality standards of R309-200. Common usage of terms such as culinary water, potable water or finished water are synonymous with drinking water.

"Drinking Water Project" means any work or facility necessary or desirable to provide water for human consumption and other domestic uses which has at least fifteen service connections or serves an average of twenty-five individuals daily for at least sixty days of the year and includes collection, treatment, storage, and distribution facilities under the control of the operator and used primarily with the system and collection, pretreatment or storage facilities used primarily in connection with the system but not under such control.

"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.

"Drinking Water Regional Planning" means a county wide water plan, administered locally by a coordinator, who facilitates the input of representatives of each public water system in the county with a selected consultant, to determine how each public water system will either collectively or individually comply with source protection, operator certification, monitoring (including consumer confidence reports), capacity development (including technical, financial and managerial aspects), environmental issues, available funding and related studies.

"Dual sample set" is a set of two samples collected at the same time and same location, with one sample analyzed for TTHM and the other sample analyzed for HAA5. Dual sample sets are collected for the purposes of conducting an IDSE under R309-210-9 and determining compliance with the TTHM and HAA5 MCLs under R309-210-10.

"DWSP Program" means the program to protect drinking water source protection zones and management areas from contaminants that may have an adverse effect on the health of persons.

"DWSP Zone" means the surface and subsurface area surrounding a ground-water or surface water source of drinking water supplying a PWS, over which or through which contaminants are reasonably likely to move toward and reach such water source.

"Emergency Storage" means that storage tank volume which provides water during emergency situations, such as pipeline failures, major trunk main failures, equipment failures, electrical power outages, water treatment facility failures, source water supply contamination, or natural disasters.

"Engineer" means a person licensed under the Professional Engineers and Land Surveyors Licensing Act, 58-22 of the Utah Code, as a "professional engineer" as defined therein.

"Enhanced coagulation" means the addition of sufficient coagulant for improved removal of disinfection byproduct precursors by conventional filtration treatment.

"Enhanced softening" means the improved removal of disinfection byproduct precursors by precipitative softening.

"Equalization Storage" means that storage tank volume which stores water during periods of low demand and releases the water under periods of high demand. Equalization storage provides a buffer between the sources and distribution for the varying daily water demands. Typically, water demands are high in the early morning or evening and relatively low in the middle of the night. A rule-of-thumb for equalization storage volume is that it should be equal to one average day's use.

"Equivalent Residential Connection" (ERC) is a term used to evaluate service connections to consumers other than the typical residential domicile. Public water system management is expected to review annual metered drinking water volumes delivered to non-residential connections and estimate the equivalent number of residential connections that these represent based upon the average of annual metered drinking water volumes delivered to true single family residential connections. This information is utilized in evaluation of the system's source and storage capacities (refer to R309-510).

"Executive Secretary" means the Executive Secretary of the Board as appointed and with authority outlined in 19-4-106 of the Utah Code.

"Existing ground-water source of drinking water" means a public supply ground-water source for which plans and specifications were submitted to the Division on or before July 26, 1993.

"Existing surface water source of drinking water" means a public supply surface water source for which plans and specifications were submitted to the Division on or before June 12, 2000.

"Filtration" means a process for removing particulate matter from water by passage through porous media.

"Filter profile" is a graphical representation of individual filter performance, based on continuous turbidity measurements or total particle counts verus time for an entire filter run, from startup to backwash inclusively, that includes an assessment of filter performance while another filter is being backwashed.

"Financial Assistance" means a drinking water project loan, credit enhancement agreement, interest buy-down agreement or hardship grant.

"Finished water" is water that is introduced into the distribution system of a public water system and is intended for distribution and consumption without further treatment, except as treatment necessary to maintain water quality in the distribution system (e.g., booster disinfection, addition of

corrosion control chemicals).

"Fire Suppression Storage" means that storage tank volume allocated to fire suppression activities. It is generally determined by the requirements of the local fire marshal, expressed in gallons, and determined by the product of a minimum flowrate in gpm and required time expressed in minutes.

"First draw sample" means a one-liter sample of tap water, collected in accordance with an approved lead and copper sampling site plan, that has been standing in plumbing pipes at least 6 hours and is collected without flushing the tap.

"Flash Mix" is the physical process of blending or dispersing a chemical additive into an unblended stream. Flash Mixing is used where an additive needs to be dispersed rapidly (within a period of one to ten seconds). Common usage of terms such as "rapid mix" or "initial mix" are synonymous with flash mix.

"Floc" means flocculated particles or agglomerated particles formed during the flocculation process. Flocculation enhances the agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculated particles may be small (less than 0.1 mm diameter) micro flocs or large, visible flocs (0.1 to 3.0 mm diameter).

"Flocculation" means a process to enhance agglomeration of destabilized particles and colloids toward settleable (or filterable) particles (flocs). Flocculation begins immediately after destabilization in the zone of decaying mixing energy (downstream from the mixer) or as a result of the turbulence of transporting flow. Such incidental flocculation may be an adequate flocculation process in some instances. Normally flocculation involves an intentional and defined process of gentle stirring to enhance contact of destabilized particles and to build floc particles of optimum size, density, and strength to be subsequently removed by settling or filtration.

"Flowing stream" is a course of running water flowing in a definite channel.

"fps" means feet per second and is one way of expressing the velocity of water.

"G" is used to express the energy required for mixing and for flocculation. It is a term which is used to compare velocity gradients or the relative number of contacts per unit volume per second made by suspended particles during the flocculation process. Velocity gradients G may be calculated from the following equation: G = square root of the value(550 times P divided by u times V). Where: P = applied horsepower, u = viscosity, and V = effective volume.

"GAC10" means granular activated carbon filter beds with an empty-bed contact time of 10 minutes based on average daily flow and a carbon reactivation frequency of every 180 days, except that the reactivation frequency for GAC10 used as a best available technology for compliance with R309-210-10 MCLs under R309-200-5(3)(i)(A) shall be 120 days.

"GAC20" means granular activated carbon filter beds with an empty-bed contact time of 20 minutes based on average daily flow and a carbon reactivation frequency of every 240 days.

"Geologist" means a person licensed under the Professional Geologist Licensing Act, 58-76 of the Utah Code, as a "professional geologist" as defined therein.

"Geometric Mean" the geometric mean of a set of N numbers X_1, X_2, X_3,...., X_N is the Nth root of the product of the numbers.

"gpd" means gallons per day and is one way of expressing average daily water demands experienced by public water systems.

"gpm" means gallons per minute and is one way of expressing flowrate.

"gpm/sf" means gallons per minute per square foot and is one way of expressing flowrate through a surface area.

"Grade" means any one of four possible steps within a certification discipline of either water distribution or water treatment. Grade I indicates knowledge and experience requirements for the smallest type of public water supply. Grade IV indicates knowledge and experience levels appropriate for the largest, most complex type of public water supply.

"Gross Alpha Particle Activity" means the total radioactivity due to alpha particle emission as inferred from measurements on a dry sample.

"Gross Beta Particle Activity" means the total radioactivity due to beta particle emission as inferred from measurements on a dry sample.

"ground water of high quality" means a well or spring producing water deemed by the Executive Secretary to be of sufficiently high quality that no treatment is required. Such sources shall have been designed and constructed in conformance with these rules, have been tested to establish that all applicable drinking water quality standards (as given in rule R309-200) are reliably and consistently met, have been deemed not vulnerable to natural or man-caused contamination, and the public water system management have established adequate protection zones and management policies in accordance with rule R309-600.

"ground water of low quality" means a well or spring which, as determined by the Executive Secretary, cannot reliably and consistently meet the drinking water quality standards described in R309-200. Such sources shall be deemed to be a low quality ground water source if any of the conditions outlined in subsection R309-505-8(1) exist. Ground water that is classified "UDI" is a subset of this definition and requires "conventional surface water treatment" or an acceptable alternative.

"Ground Water Source" means any well, spring, tunnel, adit, or other underground opening from or through which ground water flows or is pumped from subsurface water-bearing formations.

"Ground Water Under the Direct Influence of Surface Water" or "UDI" or "GWUDI" means any water beneath the surface of the ground with significant occurrence of insects or other macro organisms, algae, or large-diameter pathogens such as Giardia lamblia, or Cryptosporidium, or significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH which closely correlate to climatological or surface water conditions. Direct influence will be determined for individual sources in accordance with criteria established by the Executive Secretary. The determination of direct influence may be based on site-specific measurements of water quality and/or documentation of well or spring construction and geology with field evaluation.

"Haloacetic acids"(five) (HAA5) mean the sum of the concentrations in mg/L of the haloacetic acid compounds (monochloroacetic acid, dichloroacetic acid, trichloroacetic acid, monobromoacetic acid, and dibromoacetic acid), rounded to two significant figures after addition.

"Hardship Grant" means a grant of monies to a political subdivision that meets the drinking water project loan considerations whose project is determined by the Board to not be economically feasible unless grant assistance is provided. A hardship grant may be authorized in the following forms:

(1) a Planning Advance which will be required to be repaid at a later date, to help meet project costs incident to planning to determine the economic, engineering and financial feasibility of a proposed project;

(2) a Design Advance which will be required to be repaid at a later date, to help meet project costs incident to design including, but not limited to, surveys, preparation of plans, working drawings, specifications, investigations and studies; or

(3) a Project Grant which will not be required to be repaid.

"Hardship Grant Assessment" means an assessment applied to loan recipients. The assessment shall be calculated as a

percentage of principal. Hardship grant assessment funds shall be subject to the requirements of UAC R309-700 for hardship grants.

"Hotel, Motel or Resort" shall include tourist courts, motor hotels, resort camps, hostels, lodges, dormitories and similar facilities, and shall mean every building, or structure with all buildings and facilities in connection, kept, used, maintained as, advertised as, or held out to the public to be, a place where living accommodations are furnished to transient guests or to groups normally occupying such facilities on a seasonal or short term basis.

"Hydrogeologic methods" means the techniques used to translate selected criteria and criteria thresholds into mappable delineation boundaries. These methods include, but are not limited to, arbitrary fixed radii, analytical calculations and models, hydrogeologic mapping, and numerical flow models.

"Initial compliance period" means the first full three-year compliance period which begins at least 18 months after promulgation, except for contaminants listed in R309-200-5(3)(a), Table 200-2 numbers 19 to 33; R309-200-5(3)(b), Table 200-3 numbers 19 to 21; and R309-200-5(1)(c), Table 200-1 numbers 1, 5, 8, 11 and 18, initial compliance period means the first full three-year compliance after promulgation for systems with 150 or more service connections (January 1993-December 1995), and first full three-year compliance period after the effective date of the regulation (January 1996-December 1998) for systems having fewer than 150 service connections.

"Intake", for the purposes of surface water drinking water source protection, means the device used to divert surface water and also the conveyance to the point immediately preceding treatment, or, if no treatment is provided, at the entry point to the distribution system.

"Interest Buy-Down Agreement" means any agreement entered into between the Board, on behalf of the State, and a political subdivision, for the purpose of reducing the cost of financing incurred by a political subdivision on bonds issued by the subdivision for drinking water project costs.

"Labor Camp" shall mean one or more buildings, structures, or grounds set aside for use as living quarters for groups of migrant laborers or temporary housing facilities intended to accommodate construction, industrial, mining or demolition workers.

"Lake / reservoir" refers to a natural or man made basin or hollow on the Earth's surface in which water collects or is stored that may or may not have a current or single direction of flow.

"Land management strategies" means zoning and non-zoning controls which include, but are not limited to, the following: zoning and subdivision ordinances, site plan reviews, design and operating standards, source prohibitions, purchase of property and development rights, public education programs, ground water monitoring, household hazardous waste collection programs, water conservation programs, memoranda of understanding, written contracts and agreements, and so forth.

"Land use agreement" means a written agreement, memoranda or contract wherein the owner(s) agrees not to locate or allow the location of uncontrolled potential contamination sources or pollution sources within zone one of new wells in protected aquifers or zone one of surface water sources. The owner(s) must also agree not to locate or allow the location of pollution sources within zone two of new wells in unprotected aquifers and new springs unless the pollution source agrees to install design standards which prevent contaminated discharges to ground water. This restriction must be binding on all heirs, successors, and assigns. Land use agreements must be recorded with the property description in the local county recorder's office. Refer to R309-600-13(2)(d).

Land use agreements for protection areas on publicly owned lands need not be recorded in the local county recorder office. However, a letter must be obtained from the Administrator of the land in question and meet the requirements described above.

"Large water system" for the purposes of R309-210-6 only, means a water system that serves more than 50,000 persons.

"Lead free" means, for the purposes of R309-210-6, when used with respect to solders and flux refers to solders and flux containing not more than 0.2 percent lead; when used with respect to pipes and pipe fittings refers to pipes and pipe fittings containing not more than 8.0 percent lead; and when used with respect to plumbing fittings and fixtures intended by the manufacturer to dispense water for human ingestion refers to fittings and fixtures that are in compliance with standards established in accordance with 42 U.S.C. 300 g-6(e).

"Lead service line" means a service line made of lead which connects the water main to the building inlet and any lead pigtail, gooseneck or other fitting which is connected to such lead line.

"Legionella" means a genus of bacteria, some species of which have caused a type of pneumonia called Legionnaires Disease.

"Locational running annual average (LRAA)" is the average of sample analytical results for samples taken at a particular monitoring location during the previous four calendar quarters.

"Major Bacteriological Routine Monitoring Violation" means that no routine bacteriological sample was taken as required by R309-210-5(1).

"Major Bacteriological Repeat Monitoring Violation" - means that no repeat bacteriological sample was taken as required by R309-210-5(2).

"Major Chemical Monitoring Violation" - means that no initial background chemical sample was taken as required in R309-515-4(5).

"Management area" means the area outside of zone one and within a two-mile radius where the Optional Two-mile Radius Delineation Procedure has been used to identify a protection area.

For wells, land may be excluded from the DWSP management area at locations where it is more than 100 feet lower in elevation than the total drilled depth of the well.

For springs and tunnels, the DWSP management area is all land at elevation equal to or higher than, and within a two-mile radius, of the spring or tunnel collection area. The DWSP management area also includes all land lower in elevation than, and within 100 horizontal feet, of the spring or tunnel collection area. The elevation datum to be used is the point of water collection. Land may also be excluded from the DWSP management area at locations where it is separated from the ground water source by a surface drainage which is lower in elevation than the spring or tunnel collection area.

"Man-Made Beta Particle and Photon Emitters" means all radionuclides emitting beta particles and/or photons listed in Maximum Permissible Body Burdens and maximum Permissible Concentration of Radionuclides in Air or Water for Occupational Exposure, "NBS Handbook 69," except the daughter products of thorium-232, uranium-235 and uranium-238.

"Master Plan" (or "System Capacity and Expansion Report") means a organized plan addressing the present and future demands that will be placed on a public drinking water system by expanding into undeveloped areas or accepting additional service contracts. As a minimum a satisfactory master plan must contain the following elements:

(a) A listing of sources including: the source name, the source type (i.e., well, spring, reservoir, stream etc.) for both existing sources and additional sources identified as needed for system expansion, the minimum reliable flow of the source in gallons per minute, the status of the water right and the flow

capacity of the water right.

(b) A listing of storage facilities including: the storage tank name, the type of material (i.e., steel, concrete etc.), the diameter, the total volume in gallons, and the elevation of the overflow, the lowest level (elevation) of the equalization volume, the fire suppression volume, and the emergency volume or the outlet.

(c) A listing of pump stations including: the pump station name and the pumping capacity in gallons per minute. Under this requirement one does not need to list well pump stations as they are provided in requirement (a) above.

(d) A listing of the various pipeline sizes within the distribution system with their associated pipe materials and, if readily available, the approximate length of pipe in each size and material category. A schematic of the distribution piping showing node points, elevations, length and size of lines, pressure zones, demands, and coefficients used for the hydraulic analysis required by (h) below will suffice.

(e) A listing by customer type (i.e., single family residence, 40 unit condominium complex, elementary school, junior high school, high school, hospital, post office, industry, commercial etc.) along with an assessment of their associated number of ERC'S.

(f) The number of connections along with their associated ERC value that the public drinking water system is committed to serve, but has not yet physically connected to the infrastructure.

(g) A description of the nature and extent of the area currently served by the water system and a plan of action to control addition of new service connections or expansion of the public drinking water system to serve new development(s). The plan shall include current number of service connections and water usage as well as land use projections and forecasts of future water usage.

(h) A hydraulic analysis of the existing distribution system along with any proposed distribution system expansion identified in (g) above.

(i) A description of potential alternatives to manage system growth, including interconnections with other existing public drinking water systems, developer responsibilities and requirements, water rights issues, source and storage capacity issues and distribution issues.

"Maximum Contaminant Level" (MCL) means the maximum permissible level of a contaminant in water which is delivered to any user of a public water system.

"Maximum residual disinfectant level" (MRDL) means a level of a disinfectant added for water treatment that may not be exceeded at the consumer's tap without an unacceptable possibility of adverse health effects. For chlorine and chloramines, a PWS is in compliance with the MRDL when the running annual average of monthly averages of samples taken in the distribution system, computed quarterly, is less than or equal to the MRDL. For chlorine dioxide, a PWS is in compliance with the MRDL when daily samples are taken at the entrance to the distribution system and no two consecutive daily samples exceed the MRDL. MRDLs are enforceable in the same manner as MCLs pursuant to UT Code S 19-4-104. There is convincing evidence that addition of a disinfectant is necessary for control of waterborne microbial contaminants. Notwithstanding the MRDLs listed in R309-200-5(3), operators may increase residual disinfectant levels of chlorine or chloramines (but not chlorine dioxide) in the distribution system to a level and for a time necessary to protect public health to address specific microbiological contamination problems caused by circumstances such as distribution line breaks, storm runoff events, source water contamination, or cross-connections.

"Maximum residual disinfectant level goal" (MRDLG) means the maximum level of a disinfectant added for water treatment at which no known or anticipated adverse effect on the health of persons would occur, and which allows an adequate margin of safety. MRDLGs are non-enforceable health goals and do not reflect the benefit of the addition of the chemical for control of waterborne microbial contaminants.

"Medium-size water system" for the purposes of R309-210-6 only, means a water system that serves greater than 3,300 and less than or equal to 50,000 persons.

"Membrane filtration" is a pressure or vacuum driven separation process in which particulate matter larger than 1 micrometer is rejected by an engineered barrier, primarily through a size-exclusion mechanism, and which has a measurable removal efficiency of a target organism that can be verified through the application of a direct integrity test. This definition includes that common membrane technologies of microfiltration, ultrafiltration, nanofiltration, and reverse osmosis.

"Metropolitan area sources" means all sources within a metropolitan area. A metropolitan area is further defined to contain at least 3,300 year round residents. A small water system which has sources within a metropolitan system's service area, may have those sources classified as a metropolitan area source.

"MG" means million gallons and is one way of expressing a volume of water.

"MGD" means million gallons per day and is one way of expressing average daily water demands experienced by public water systems or the capacity of a water treatment plant.

"mg/L" means milligrams per liter and is one way of expressing the concentration of a chemical in water. At small concentrations, mg/L is synonymous with "ppm" (parts per million).

"Minor Bacteriological Routine Monitoring Violation" means that not all of the routine bacteriological samples were taken as required by R309-210-5(1).

"Minor Bacteriological Repeat Monitoring Violation" means that not all of the repeat bacteriological samples were taken as required by R309-210-5(2).

"Minor Chemical Monitoring Violation" means that the required chemical sample(s) was not taken in accordance with R309-205 and R309-210.

"Modern Recreation Camp" means a campground accessible by any type of vehicular traffic. The camp is used wholly or in part for recreation, training or instruction, social, religious, or physical education activities or whose primary purpose is to provide an outdoor group living experience. The site is equipped with permanent buildings for the purpose of sleeping, a drinking water supply under pressure, food service facilities, and may be operated on a seasonal or short term basis. These types of camps shall include but are not limited to privately owned campgrounds such as youth camps, church camps, boy or girl scout camps, mixed age groups, family group camps, etc.

"Near the first service connection" means one of the service connections within the first 20 percent of all service connections that are nearest to the treatment facilities.

"Negative Interest" means a loan having loan terms with an interest rate at less than zero percent. The repayment schedule for loans having a negative interest rate will be prepared by the Board.

"New ground water source of drinking water" means a public supply ground water source of drinking water for which plans and specifications are submitted to the Division after July 26, 1993.

"New surface water source of drinking water" means a public supply surface water source of drinking water for which plans and specifications are submitted to the Division after June 12, 2000.

"New Water System" means a system that will become a community water system or non-transient, non-community

water system on or after October 1, 1999.

"Non-Community Water System" (NCWS) means a public water system that is not a community water system. There are two types of NCWS's: transient and non-transient.

"Non-distribution system plumbing problem" means a coliform contamination problem in a public water system with more than one service connection that is limited to the specific service connection from which a coliform-positive sample was taken.

"Nonpoint source" means any diffuse source of contaminants or pollutants not otherwise defined as a point source.

"Non-Transient Non-Community Water System" (NTNCWS) means a public water system that regularly serves at least 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those serving the same individuals (industrial workers, school children, church members) by means of a separate system.

"Not Approved" refers to a rating placed on a system by the Division and means the water system does not fully comply with all the Rules of R309 as measured by R309-400.

"NTU" means Nephelometric Turbidity Units and is an acceptable method for measuring the clarity of water utilizing an electronic nephelometer (see "Standard Methods for Examination of Water and Wastewater").

"Operator" means a person who operates, repairs, maintains, and is directly employed by a public drinking water system.

"Operator Certification Commission" means the Commission appointed by the Board as an advisory Commission on public water system operator certification.

"Operating Permit" means written authorization from the Executive Secretary to actually start utilizing a facility constructed as part of a public water system.

"Optimal corrosion control treatment" for the purposes of R309-210-6 only, means the corrosion control treatment that minimizes the lead and copper concentrations at users' taps while insuring that the treatment does not cause the water system to violate any national primary drinking water regulations.

"Package Plants" refers to water treatment plants manufactured and supplied generally by one company which are reportedly complete and ready to hook to a raw water supply line. Caution, some plants do not completely comply with all requirements of these rules and will generally require additional equipment.

"PCBs" means a group of chemicals that contain polychlorinated biphenyl.

"Peak Day Demand" means the amount of water delivered to consumers by a public water system on the day of highest consumption, generally expressed in gpd or MGD. This peak day will likely occur during a particularly hot spell in the summer. In contrast, some systems associated with the skiing industry may experience their "Peak Day Demand" in the winter.

"Peak Hourly Flow" means the maximum hourly flow rate from a water treatment plant and utilized when the plant is preparing disinfection profiling as called for in R309-215-14(2).

"Peak Instantaneous Demand" means calculated or estimated highest flowrate that can be expected through any water mains of the distribution network of a public water system at any instant in time, generally expressed in gpm or cfs (refer to section R309-510-9).

"Person" means an individual, corporation, company, association, partnership; municipality; or State, Federal, or tribal agency.

"Picocurie" (pCi) means that quantity of radioactive material producing 2.22 nuclear transformations per minute.

"Plan Approval" means written approval, by the Executive Secretary, of contract plans and specifications for any public drinking water project which have been submitted for review prior to the start of construction (see also R309-500-7).

"Plant intake" refers to the works or structures at the head of a conduit through which water is diverted from a source (e.g., river or lake) into the treatment plant.

"Plug Flow" is a term to describe when water flowing through a tank, basin or reactors moves as a plug of water without ever dispersing or mixing with the rest of the water flowing through the tank.

"Point of Disinfectant Application" is the point where the disinfectant is applied and water downstream of that point is not subject to re-contamination by surface water runoff.

"Point of Diversion"(POD) is the point at which water from a surface source enters a piped conveyance, storage tank, or is otherwise removed from open exposure prior to treatment.

"Point-of-Entry Treatment Device" means a treatment device applied to the drinking water entering a house or building for the purpose of reducing contaminants in the drinking water distributed throughout the house or building.

"Point-of-Use Treatment Device" means a treatment device applied to a single tap used for the purpose of reducing contaminants in drinking water at that one tap.

"Point source" means any discernible, confined, and discrete source of pollutants or contaminants, including but not limited to any site, pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, animal feeding operation with more than ten animal units, landfill, or vessel or other floating craft, from which pollutants are or may be discharged.

"Political Subdivision" means any county, city, town, improvement district, metropolitan water district, water conservancy district, special service district, drainage district, irrigation district, separate legal or administrative entity created under Title 11, Chapter 13, Interlocal Cooperation Act, or any other entity constituting a political subdivision under the laws of Utah.

"Pollution source" means point source discharges of contaminants to ground or surface water or potential discharges of the liquid forms of "extremely hazardous substances" which are stored in containers in excess of "applicable threshold planning quantities" as specified in SARA Title III. Examples of possible pollution sources include, but are not limited to, the following: storage facilities that store the liquid forms of extremely hazardous substances, septic tanks, drain fields, class V underground injection wells, landfills, open dumps, landfilling of sludge and septage, manure piles, salt piles, pit privies, drain lines, and animal feeding operations with more than ten animal units.

The following definitions are part of R309-600 and clarify the meaning of "pollution source:"

(1) "Animal feeding operation" means a lot or facility where the following conditions are met: animals have been or will be stabled or confined and fed or maintained for a total of 45 days or more in any 12 month period, and crops, vegetation forage growth, or post-harvest residues are not sustained in the normal growing season over any portion of the lot or facility. Two or more animal feeding operations under common ownership are considered to be a single feeding operation if they adjoin each other, if they use a common area, or if they use a common system for the disposal of wastes.

(2) "Animal unit" means a unit of measurement for any animal feeding operation calculated by adding the following numbers; the number of slaughter and feeder cattle multiplied by 1.0, plus the number of mature dairy cattle multiplied by 1.4, plus the number of swine weighing over 55 pounds multiplied by 0.4, plus the number of sheep multiplied by 0.1, plus the number of horses multiplied by 2.0.

(3) "Extremely hazardous substances" means those substances which are identified in the Sec. 302(EHS) column of

the "TITLE III LIST OF LISTS - Consolidated List of Chemicals Subject to Reporting Under SARA Title III," (EPA 550-B-96-015). A copy of this document may be obtained from: NCEPI, PO Box 42419, Cincinnati, OH 45202. Online ordering is also available at http://www.epa.gov/ncepihom/orderpub.html.

"Potential contamination source" means any facility or site which employs an activity or procedure which may potentially contaminate ground or surface water. A pollution source is also a potential contamination source.

"ppm" means parts per million and is one way of expressing the concentration of a chemical in water. At small concentrations generally used, ppm is synonymous with "mg/l" (milligrams per liter).

"Practical Quantitation Level" (PQL) means the required analysis standard for laboratory certification to perform lead and copper analyses. The PQL for lead is .005 milligrams per liter and the PQL for copper is 0.050 milligrams per liter.

"Presedimentation" is a preliminary treatment process used to remove gravel, sand and other particulate material from the source water through settling before the water enters the primary clarification and filtration processes in a treatment plant.

"Primary Disinfection" means the adding of an acceptable primary disinfectant during the treatment process to provide adequate levels of inactivation of bacteria and pathogens. The effectiveness is measured through "CT" values and the "Total Inactivation Ratio." Acceptable primary disinfectants are, chlorine, ozone, and chlorine dioxide (see also "CT" and "$CT_{99.9}$").

"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 R309-705-8, and by the Board.

"Project Costs" include the cost of acquiring and constructing any drinking water 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; engineering or architectural fees, legal fees, fiscal agent's 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; and any other cost incurred by the political subdivision, the Board or the Department of Environmental Quality, in connection with the issuance of obligation of the political subdivision to evidence any loan made to it under the law.

"Protected aquifer" means a producing aquifer in which the following conditions are met:

(1) A naturally protective layer of clay, at least 30 feet in thickness, is present above the aquifer;

(2) the PWS provides data to indicate the lateral continuity of the clay layer to the extent of zone two; and

(3) the public supply well is grouted with a grout seal that extends from the ground surface down to at least 100 feet below the surface, and for a thickness of at least 30 feet through the protective clay layer.

"Public Drinking Water Project" means construction, addition to, or modification of any facility of a public water system which may affect the quality or quantity of the drinking water (see also section R309-500-6).

"Public Water System" (PWS) means a system, either publicly or privately owned, providing water through constructed conveyances for human consumption and other domestic uses, which has at least 15 service connections or serves an average of at least 25 individuals daily at least 60 days out of the year and includes collection, treatment, storage, or distribution facilities under the control of the operator and used primarily in connection with the system, or collection, pretreatment or storage facilities used primarily in connection with the system but not under his control (see 19-4-102 of the Utah Code Annotated). All public water systems are further categorized into three different types, community (CWS), non-transient non-community (NTNCWS), and transient non-community (TNCWS). These categories are important with respect to required monitoring and water quality testing found in R309-205 and R309-210 (see also definition of "water system").

"Raw Water" means water that is destined for some treatment process that will make it acceptable as drinking water. Common usage of terms such as lake or stream water, surface water or irrigation water are synonymous with raw water.

"Recreational Home Developments" are subdivision type developments wherein the dwellings are not intended as permanent domiciles.

"Recreational Vehicle Park" means any site, tract or parcel of land on which facilities have been developed to provide temporary living quarters for individuals utilizing recreational vehicles. Such a park may be developed or owned by a private, public or non-profit organization catering to the general public or restricted to the organizational or institutional member and their guests only.

"Regional Operator" means a certified operator who is in direct responsible charge of more than one public drinking water system.

"Regionalized Water System" means any combination of water systems which are physically connected or operated or managed as a single unit.

"Rem" means the unit of dose equivalent from ionizing radiation to the total body or any internal organ or organ system. A "millirem" (mrem) is 1/1000 of a rem.

"Renewal Course" means a course of instruction, approved by the Subcommittee, which is a prerequisite to the renewal of a Backflow Technician's Certificate.

"Repeat compliance period" means any subsequent compliance period after the initial compliance period.

"Replacement well" means a public supply well drilled for the sole purpose of replacing an existing public supply well which is impaired or made useless by structural difficulties and in which the following conditions are met:

(1) the proposed well location shall be within a radius of 150 feet from an existing ground water supply well; and

(2) the PWS provides a copy of the replacement application approved by the State Engineer (refer to Section 73-3-28 of the Utah Code).

"Required reserve" means funds set aside to meet requirements set forth in a loan covenant/bond indenture.

"Residual Disinfectant Concentration" ("C" in CT calculations) means the concentration of disinfectant, measured in mg/L, in a representative sample of water.

"Restricted Certificate" means that the operator has qualified by passing an examination but is in a restricted certification status due to lack of experience as an operator.

"Roadway Rest Stop" shall mean any building, or buildings, or grounds, parking areas, including the necessary toilet, hand washing, water supply and wastewater facilities intended for the accommodation of people using such facilities while traveling on public roadways. It does not include scenic view or roadside picnic areas or other parking areas if these are properly identified

"Routine Chemical Monitoring Violation" means no routine chemical sample(s) was taken as required in R309-205, R309-210 and R309-215.

"Safe Yield" means the annual quantity of water that can be

taken from a source of supply over a period of years without depleting the source beyond its ability to be replenished naturally in "wet years".

"Sanitary Seal" means a cap that prevents contaminants from entering a well through the top of the casing.

"scfm/sf" means standard cubic foot per minute per square foot and is one way of expressing flowrate of air at standard density through a filter or duct area.

"Secondary Disinfection" means the adding of an acceptable secondary disinfectant to assure that the quality of the water is maintained throughout the distribution system. The effectiveness is measured by maintaining detectable disinfectant residuals throughout the distribution system. Acceptable secondary disinfectants are chlorine, chloramine, and chlorine dioxide.

"Secondary Maximum Contaminant Level" means the advisable maximum level of contaminant in water which is delivered to any user of a public water system.

"Secretary to the Subcommittee" means that individual appointed by the Executive Secretary to conduct the business of the Subcommittee.

"Sedimentation" means a process for removal of solids before filtration by gravity or separation.

"Semi-Developed Camp" means a campground accessible by any type of vehicular traffic. Facilities are provided for both protection of site and comfort of users. Roads, trails and campsites are defined and basic facilities (water, flush toilets and/or vault toilets, tables, fireplaces or tent pads) are provided. These camps include but are not limited to National Forest campgrounds, Bureau of Reclamation campgrounds, and youth camps.

"Service Connection" means the constructed conveyance by which a dwelling, commercial or industrial establishment, or other water user obtains water from the supplier's distribution system. Multiple dwelling units such as condominiums or apartments, shall be considered to have a single service connection, if fed by a single line, for the purpose of microbiological repeat sampling; but shall be evaluated by the supplier as multiple "equivalent residential connections" for the purpose of source and storage capacities.

"Service Factor" means a rating on a motor to indicate an increased horsepower capacity beyond nominal nameplate capacity for occasional overload conditions.

"Service line sample" means a one-liter sample of water collected in accordance with R309-210-6(3)(b)(iii), that has been standing for at least 6 hours in a service line.

"Single family structure" for the purposes of R309-210-6 only, means a building constructed as a single-family residence that is currently used as either a residence or a place of business.

"Small water system" means a public water system that serves 3,300 persons or fewer.

"Specialist" means a person who has successfully passed the written certification exam and meets the required experience, but who is not in direct employment with a Utah public drinking water system.

"Stabilized drawdown" means that there is less than 0.5 foot of change in water level measurements in a pumped well for a minimum period of six hours.

"Standard sample" means the aliquot of finished drinking water that is examined for the presence of coliform bacteria.

"SOCs" means synthetic organic chemicals.

"Stabilized Drawdown" means the drawdown measurements taken during a constant-rate yield and drawdown test as outlined in subsection R309-515-14(10)(b) are constant (no change).

"Stock Tight" means a type of fence that can prevent the passage of grazing livestock through its boundary. An example of such fencing is provided by design drawing 02838-3 titled "Cattle Exclosure" designed by the U.S. Department of the Interior, Bureau of Land Management, Division of Technical Services (copies available from the Division).

"Subcommittee" means the Cross Connection Control Subcommittee.

"Supplier of water" means any person who owns or operates a public water system.

"Surface Water" means all water which is open to the atmosphere and subject to surface runoff (see also section R309-515-5(1)). This includes conveyances such as ditches, canals and aqueducts, as well as natural features.

"Surface Water Systems" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection (Federal SWTR subpart H) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Surface Water Systems (Large)" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection and serve a population of 10,000 or greater (Federal SWTR subpart P and L) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Surface Water Systems (Small)" means public water systems using surface water or ground water under the direct influence of surface water as a source that are subject to filtration and disinfection and serve a population less than 10,000 (Federal SWTR subpart L, T and P (sanitary survey requirements)) and the requirements of R309-215 "Monitoring and Water Quality: Treatment Plant Monitoring Requirements."

"Susceptibility" means the potential for a PWS (as determined at the point immediately preceding treatment, or if no treatment is provided, at the entry point to the distribution system) to draw water contaminated above a demonstrated background water quality concentration through any overland or subsurface pathway. Such pathways may include cracks or fissures in or open areas of the surface water intake, and/or the wellhead, and/or the pipe/conveyance between the intake and the water distribution system or treatment.

"SUVA" means Specific Ultraviolet Absorption at 254 nanometers (nm), an indicator of the humic content of water. It is a calculated parameter obtained by dividing a sample's ultraviolet absorption at a wavelength of 254 nm (UV_{254}) (in m^{-1}) by its concentration of dissolved organic carbon (DOC) (in mg/L).

"System with a single service connection" means a system which supplies drinking water to consumers via a single service line.

"T" is short for "Contact Time" and is generally used in conjunction with either the residual disinfectant concentration (C) in determining CT or the velocity gradient (G) in determining mixing energy GT.

"Ten State Standards" refers to the Recommended Standards For Water Works, 1997 by the Great Lakes Upper Mississippi River Board of State Public Health and Environmental Managers available from Health Education Services, A Division of Health Research Inc., P.O. Box 7126, Albany, New York 12224, (518)439-7286.

"Time of travel" means the time required for a particle of water to move in the producing aquifer from a specific point to a ground water source of drinking water. It also means the time required for a particle of water to travel from a specific point along a surface water body to an intake.

"Total Inactivation Ratio" is the sum of all the inactivation ratios calculated for a series of disinfection sequences, and is indicated or shown as: "Summation sign (CT_{calc})/($CT_{req'd}$)." A total inactivation ratio equal to or greater than 1.0 is assumed to provide the required inactivation of Giardia lamblia cysts. $CT_{calc}/CT_{99.9}$ equal to 1.0 provides 99.9 percent (3-log)

inactivation, whereas CT_{calc}/CT_{90} equal to 1.0 only provides 90 percent (1-log) inactivation.

"Too numerous to count" (TNTC) means that the total number of bacterial colonies exceeds 200 on a 47 mm diameter membrane filter used for coliform detection.

"Total Organic Carbon" (TOC) means total organic carbon in mg/L measured using heat, oxygen, ultraviolet irradiation, chemical oxidants, or combinations of these oxidants that convert organic carbon to carbon dioxide, rounded to two significant figures.

"Total Trihalomethanes" (TTHM) means the MCL for trihalomethanes. This is the sum of four of ten possible isomers of chlorine/bromine/methane compounds, all known as trihalomethanes (THM). TTHM is defined as the arithmetic sum of the concentrations in micro grams per liter of only four of these (chloroform, bromodichloromethane, dibromochloromethane, and bromoform) rounded to two significant figures. This measurement is made by samples which are "quenched," meaning that a chlorine neutralizing agent has been added, preventing further THM formation in the samples.

"Training Coordinating Committee" means the voluntary association of individuals responsible for environmental training in the state of Utah.

"Transient Non-Community Water System" (TNCWS) means a non-community public water system that does not serve 25 of the same nonresident persons per day for more than six months per year. Examples of such systems are those, RV park, diner or convenience store where the permanent nonresident staff number less than 25, but the number of people served exceeds 25.

"Treatment Plant" means those facilities capable of providing any treatment to any waterserving a public drinking water system. (Examples would include but not be limited to disinfection, conventional surface water treatment, alternative surface water treatment methods, corrosion control methods, aeration, softening, etc.).

"Treatment Plant Manager" means the individual responsible for all operations of a treatment plant.

"Trihalomethanes" (THM) means any one or all members of this class of organic compounds.

"Trihalomethane Formation Potential" (THMFP) - these samples are collected just following disinfection and measure the highest possible TTHM value to be expected in the water distribution system. The formation potential is measured by not neutralizing the disinfecting agent at the time of collection, but storing the sample seven days at 25 degrees C prior to analysis. A chlorine residual must be present in these samples at the end of the seven day period prior to analysis for the samples to be considered valid for this test. Samples without a residual at the end of this period must be resampled if this test is desired.

"Turbidity Unit" refers to NTU or Nephelometric Turbidity Unit.

"Two-stage lime softening" is a process in which chemical addition and hardness precipitation occur in each of two distinct unit clarification processes in series prior to filtration.

"UDI" means under direct influence (see also "Ground Water Under the Direct Influence of Surface Water").

"Uncovered finished water storage facility" is a tank, reservoir, or other facility used to store water that will undergo no further treatment to reduce microbial pathogens except residual disinfection and is directly open to the atmosphere.

"Unprotected aquifer" means any aquifer that does not meet the definition of a protected aquifer.

"Unregulated Contaminant" means a known or suspected disease causing contaminant for which no maximum contaminant level has been established.

"Unrestricted Certificate" means that a certificate of competency issued by the Executive Secretary when the operator has passed the appropriate level written examination and has met all certification requirements at the discipline and grade stated on the certificate.

"Virus" means a virus of fecal origin which is infectious to humans.

"Waterborne Disease Outbreak" means the significant occurrence of acute infectious illness, epidemiologically associated with the ingestion of water from a public water system, as determined by the appropriate local or State agency.

"Watershed" means the topographic boundary that is the perimeter of the catchment basin that contributes water through a surface source to the intake structure. For the purposes of surface water DWSP, if the topographic boundary intersects the state boundary, the state boundary becomes the boundary of the watershed.

"Water Supplier" means a person who owns or operates a public drinking water system.

"Water System" means all lands, property, rights, rights-of-way, easements and related facilities owned by a single entity, which are deemed necessary or convenient to deliver drinking water from source to the service connection of a consumer(s). This includes all water rights acquired in connection with the system, all means of conserving, controlling and distributing drinking water, including, but not limited to, diversion or collection works, springs, wells, treatment plants, pumps, lift stations, service meters, mains, hydrants, reservoirs, tanks and associated appurtenances within the property or easement boundaries under the control of or controlled by the entity owning the system.

In accordance with R309, certain water systems may be exempted from monitoring requirements, but such exemption does not extend to submittal of plans and specifications for any modifications considered a public drinking water project.

"Wellhead" means the physical structure, facility, or device at the land surface from or through which ground water flows or is pumped from subsurface, water-bearing formations.

"Wholesale system" is a public water system that treats source water as necessary to produce finished water and then delivers some or all of that finished water to another public water system. Delivery may be through a direct connection or through the distribution system of one or more consecutive systems.

"Zone of Influence" corresponds to area of the upper portion of the cone of depression as described in "Groundwater and Wells," second edition, by Fletcher G. Driscoll, Ph.D., and published by Johnson Division, St. Paul, Minnesota.

KEY: drinking water, definitions
May 12, 2009 **19-4-104**
Notice of Continuation May 16, 2005 **63-46b-4**

R309. Environmental Quality, Drinking Water.
R309-500. Facility Design and Operation: Plan Review, Operation and Maintenance Requirements.
R309-500-1. Purpose.

The purpose of this rule is to describe plan review procedures and requirements, clarify projects requiring review, and inspection requirements for drinking water projects. It is intended to be applied in conjunction with rules R309-500 through R309-550. Collectively, these rules govern the design, construction, operation and maintenance of public drinking water system facilities. These rules are intended to assure that such facilities are reliably capable of supplying adequate quantities of water which consistently meet applicable drinking water quality requirements and do not pose a threat to general public health.

R309-500-2. Authority.

This rule is promulgated by the Drinking Water Board as authorized by Title 19, Environmental Quality Code, Chapter 4, Safe Drinking Water Act, Subsection 104(1)(a)(ii) of the Utah Code and in accordance with Title 63G, Chapter 3 of the same, known as the Administrative Rulemaking Act.

R309-500-3. Definitions.

Definitions for certain terms used in this rule are given in R309-110 but may be further clarified herein.

R309-500-4. General.

(1) Construction and Operation of New Facilities.

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.

Plans and specifications and a business plan as required by R309-800-5, along with a completed project notification form, shall be submitted to the Executive Secretary for any new water systems or previously un-reviewed water systems unless acceptable data can be presented that the proposed or existing water system will not become a "public water system" as defined in 19-4-102 of the Utah Code or in R309-110.

Construction of new facilities for public water systems or existing facilities of previously un-reviewed public drinking water systems shall conform to rules R309-500 through R309-550; the "Facility Design and Operation" rules. There may be times in which the requirements of the Facility Design and Operation rules are not appropriate. Thus, the Executive Secretary may grant an "exception" to the Facility Design and Operation rules if it can be shown that the granting of such an exception will not jeopardize the public health.

Construction of a public drinking water project shall not begin until complete plans and specifications have been approved in writing by the Executive Secretary unless waivers have been issued as allowed by R309-500-6(3). This approval shall be referred to as the Plan Approval.

Furthermore, no new public drinking water facility shall be put into operation until written approval to do so has been given by the Executive Secretary or this requirement waived. This approval is referred to as the Operating Permit.

(2) Existing Facilities.

All existing public drinking water systems shall be capable of reliably delivering water which meets the minimum current standard of drinking water quantity and quality requirements. The Executive Secretary may require modification of existing systems in accordance with R309-500 through R309-550 when such modifications are needed to reliably achieve minimum quantity and quality requirements.

(3) Operation and Maintenance of Existing Facilities.

Public drinking water system facilities shall be operated and maintained in a manner which protects the public health. As a minimum, the operation and maintenance procedures of R309-500 through R309-550 shall be adhered to.

R309-500-5. Public Drinking Water Project.

(1) Definition.

A public drinking water project, requiring the submittal of a project notification form along with plans and specifications, is any of the following:

(a) The construction of any facility for a proposed drinking water system (see 19-4-106(3) of the Utah Code or R309-500-4(1) above describing the authority of the Executive Secretary).

(b) Any addition to, or modification of, the facilities of an existing public drinking water system which may affect the quality or quantity of water delivered.

(c) Any activity, other than on-going operation and maintenance procedures, which may affect the quality or quantity of water delivered by an existing public drinking water system. Such activities include:

(i) the interior re-coating or re-lining of any raw or drinking water storage tank, or water storage chamber within any treatment facility,

(ii) the "in-situ" re-lining of any pipeline,

(iii) a change or addition of any primary coagulant water treatment chemical (excluding filter, flocculent or coagulant aids) when the proposed chemical does not appear on a list of chemicals pre-approved by the Executive Secretary for a specific treatment facility, and

(iv) the re-development of any spring or well source or replacement of a well pump with one of different capacity.

(2) On-going Operation and Maintenance Procedures.

On-going operation and maintenance procedures are not considered public drinking water projects and, accordingly, are not subject to the project notification, plan approval and operating permit requirements of this rule. However, these activities shall be carried out in accordance with all operation and maintenance requirements contained in R309-500 through R309-550 and specifically the disinfection, flushing and bacteriological sampling and testing requirements of ANSI/AWWA C651-05 for pipelines, ANSI/AWWA C652-02 for storage facilities, and ANSI/AWWA C654-03 for wells before they are placed back into service. The following activities are considered to be on-going operation and maintenance procedures:

(a) pipeline leak repair,

(b) replacement of existing deteriorated pipeline where the new pipeline segment is the same size as the old pipeline or the new segment is upgraded to meet the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3),

(c) tapping existing water mains with corporation stops so as to make connection to new service laterals to individual structures,

(d) distribution pipeline additions where the pipeline size is the same as the main supplying the addition or the pipeline addition meets the minimum pipeline sizes required by R309-550-5(4) or larger sizes as determined by a hydraulic analysis in accordance with R309-550-5(3), the length is less than 500 feet and contiguous segments of new pipe total less than 1000 feet in any fiscal year,

(e) entry into a drinking water storage facility for the purposes of inspection, cleaning and maintenance, and

(f) replacement of equipment or pipeline appurtenances with the same type, size and rated capacity (fire hydrants, valves, pressure regulators, meters, service laterals, chemical feeders and booster pumps including deep well pumps).

R309-500-6. Plan Approval Procedure.

(1) Project Notification.

The Division shall be notified prior to the construction of

any "public drinking water project" as defined in R309-500-5(1) above. The notification may be prior to or simultaneous with submission of construction plans and specifications as required by R309-500-6(2) below. Notification shall be made by the management of the regulated public water system on a form provided by the Division. Information required by this form shall be determined by the Division and may include:

(a) whether the project is for a new or existing public drinking water system,

(b) the professional engineer, registered in the State of Utah, designing the project and his/her experience designing public drinking water projects within the state,

(c) the individual(s) who will be inspecting the project during construction and whether such inspection will be full-time or part time,

(d) whether required approvals or permits from other governmental agencies (e.g. local planning commissions, building inspectors, Utah Division of Water Rights) are awaiting approval by the Executive Secretary, the agency's name and contact person,

(e) the fire marshal, fire district or other entity having legal authority to specify requirements for fire suppression in the project area,

(f) for community and non-transient non-community public water systems or any public water system treating surface water, the name of the certified operator who is, or will be, in direct responsible charge of the water system,

(g) whether the water system has a registered professional engineer employed, appointed or designated as being directly responsible for the entire system design and his or her name and whether the system is requesting waiving of plan submittal under conditions of R309-500-6 (3),

(h) the anticipated construction schedule, and

(i) a description of the type of legal entity responsible for the water system (i.e. corporation, political subdivision, mutual ownership, individual ownership, etc.) and the status of the entity with respect to the rules of the Utah Public Service Commission.

(2) Pre-Construction Requirements.

All of the following shall be accomplished before construction of any public drinking water project commences:

(a) Contract documents, plans and specifications for a public drinking water project shall be submitted to the Division at least 30 days prior to the date on which action is desired unless the system is eligible for and has requested waiving of plan submittal. Any submittal shall include engineering reports, pipe network hydraulic analyses, water consumption data, supporting information, evidence of rights-of-way and reference to any previously submitted master plans pertinent to the project, along with a description of a program for keeping existing water works facilities in operation during construction so as to minimize interruption of service.

(b) Plans and specifications shall be prepared for every anticipated public water system project. The design utilized shall conform to the requirements of R309-500 through R309-550. Furthermore, the plans and specification shall be sufficiently detailed to assure that the project shall be properly constructed. Drawings shall be compatible with Division's document storage and microfilming practice. Drawings which are illegible or of unusual size shall not be accepted for review. Drawing size shall not exceed 30" x 42" nor be less than 8-1/2" x 11".

(c) The plans and specifications shall be stamped and signed by a licensed professional engineer in accordance with Section 58-22-602(2) of the Utah Code.

(d) Plans and specifications shall be reviewed for conformance with R309-500 through R309-550. No work shall commence on a public water system project until a plan approval has been issued by the Executive Secretary unless conditions outlined in R309-500-6(3) are met and waiving of plan submittal has been requested. If construction or the ordering of substantial equipment has not commenced within one year, a renewal of the Plan Approval shall be obtained prior to proceeding with construction.

(e) If, in the judgment of the Executive Secretary, alternate designs or specific solutions can protect the public health to the same or greater extent as achieved in R309-500 through R309-550, the Executive Secretary may grant an exception thereto (see the third paragraph of R309-500-4(1)).

(f) Novel equipment or treatment techniques may be developed which are not specifically addressed by these rules. These may be accepted by the Executive Secretary if it can be shown that:

(i) the technique will produce water meeting the requirements of R309-200 of these rules,

(ii) the Executive Secretary has determined that it will protect public health to the same extent provided by comparable treatment processes outlined in these rules, and

(iii) the Executive Secretary has determined the technique is as reliable as any comparable treatment process outlined is these rules.

(3) Waiving of Plan Submittal Requirement.

With identification of a professional engineer, as indicated below, on a project notification form the plan submittal requirement may be waived for certain projects. In these instances, in lieu of plans and specifications, a "certification of rule conformance" shall be submitted along with the additional information required for an operating permit (see R309-500-9), signed by the professional engineer identified to Executive Secretary in (b) or, if the system has not employed, appointed, or designated such, the registered professional engineer who prepared the items in (a). Projects eligible for this waiving of plan submittal are:

(a) distribution system improvements (excluding pressure reducing valve stations and in-line booster pump stations) which conform to a "master plan" previously reviewed and approved by the Executive Secretary and installed in accordance with the system's standard installation drawings, also previously reviewed and approved by the Executive Secretary, or

(b) distribution system improvements consisting solely of pipelines and pipeline appurtenances (excluding pressure reducing valve stations and in-line booster pump stations);

(i) less than or equal to 4 inches in diameter in water systems (without fire hydrants) serving solely a residential population less than 3,300;

(ii) less than or equal to 8 inches in diameter in water systems (with fire hydrants) providing water for mixed use (commercial, industrial, agricultural and/or residential) to a population less than 3,300;

(iii) less than or equal to 12 inches in diameter in water systems(with fire hydrants) providing water for mixed use to a population between 3,300 and 50,000;

(iv) less than or equal to 16 inches in diameter in water systems (with fire hydrants) providing water for mixed use to a population greater than 50,000.

Additionally, the above systems in (b) shall employ, appoint or designate a registered professional engineer who is directly responsible for the entire public water system design and identify this individual to the Executive Secretary as well as have standard installation drawings previously reviewed and approved by the Division before being eligible for waiving of plan submittal requirements.

R309-500-7. Inspection During Construction.

Staff from the Division, or the appropriate local health department, after reasonable notice and presentation of credentials may make visits to the work site to assure compliance with these rules.

R309-500-8. Change Orders.

Any deviations from approved plans or specifications affecting capacity, hydraulic conditions, operating units, the functioning of water treatment processes, or the quality of water to be delivered, shall be reported to the Executive Secretary. If deemed appropriate, the Executive Secretary may require that revised plans and specifications be submitted for review. Revised plans or specifications shall be submitted to the Division in time to permit the review and approval of such plans or specifications before any construction work, which will be affected by such changes, is begun.

R309-500-9. Issuance of Operating Permit.

The Division shall be informed when a public drinking water project, or a well-defined phase thereof, is at or near completion. The new or modified facility shall not be used until an "Operating Permit" is issued, in writing, by the Executive Secretary. This permit shall not be issued until all of the following items are submitted and found to be acceptable for all projects with the exception of distribution lines (including in-line booster pump stations or pressure reducing stations), which may be placed into service prior to submittal of all items if the professional engineer responsible for the entire system, as identified to the Executive Secretary, has received items (1) and (4):

(1) a statement from a registered professional engineer that all conditions of Plan Approval were accomplished ("certification of rule conformance"),

(2) as-built "record" drawings; unless no changes are made from previously submitted and approved plans during construction,

(3) confirmation that a copy of the as-built "record" drawings has been received by the water system owner,

(4) evidence of proper flushing and disinfection in accordance with the appropriate ANSI/AWWA Standard,

(5) where appropriate, water quality data

(6) a statement from the Engineer indicating what changes to the project were necessary during construction, and certification that all of these changes were in conformance with these rules ("certification of rule conformance"),

(7) all other documentation which may have been required during the plan review process, and

(8) confirmation that the water system owner has been provided with an Operation and Maintenance manual for the new facility.

R309-500-10. Adequacy of Wastewater Disposal.

Plans and specifications for new water systems, or facilities required as a result of proposed subdivision additions to existing water systems, shall only be approved if the method(s) of wastewater disposal in the affected area have been approved, or been determined to be feasible, by the Utah Division of Water Quality or the appropriate local health agency.

R309-500-11. Financial Viability.

Owners of new or existing water systems are encouraged to develop realistic financial strategies for recouping the costs of constructing and operating their systems. Plans for water system facilities shall not be approved when it is obvious that public health will eventually be threatened because the anticipated usage of the system will not generate sufficient funds to insure proper operation and maintenance of the system (see also R309-352-5).

R309-500-12. Fee Schedule.

The Division may charge a fee for the review of plan and specifications. A fee schedule is available from the Division.

R309-500-13. Other Permits.

Local, county or other state permits may also be necessary before beginning construction of any drinking water project.

R309-500-14. Reference Documents.

All references made in R309-500 through R309-550 are available for inspection at the Division's office.

R309-500-15. Violations of These Rules.

Violations of rule contained in R309-500 through R309-550 are subject to the provisions of the Utah Safe Drinking Water Act (Title 19, Chapter 4 Section 109 of the Utah Code) and may be subject to fines and penalties.

KEY: drinking water, plan review, operation and maintenance requirements, permits
May 12, 2009 19-4-104
Notice of Continuation April 2, 2007

R315. Environmental Quality, Solid and Hazardous Waste.
R315-315. Special Waste Requirements.
R315-315-1. General Requirements.

(1) If special wastes are accepted at the facility, proper provisions shall be made for handling and disposal. These provisions may include, where required and approved by the Executive Secretary, a separate area for disposal of the wastes, designated by appropriate signs.

(2) Sections R315-315-2 through 9 are applicable to all solid waste facilities regulated by Rules R315-301 through 320.

R315-315-2. Asbestos Waste.

(1) Regulated asbestos-containing material to be disposed of shall be handled, transported, and disposed in a manner that will not permit the release of asbestos fibers into the air and must otherwise comply with Code of Federal Regulations, Title 40, Part 61, Section 154.

(2) No transporter or disposal facility shall accept regulated asbestos-containing material unless the waste has been adequately wetted and containerized.

(a) Regulated asbestos-containing material is adequately wetted when its moisture content prevents fiber release.

(b) Regulated asbestos-containing material is properly containerized when it is placed in double plastic bags of 6-mil or thicker, sealed in such a way to be leak-proof and air-tight, and the amount of void space or air in the bags is minimized. Regulated asbestos-containing material slurries must be packaged in leak-proof and air-tight rigid containers if such slurries are too heavy for the plastic bag containers. Upon submittal of a request, including documentation demonstrating safety, the Executive Secretary may authorize other proper methods of containment which may include double bagging, plastic-lined cardboard containers, plastic-lined metal containers, or the use of vacuum trucks for the transport of slurry.

(c) All containers holding regulated asbestos-containing material shall be labeled with the name of the waste generator, the location where the waste was generated, and tagged with a warning label indicating that the containers hold regulated asbestos-containing material.

(3) The following standards apply to the disposal of Regulated Asbestos-Containing Material;

(a) upon entering the disposal site, the transporter of the regulated asbestos-containing material shall notify the landfill operator that the load contains regulated asbestos-containing material by presenting the waste shipment record. The landfill operator will verify quantities received, sign off on the waste shipment record, and send a copy of the waste shipment record to the generator within 30 days;

(b) upon receipt of the regulated asbestos-containing material, the landfill operator shall inspect the loads to verify that the regulated asbestos-containing material is properly contained in leak-proof containers and labeled appropriately. The operator shall notify the local health department and the Executive Secretary if the operator believes that the regulated asbestos-containing material is in a condition that may cause fiber release during disposal. If the wastes are not properly containerized, and the landfill operator accepts the load, the operator shall thoroughly soak the regulated asbestos-containing material with a water spray prior to unloading, rinse out the truck, and immediately cover the regulated asbestos-containing material with material which prevents fiber release prior to compacting the regulated asbestos-containing material in the landfill.

(c) During deposition and covering of the regulated asbestos-containing material, the operator:

(i) may prepare a separate trench or separate area of the landfill to receive only regulated asbestos-containing material, or may dispose of the regulated asbestos-containing material at the working face of the landfill;

(ii) shall place the regulated asbestos-containing material containers into the trench, separate area, or at the bottom of the landfill working face with sufficient care to avoid breaking the containers;

(iii) within 18 hours or at the end of the operating day, shall completely cover the containerized regulated asbestos-containing material with sufficient care to avoid breaking the containers with a minimum of six inches of material containing no regulated asbestos-containing material. If the regulated asbestos-containing material is improperly containerized, it must be completely covered immediately with six inches of material containing no regulated asbestos-containing material; and

(iv) shall not compact regulated asbestos-containing material until completely covered with a minimum of six inches of material containing no regulated asbestos-containing material.

(d) The operator shall provide barriers adequate to control public access. At a minimum, the operator shall:

(i) limit access to the regulated asbestos-containing material management site to no more than two entrances by gates that can be locked when left unattended and by fencing adequate to restrict access by the general public; and

(ii) place warning signs at the entrances and at intervals no greater than 330 feet along the perimeter of the sections where regulated asbestos-containing material is deposited that comply with the requirements of 40 CFR 61.154(b); and

(e) close the separate trenches, if constructed, according to the requirements of Subsection R315-303-3(4) with the required signs in place.

R315-315-3. Ash.

(1) Ash Management.

(a) Ash may be recycled.

(b) If ash is disposed, the preferred method is in a permitted ash monofill, but ash may be disposed in a permitted Class I, II, III, or V landfill.

(2) Ash shall be transported in a manner to prevent leakage or the release of fugitive dust.

(3) Ash shall be handled and disposed at the landfill in a manner to prevent fugitive dust emissions.

R315-315-4. Bulky Waste.

Bulky waste such as automobile bodies, furniture, and appliances shall be crushed and then pushed onto the working face near the bottom of the cell, but not in an area that will compromise the integrity of the liner system, or into a separate disposal area.

R315-315-5. Sludge Requirements.

(1) Sludges containing free liquids may not be disposed in a landfill with other solid waste.

(2) Sludges, if they contain no free liquids, may be placed in the landfill working face and covered with other solid waste or other suitable cover material.

(3) Disposal of any type of sludge in a landfill must meet the requirements of Subsection R315-303-3(1).

R315-315-6. Dead Animals.

(1) Dead animals shall be managed and disposed in a manner that minimizes odors and the attraction, harborage, or propagation of insects, rodents, birds, or other animals.

(2) Dead animals may be disposed at the active working face of a permitted landfill or in a separate trench, at a permitted facility, specifically prepared to receive dead animals.

(a) If dead animals are disposed at the active working face of a permitted landfill, the carcasses shall be immediately covered with a minimum of two feet of soil other material.

(b) If dead animals are disposed in a separate trench, at a

permitted facility, the carcasses shall be completely covered with a minimum of six inches of earth at the end of the working day the carcasses are received.

R315-315-7. PCB Containing Waste.

(1) Any facility that disposes of nonhazardous waste, hazardous waste, or radioactive waste containing PCBs is regulated by Rules R315-301 through 320.

(2) The following wastes containing PCBs may be disposed in a permitted Class I, II, III, IV, V, or VI Landfill; permitted incinerator; permitted energy recovery facility; or a facility permitted by rule under Rule R315-318:

(a) waste, as specified by 40 CFR 761.61, containing PCBs at concentrations less than 50 ppm;

(b) PCB household waste as defined by 40 CFR 761.3 ; and

(c) small quantities, 10 or fewer, of intact, non-leaking, small PCB capacitors, including capacitors from fluorescent lights x-ray machines, and other machines and test equipment.

(3) Waste containing PCBs at concentrations of 50 ppm or higher are prohibited from disposal in a landfill, incinerator, or energy recovery facility that is regulated by Rules R315-301 through 320, except:

(a) the following facilities may receive waste containing PCBs at concentrations of 50 ppm or higher for treatment or disposal:

(i) a facility permitted prior to July 15, 1993 under 40 CFR 761.70, .75 or .77; or

(ii) a facility permitted after July 15, 1993 under 40 CFR 761.70, .71, .72, .75, or .77 and approved by the Executive Secretary under Rules R315-301 through 320; or

(b) a Class I or V landfill that has a liner and ground water monitoring or an incinerator that meets the requirements of Subsection R315-315-7(a)(i) or (ii) and when approved by the Executive Secretary, may dispose of the following PCB wastes:

(i) PCB bulk products regulated by 40 CFR 761.62(b);

(ii) drained PCB contaminated equipment as defined by 40 CFR 761.3;

(iii) drained PCB articles, including drained PCB transformers, as defined by 40 CFR 761.3;

(iv) non-liquid cleaning materials remediation wastes containing PCB's regulated by 40 CFR 761.61(a)(5)(v)(A);

(v) PCB containing manufactured products regulated by 40 CFR 761.62(b)(1)(i) and (ii); or

(vi) non-liquid PCB containing waste, initially generated as a non-liquid waste, generated as a result of research and development regulated by 40 CFR 761.64(b)(2).

(c) If a unit of a permitted landfill is approved to receive PCB containing wastes under Subsection R315-315-7(3)(b), the owner or operator of the landfill:

(i) shall modify the approved Ground Water Monitoring Plan to include the testing of the ground water samples for PCB containing constituents at appropriate detection levels; and

(ii) shall test the leachate generated at the unit of the landfill for PCB's.

R315-315-8. Petroleum Contaminated Soils.

(1) Terms used in Section R315-315-8 are defined in Section R315-301-2. For the purpose of Section R315-315-8 and in addition to the definitions in Section R315-301-2, the following definition applies: "Petroleum contaminated soils" means soils that have been contaminated with either diesel or gasoline or both.

(2) Petroleum contaminated soils that are not a hazardous waste may be accepted for disposal at a:

(a) Class I Landfill;

(b) Class II Landfill;

(c) Class III Landfill; or

(d) Class V Landfill.

(3) Petroleum contaminated soils containing the following constituents at or below the following levels and are otherwise not a hazardous waste, may be accepted for disposal at a Class IV or VI Landfill:

(a) Benzene, 0.03 mg/kg;

(b) Ethylbenzene, 13 mg/kg;

(c) Toluene, 12 mg/kg; and

(d) Xylenes, 200 mg/kg.

R315-315-9. Waste Asphalt.

(1) The preferred management of waste asphalt is recycling. Recycling of waste asphalt occurs when it is used:

(a) as a feedstock in the manufacture of new hot or cold mix asphalt;

(b) as underlayment in road construction;

(c) as subgrade in road construction when the asphalt is above the historical high level of ground water;

(d) under parking lots when the asphalt is above the historical high level of ground water; or

(e) as road shoulder when the use meets engineering requirements.

(2) If waste asphalt is disposed, it shall be disposed in a permitted landfill.

KEY: solid waste management, waste disposal
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Notice of Continuation February 14, 2008

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-27. Medicaid Certification of Nursing Care Facilities.
R414-27-1. Introduction and Authority.

(1) This rule governs the certification of nursing care facilities to receive Medicaid payments for services to Medicaid eligible individuals.

(2) This rule implements Title 26, Chapter 18, Part 5.

(3) Section 26-18-3 authorizes this rule.

R414-27-2. Medicaid Certification Requirements.

(1) The director of the Division of Health Care Financing (DHCF) within the Department of Health may authorize Medicaid certification for a nursing care facility that:

(a) is in compliance with 42 CFR Part 483 or has a plan of correction approved by the Department to remedy areas of noncompliance;

(b) is in compliance with the Health Care Facility Licensing and Inspection Act, Title 26, Chapter 21, and the rules applicable to nursing homes made pursuant to that act or has a plan of correction approved by the Department to remedy areas of noncompliance;

(c) has not increased its certified bed capacity by more than 30 percent annually after March 31, 2004, except as authorized in Subsection 26-18-503(5);

(d) is Medicare-certified by the Centers for Medicare and Medicaid Services to provide care for Medicare clients;

(e) since March 18, 2008, has not increased its licensed bed capacity except in conjunction with an increase in certified bed capacity as authorized in Subsection 26-18-503(5) or for which the DHCF Director has approved the increase in the nursing care facility program's certified bed capacity expansion before October 15, 2007; and

(f) since March 18, 2008, has not increased its certified bed capacity except as authorized in Subsection 26-18-503(5).

(2) The "independent analysis" referred to in Subsection 26-18-503(5)(b) must be performed by unrelated certified public accountants in accordance with generally accepted accounting principles.

(3) A nursing care facility is not eligible for Medicaid certification if it expands bed capacity without prior approval from the DHCF Director as authorized in this section, except as outlined in Section 26-18-505.

R414-27-3. Medicaid Certification Subsequent to Change of Ownership.

(1) The owner of a nursing care facility program may transfer ownership to another person. The transferred nursing care facility may become Medicaid certified if:

(a) the nursing care facility is in compliance with Section R414-27-2 at the time of transfer;

(b) the transferee operates the nursing care facility at the same physical location as the previous Medicaid-certified program;

(c) the transferee agrees to pay the Department's litigation costs if any third party asserts a right to operate the transferred Medicaid-certified nursing care facility;

(d) the transferee certifies that bed capacity will not expand through a third party owner with a legitimate claim to operate the transferred Medicaid-certified nursing care facility;

(e) the transferee applies for and takes all necessary steps to become Medicaid-certified within one year of the date the previously certified nursing care facility ceased to provide medical assistance to a Medicaid client;

(2) If a third party is found, by final agency action of the Department after exhaustion of all administrative and judicial appeal rights, to be entitled to operate a certified program at the physical facility, the transferee shall voluntarily comply with Subsection 26-18-503(4)(b). The Department of Health may revoke Medicaid certification if the transferee does not comply with Subsection 26-18-503(4)(b).

(3) the transferee that receives Medicaid certification after taking ownership under the provisions of Subsection R414-27-3(1) does not assume the Medicaid liabilities of the previous nursing care facility program if the transferee is not a third party owner in whole or in part of the previous nursing care facility program.

R414-27-4. Medicaid Certification Subsequent to Renovation or Construction of a New Physical Facility.

A nursing care facility operating in a new or renovated facility is eligible for re-certification if the nursing care facility:

(1) was certified at the time of renovation or new construction;

(2) was in compliance with Sections R414-27-2 and R414-27-3 when it ceased providing care to Medicaid clients at the prior location or before beginning renovations;

(3) is in the same county or within a five mile radius of the original facility;

(4) the construction is completed no later than three years after the date the nursing care facility ceased to operate in the original facility; and

(5) notifies DHCF no later than 90 days after the date outlined in Subsection R414-27-4(1) of its intent to retain its Medicaid certification.

KEY: Medicaid

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Notice of Continuation January 17, 2008	**26-18-3**
	26-18-503

R414. Health, Health Care Financing, Coverage and Reimbursement Policy.
R414-510. Intermediate Care Facility for Individuals with Mental Retardation Transition Program.
R414-510-1. Introduction and Authority.

(1) This rule implements the Intermediate Care Facility for Individuals with Mental Retardation (ICF/MR) Transition Program. Program participation is voluntary and allows an individual to transition out of an ICF/MR into the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions Home and Community-Based Services (HCBS) Waiver Program.

(2) This rule is authorized by Section 26-18-3. Waiver services for this program are optional and provided in accordance with 42 CFR 440.225.

R414-510-2. Definitions.

(1) "ICF/MR Transition Program applicant" is an individual who meets the eligibility requirements found in Section R414-510-3 of this rule, and who submits an ICF/MR Transition Program application to the Utah Department of Health, Division of Health Care Financing during the open application period as described in Subsection R414-510-4(2) of this rule.

(2) "Slot" refers to the funding that is available for one individual to participate in the ICF/MR Transition Program.

R414-510-3. Client Eligibility Requirements.

Services are available to an individual who:

(1) receives ICF/MR benefits under the Utah Medicaid State Plan;

(2) has a diagnosis of mental retardation or a related condition;

(3) meets ICF/MR level of care criteria defined in Section R414-502-8;

(4) meets the Utah Department of Human Services, Division of Services for People with Disabilities state funding eligibility criteria found in Subsection 62A-5-102(4); and

(5) has resided in a Medicaid-certified ICF/MR located in Utah for at least 12 consecutive months.

R414-510-4. Program Access Requirements.

(1) Legislative appropriations determine the number of individuals selected in the particular year for placement in the program.

(2) Upon new legislative appropriation for the program, the Department announces an open application period for accepting applications.

(3) After the open application period, the Department places the name of each ICF/MR Transition Program applicant on both a longevity list and a random list. On the longevity list, the Department ranks each ICF/MR Transition Program applicant according to length of consecutive stay in an ICF/MR in Utah. On the random list, the Department randomly ranks each ICF/MR Transition Program applicant based on a computerized random selection.

(4) The Department takes evenly from the longevity list and the random list for placement in the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions HCBS Waiver Program. If the Legislature funds an odd number of program slots, the Department places one additional individual from the longevity list.

(5) If an ICF/MR Transition Program applicant is selected for transition and has a spouse who also resides in a Utah ICF/MR and who meets the eligibility criteria in Section R414-510-2, the Department shall provide an additional slot for the spouse to participate in the transition program without affecting the number of available slots from the longevity and random lists.

(6) Once the Department places individuals into the program for the year's appropriation, the longevity and random lists are retired and no longer used. The Department makes no new placements into the program to replace individuals who leave the program for whatever reason.

(7) As the Legislature makes new appropriations for the program, the Department creates new longevity and random lists for each new appropriation and selects individuals for the program as described in subsections (2) through (4).

R414-510-5. Service Coverage.

This rule incorporates by reference the services and limitations found in the Medicaid 1915(c) HCBS Services Waiver and the Community Supports Waiver for Individuals with Intellectual Disabilities and Other Related Conditions, State Implementation Plan, Effective July 1, 2005.

R414-510-6. Reimbursement Methodology.

The Department of Human Services (DHS) contracts with DHCF to set 1915(c) HCBS waiver rates for waiver covered services. The DHS rate-setting process is designed to comply with requirements under the 1915(c) HCBS Waiver program and other applicable Medicaid rules. Medicaid requires that rates for services not exceed customary charges.

KEY: Medicaid
May 21, 2009 **26-1-5**
26-18-3

R430. Health, Health Systems Improvement, Child Care Licensing.
R430-8. Exemptions From Child Care Licensing.
R430-8-1. Legal Authority.
R430-8-2. Purpose.

This rule defines what constitutes child care that is exempt from regulation by the Utah Department of Health, Bureau of Child Care Licensing.

R430-8-3. Definitions.

(1) "Parochial education institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution and exercises oversight over the health and safety of the children in the program;

(c) is owned and operated by a religious institution that is registered with the federal government as 501(c)(3) religious organization;

(d) is not directly funded at public expense;

(e) does not receive:

(i) child care subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(f) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(2) "Private education institution" means an institution that meets all of the following criteria:

(a) operates as a substitute for, and gives the equivalent of, instruction required in public schools for any grade from first through twelfth grade;

(b) has a governing board that actively supervises and directs the educational curriculum used by the institution, and exercises oversight over the health and safety of the children in the program;

(c) is not directly funded at public expense;

(d) does not receive:

(i) child care subsidy funds, directly or indirectly, from the Department of Workforce Services; or

(ii) child care food program funds, directly or indirectly, from the State Office of Education; and

(e) does not provide instruction in the home in lieu of instruction required in public schools for any grade from first through twelfth grade.

(3) "Public school" means a school, including a charter school, that is directly funded at public expense and is regulated by a board of education governed by Title 53A, Chapter 3, Local School Boards.

(4) "Related children" means children for whom the child care provider is the:

(a) parent, legal guardian, or step-parent;

(b) grandparent, step-grandparent, or great-grandparent;

(c) sibling or step-sibling; or

(d) aunt, uncle, step-aunt, step-uncle, great-aunt, or great-uncle.

R430-8-4. Care Not in Lieu of Parental Care.

(1) The Department does not issue licenses for care that meets all of the following:

(a) the parent is physically present in the building where the care is provided, at all times while the care is being provided, and is near enough to reach his or her child to provide care within five minutes if needed;

(b) the duration of the care is less than four hours for any individual child in any one day;

(c) the program does not diaper children; and

(d) the program does not prepare or serve meals to children.

R430-8-5. Care Under Other Government Oversight.

(1) A license is not required for care provided at a facility that is owned or operated by the federal government.

(2) A license is not required for care provided by a program that is owned or operated by the federal government.

(3) A license is not required for care provided as part of a summer camp that operates on federal land pursuant to a federal permit.

(4) A license is not required for care provided by an organization that qualifies for tax exempt status under Section 501(c)(3) of the Internal Revenue Code, if:

(a) the care is provided pursuant to a written agreement with a local municipality or a county;

(b) the local municipality or county provides oversight of the program; and

(c) all of the children in care are over age four.

(5) A license is not required for care provided at a residential support program that is licensed by the Department of Human Services.

R430-8-6. Mental Health Counseling.

A license is not required for group counseling of children provided by a mental health therapist who is licensed to practice in this state, as defined in Utah Code 58-60-102.

R430-8-7. Relative Care.

The Department does not issue licenses or certificates to persons who only care for related children.

R430-8-8. Care in the Home of the Provider.

(1) A license or certificate is not required for care provided in the home of the provider for less than four hours per day, or for fewer than five children in the home at one time.

(2) The Department does not issue licenses or certificates for care provided in the home of the provider on a sporadic basis only.

R430-8-9. Care Provided by an Educational Institution.

(1) A license is not required for care provided by or at a public school or as part of a course of study at a public school.

(2) A license is not required for care provided at a public or private institution of higher education if the care is provided in connection with a course of study at the institution of higher education.

(3) A license is not required for:

(a) care provided as part of a course of study at a private education institution; or

(b) care provided as part of a program administered by a private education institution.

(4) A license is not required for care provided by a parochial education institution.

KEY: child care facilities
November 1, 2008 **26-39**
Notice of Continuation May 19, 2009

R510. Human Services, Aging and Adult Services.
R510-302. Adult Protective Services.
R510-302-1. Purpose.

This rule clarifies the responsibilities of Adult Protective Services.

R510-302-2. Authority.

This rule is authorized by Sections 62A-3-106.5 and 62A-3-302.

R510-302-3. Principles.

(1) Adult Protective Services shall respect the lifestyle that is knowingly and voluntarily chosen by the vulnerable adult.

A vulnerable adult with capacity to consent has the right to self-determination.

(2) All services provided are voluntary unless court ordered.

(3) All services provided should be the least restrictive possible.

(4) All services provided shall be community-based unless community-based services are unavailable.

(5) Adult Protective Services shall encourage a vulnerable adult's family and community to take responsibility for providing necessary services.

(6) Adult Protective Services shall coordinate and cooperate with other agencies to protect vulnerable adults.

(7) Adult Protective Services shall treat vulnerable adults and others in a courteous, dignified and professional manner.

R510-302-4. Definitions.

(1) All definitions found in Title 62A Chapter 3 are incorporated by reference.

(2) Activities of Daily Living means the ability to: take a full body bath or shower, including transfer in and out of the bath or shower; tend to personal hygiene needs, including care of teeth, dentures, shaving, and hair care; put on, fasten and take off all clothing, and select appropriate attire; walk without supervision or cues, including using a walker or cane; use steps or ramps; use toilet or commode, including transferring on and off toilet, cleansing self, changing pads, and caring for colostomy or catheter in appropriate manner; transfer without supervision or devices in and out of a bed or chair; and the ability to feed oneself, prepare food on a plate, drink from a cup and/or use necessary adaptive devices.

(3) Instrumental Activities of Daily Living means the core life activities of independent living, including using the telephone, managing money, preparing meals, doing housework, remembering to take medications, providing for ones necessities, and obtaining services.

(4) Conservator means an individual or agency appointed by a court in accordance with Section 75-5-401, et seq.

(5) Guardian means an individual or agency appointed by a court in accordance with Section 75-5-303, et seq.

(6) Incapacitated Person is as defined in Section 75-1-201(18).

(7) Intentionally is as defined in Section 76-2-103(1).

(8) Knowingly is as defined in Section 76-2-103(2).

(9) Lifestyle Choice means the way of life knowingly and voluntarily preferred or selected by a person who has capacity to consent.

(10) Limited Capacity means that a person's ability to understand and communicate regarding the nature and consequences of decisions concerning the adult's person or property is limited in one or more, but not all, functional areas, or during identified times of day, due to an mental illness, developmental disability, organic brain disorder, physical illness or disability, chronic use of drugs, chronic intoxication, short-term memory loss, or other cause.

(11) Long-term care facility is as defined in Section 62A-3-202.

Protective intervention funding means payments made to the vulnerable adult, family, or caregiver or other provider that will alleviate or resolve a protective need.

(12) Protective Need means a need resulting from or related to the abuse, neglect, or financial exploitation of a vulnerable adult.

(13) Protective Supervision means an APS service offered to reduce or resolve a vulnerable adult's protective need.

(14) Recklessly is as defined in Section 76-2-103(3).

(15) Respite Care means a time-limited period of relief from care giving responsibilities paid to a respite care provider or individual from Protective Intervention Funds.

(16) Service Plan means a document created by the caseworker for an approved Short Term Service Case that includes a goal, objectives, methods, and progress reviews to resolve the protective needs identified in an Adult Protective Services investigation, and which implements recommendations of the case review committee.

(17) Short-term protective services include but are not limited to crisis intervention, emergency shelter, protective supervision, respite care, supported living services, short-term intervention funding, or monitoring the vulnerable adult's money-management.

(18) Short-Term intervention funding means short-term payments made to the vulnerable adult, family, or caregiver or other provider, during a short-term service case for goods or services other than for Respite care or Supported Living, that will alleviate or resolve a protective need.

(19) Supported Living means short-term payments made to individuals or providers that enable the vulnerable adult to remain in his or her own home or in the home of a relative.

R510-302-5. Records.

(1) Adult Protection case files shall be securely maintained.

(2) An Adult Protection case file shall include all records relating to an investigation performed by Adult Protective Services, and may include an adult protection report, capacity assessment, allegation assessment, risk assessment, service plan recommendations and service plans, case activity record, correspondence, agreements, authorizations, medical and psychological records, financial records, police reports, photographs, video recordings, audio recordings, court documents, and legal documents.

(a) Short-term service case files may include in addition to the above items: client eligibility documents, information releases, correspondence, Assessments, disbursement requests, records of Protective Intervention payments, and service plan documents.

(3) An Adult Protection case file shall document services needed by and provided for each vulnerable adult client.

(4) Case Review Committee recommendations will be documented in the case record.

(5) If a vulnerable adult dies after a referral is received, the investigator shall complete a report in compliance with DHS Policy and Procedures 05-02.

R510-302-6. Adult Protective Services Intake.

(1) Referrals may be submitted to APS Intake Office via written or telephonic means from any person who has reason to believe that a vulnerable adult has been abused, neglected, or exploited in the State of Utah.

(2) All referrals shall be evaluated by APS Intake to determine whether APS shall investigate the allegation.

(3) APS shall investigate all allegations of abuse, neglect, or exploitation of a vulnerable adult in the State of Utah except as follows:

(a) Allegations involving non-serious incidents of abuse,

neglect or exploitation in a long-term care facility shall be referred to the long-term care ombudsman program in accordance with Section 62A-3-201, et seq.

(i) Non-serious incidents are incidents between residents over the age of 60 in which there are no injuries that require medical attention, and in which the facility has taken all reasonable steps to protect residents from future harm.

(4) APS shall notify the Department of Health and the Local Long-term Care Ombudsman when a referral involves a long-term care facility.

(5) APS may submit a referral that involves a Division employee or other potential conflict of interest to the DHS Office of Services Review for investigation.

(6) APS shall not accept a referral that does not involve an allegation that a vulnerable adult may have been or is being abused, neglected, or exploited.

(7) APS shall not accept or investigate a referral that involves the abuse, neglect, or exploitation of a vulnerable adult on an Indian Reservation unless a written agreement between APS and tribal authorities is in effect and grants APS authority to investigate.

(a) APS may refer a case that involves the abuse, neglect, or exploitation of a vulnerable adult on an Indian Reservation to federal or tribal authorities.

(8) APS shall not accept or investigate a referral that identifies no current abuse, neglect, or exploitation but anticipates that abuse, neglect, or exploitation may occur in the future.

R510-302-7. Investigation.

(1) The assigned investigator shall review the referral received from APS Intake and determine whether:

(a) there is an allegation of abuse, neglect or exploitation;

(b) the alleged victim is a vulnerable adult;

(c) the alleged victim has the capacity to consent;

(d) the alleged victim has a legal guardian or conservator; and

(e) an emergency exists.

(2) The investigator shall initiate the investigation and make a face-to-face visit with the alleged victim.

(a) The investigator shall seek the consent of the vulnerable adult to provide services if the vulnerable adult has the capacity to consent.

(b) The investigator shall seek the consent of the vulnerable adult's legal guardian to provide services if the vulnerable adult does not have the capacity to consent.

(c) The investigator may seek a court order to provide services in the absence of consent from the vulnerable adult or the vulnerable adult's legal guardian.

(3) The investigator may not enter the home of a vulnerable adult unless the vulnerable adult, legal guardian, or caretaker consents, except as described in subsection (a) below.

(a) The investigator may enter the home of a vulnerable adult if exigent circumstances exist to protect the vulnerable adult from imminent harm.

(b) The Investigator may contact persons who may have information regarding the vulnerable adult's circumstances and to obtain information necessary to investigate allegations of abuse, neglect, or exploitation.

(4) The investigator shall evaluate the extent of the alleged victim's mental and/or physical impairment, whether the alleged victim is a vulnerable adult, and whether any impairment substantially impacts activities of daily living.

(5) The investigator shall interview the alleged perpetrator unless:

(a) specifically requested not to do so by law enforcement officers in order to avoid impeding an ongoing criminal investigation or proceeding;

(b) interviewing the alleged perpetrator would likely endanger any person;

(c) prior to interviewing the alleged perpetrator, the allegation is found to be without merit;

(d) an alleged victim with capacity terminates the APS investigation;

(e) APS is unable to locate the victim;

(f) the alleged victim died before the investigation started;

(g) the alleged perpetrator is unknown; or

(h) the alleged perpetrator has declined the interview.

(6) The Investigator shall, based on all information obtained during the investigation, determine:

(a) whether each allegation of abuse, neglect, and exploitation identified by the referent is supported, inconclusive, or without merit; and

(b) whether each allegation of abuse, neglect, and exploitation identified during the investigation is supported, inconclusive, or without merit.

(7) When the investigator has reason to believe a drug lab may be located at an investigative site, the investigator will contact law enforcement agencies and not enter the site until the local health department determines it is safe to do so.

(a) Law enforcement agencies may be asked to assess and secure a vulnerable adult's immediate safety, facilitate the vulnerable adult's exit from the lab site, and arrange for emergency transportation to the hospital for decontamination.

(8) The investigator may obtain an administrative subpoena when the following circumstances apply:

(a) the vulnerable adult lacks the capacity to consent;

(b) the vulnerable adult's legal guardian refuses to consent;

(c) the custodian of the records or items pertinent to an investigation refuses to allow access to those records or items without a subpoena; and

(d) the information sought is necessary to investigate allegations of abuse, neglect or exploitation or to protect the alleged victim.

(9) An administrative subpoena form shall include a list that specifically identifies the documents or objects being subpoenaed.

(a) An administrative subpoena is not valid until signed by the Director or Regional Director.

(b) The investigator shall document all items received as a result of the subpoena.

(10) The Investigator shall determine whether the vulnerable adult has an unmet protective need.

(a) If an unmet protective need exists, the investigator shall refer the vulnerable adult and the vulnerable adult's legal guardian to available community resources and services to resolve the protective need.

(b) If an unmet protective need exists, the investigator or Supervisor may request a review by the Case Review Committee to determine if Short-Term Services may help to resolve the protective need.

(c) APS shall not facilitate the placement of a vulnerable adult who lacks capacity to consent with an unlicensed caregiver.

(d) APS may contact the family of a vulnerable adult and inform the family that the vulnerable adult requires alternate living arrangements in an environment that is safe and meets the vulnerable adult's protective needs.

(e) APS may, but is not required to, seek or facilitate the placement of a vulnerable adult with a licensed caregiver.

(f) Protective Intervention Funds may, in the sole discretion of APS, be made available to the vulnerable adult, family caregiver or other provider to alleviate or resolve a protective need, and must directly benefit the vulnerable adult.

(i) One-time payments may be made for medications, medical treatment, or medical equipment or supplies not covered by insurance or other medical coverage; transportation; minor repairs or modifications; rent; food; or clothing, or other

needs that directly benefit the vulnerable adult to alleviate or resolve a protective need.

(ii) Payments may be made to a service provider or individual for approved Short-term services for Respite care, Supported living, or for short-term intervention funds.

R510-302-8. Income Eligibility.

(1) There are no income eligibility requirements for an APS investigation of allegations of abuse, neglect, or exploitation.

(2) There are no income eligibility requirements in order to receive short-term protective supervision services.

(3) There are no income eligibility requirements in order to receive Protective Intervention Funds to resolve a situational crisis or an immediate protective need.

(4) Short-term protective services may only be provided to a vulnerable adult who is the victim of abuse, neglect, or exploitation.

(5) Short-term protective services may only be provided in accordance with the terms of a service plan consented to and signed by the vulnerable adult or the vulnerable adult's legal guardian, or pursuant to court order. An updated service plan will be signed at each case review.

(6) A vulnerable adult shall meet income eligibility requirements in order to receive short-term protective services other than protective supervision services, including respite care, supported living, short-term intervention funding, protective payee services, and other services approved by the APS Director or regional director.

(a) For purposes of eligibility for short-term protective services, "family" includes an adult, the adult's spouse, and their natural children under age 18, who are residing in the same household.

A person living under the care of someone other than their spouse is considered a one-person family.

(b) In determining whether a vulnerable adult meets income eligibility requirements for short-term protective services, family assets shall be disclosed and evaluated.

(i) Family assets include the fair market value of stocks, bonds, certificates of deposit, notes, savings and checking accounts, inheritance, capital gains, or gifts, which can be readily converted to cash.

(ii) A client's income and deductions will be used to determine the client's adjusted gross income to determine the client's eligibility status.

(iii) Monthly gross income includes the total monthly income received by an individual from earnings, military pay, commissions, tips, piece-rate payments, and cash bonuses; net income from self-employment; Social Security Pensions, SSI, Survivor's Benefits, and Permanent Disability Insurance payments; dividends, interest, income from estates or trusts, net rental income or royalties, net income from rental of property, receipts from boarders or lodgers; pensions, annuities; unemployment compensation; strike benefits; worker's compensation; alimony, child support, money received as specified in a divorce or support decree; Veterans' pensions or subsistence allowances; and other regular (three out of six months) financial assistance.

(iv) Monthly gross income does not include per capita payments to or funds held in trust for any individual in satisfaction of a judgment of the Indian Claims Commission or the Court of Claims; net proceeds received from the sale of a primary residence or an automobile; money borrowed; insurance payments in excess of incurred costs that must be paid from the settlement; the value of the coupon allotment under the Food Stamp Act; the value of USDA donated foods; the value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food service program for children under the National School Lunch Act; any payment received under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970; earnings of a child (under 18 years of age) residing in the home; payments for energy assistance and weatherization HEAT program; housing subsidies paid by the Federal government; payments or grants received due to natural disaster; educational loans, grants, or scholarships to any undergraduate student for educational purposes that is made or insured by the U.S. Commissioner of Education (BEOG; SEOG; NDSL; Guaranteed Student Loans; SSIG; and PELL Grants); payments to participate in a service learning program, such as College Work-Study or University Year for Action; and that portion of any other loan, grant, or scholarship which is conditioned upon school attendance, actually used for tuition, books, fees, equipment, special clothing needs, transportation to and from the school, and the child care services necessary for school attendance.

(v) The expenses that shall be deducted in determining adjusted gross income are limited to medical expenses (including Medicaid spend-down and insurance); storage expenses; child support paid, including money paid for house payments, rent, etc. as specified in a divorce or support decree; the dollar amount of first mortgage/rental payment over 25% of monthly countable income (not counted for Foster Care); and fees paid for other programs and protective services.

(vi) The sum of all family assets shall be divided by the number of family members, and if that amount exceeds $4,000 per family member, then the value over $4,000 shall be prorated over twelve months, and the resulting amount shall be added to the monthly countable income.

(vii) Eligibility status must be verified annually and within 30 days of any family member's increase in assets.

(viii) A client's adjusted gross income for income tax purposes is not the same as the adjusted gross income for service eligibility purposes.

(ix) All family assets and expenses shall be supported with current bank records, check stubs, and other verifiable records. Documentation must clearly indicate the name of the applicable family member.

R510-302-9. Protective Need Intervention.

(1) If protective services are needed and the vulnerable adult has the capacity to consent, the Investigator will work with the vulnerable adult to identify options to alleviate the protective need. If a vulnerable adult lacks the capacity to consent to protective services and has no legal guardian, the Investigator may:

(a) request a multi-disciplinary case staffing;

(b) contact the vulnerable adult's family;

(c) contact mental health professionals or physicians;

(d) contact agencies, organizations or services available to meet the vulnerable adult's protective need; or

(e) contact the Office of the Public Guardian.

(2) The Investigator may provide short-term counseling or crisis intervention to assist the vulnerable adult in obtaining services or benefits relating to the abuse, neglect, or exploitation.

(3) The Investigator may request Protective Intervention Funding to alleviate the vulnerable adult's protective need.

(a) Emergency shelter placements may be made for up to 30 days within a twelve-month period for a vulnerable adult who has been abused, neglected, or exploited only if:

(i) the vulnerable adult's circumstances require immediate alternate living arrangements in a safe environment;

(ii) the vulnerable adult or legal guardian consents to the emergency shelter placement or a court order authorizes the placement;

(iii) the vulnerable adult does not meet the eligibility requirements for shelter under the Family Violence program; and

(iv) the emergency shelter has all required current licenses and certifications.

R510-302-10. Short Term Intervention.

(1) A short-term services Case Review Committee shall monitor and review short-term services.

(a) The Case Review Committee will consist of the primary worker, supervisor or designee, and two other region workers. The Committee may include other APS and community or agency individuals when determined necessary by the Case Review Committee.

(b) The Case Review Committee shall oversee the progress made towards resolution of the protective need.

(c) The Case Review Committee may recommend that short-term services are initiated, extended, or terminated.

(d) The Case Review Committee may recommend community referrals or alternative actions.

(e) The Case Supervisor may approve or deny Short-Term Services recommended by the Case Review Committee.

(2) Short-Term Services may only be provided under the following conditions:

(a) Short-term services are voluntary and shall not be implemented without the written consent of the vulnerable adult or the vulnerable adult's legal representative.

(b) Every short-term service case shall include a protective supervision service.

(c) Protective Intervention funds for Short-term services shall not be disbursed without the approval of the APS supervisor or regional director.

(d) Respite Care funds may not be used for caring for other members of the family, performing extensive household tasks, or transportation.

(e) Respite Care may be provided in the vulnerable adult's home, a caregiver's home, or in a licensed facility.

(f) Supported Living Payments may be made to providers to enable the vulnerable adult to remain in his own home or in the home of a relative, and may include short-term supervision, transportation, assistance with shopping, training or assistance with activities of daily living.

(g) Payments for Short-Term Services may not be made until a case has been approved by the Case Review Committee and Services voluntarily agreed to in writing by the vulnerable adult, his or her guardian, or approved by court order.

R510-302-11. Protective Payee Services.

(1) Protective Payee Services are available only to a vulnerable adult who has been approved for this service prior to May 5, 2008.

(2) Protective Payee Services include money management skills for individuals without a legal guardian.

(a) The protective payee will review the vulnerable adult's financial account and allocate, with the vulnerable adult (if able to participate) funds for the vulnerable adult's basic needs, such as food, clothing, shelter, medical care, and other costs of care or special needs.

(b) If the vulnerable adult has income remaining after all basic costs are paid, it shall be placed in the vulnerable adult's trust account.

(c) The protective payee will provide the vulnerable adult with a monthly copy of the account ledger.

(3) Protective Payee Services shall be documented in accordance with standard accounting practices.

(4) Protective Payee Services shall cease if the vulnerable adult withdraws consent unless otherwise required by court order.

(5) Protective Payee Services shall cease if another person provides protective payee services.

(6) Protective Payee Services shall cease if the vulnerable adult has minor children residing in the home for whom he has legal responsibility and for whom any type of financial assistance is received.

(7) When Protective Payee Services are terminated due to the death of the vulnerable adult, the vulnerable adult's remaining expenses, including burial expenses, shall be paid from the account and the funding agencies shall be notified of the vulnerable adult's death. Any remaining funds shall be distributed in accordance with State law.

R510-302-12. Termination of Short-Term Protective Services.

(1) A vulnerable adult has no entitlement or right to short-term protective services.

(2) Protective Services may be terminated by the vulnerable adult or APS at any time.

(3) Protective Services shall be terminated when:

(a) the vulnerable adult is no longer in immediate danger of abuse, neglect or exploitation;

(b) a vulnerable adult who voluntarily accepted services requests that those services be terminated;

(c) recommended by the Case Review Committee;

(d) the court terminates an order requiring APS to provide services;

(e) the vulnerable adult is receiving protective services from other persons or agencies;

(f) the vulnerable adult's behavior is abusive or violent and constitutes a threat;

(g) the vulnerable adult no longer meets the eligibility requirements for services;

(h) the vulnerable adult refuses to comply with the service plan;

(i) there is insufficient funding to pay for the service;

(j) the vulnerable adult moves out of State; or

(k) the vulnerable adult dies.

(4) When APS terminates Short-Term protective services, a letter will be sent to the vulnerable adult stating the case is going to be terminated and the reason for termination.

(a) The letter shall state that termination becomes effective 10 days from the date the letter was sent unless the vulnerable adult requests an administrative review of the reason for the termination and to decide if the services should be reinstated or alternative services may be available.

(b) In Protective Payee Short-Term Service cases, the letter to the vulnerable adult shall be copied to the agency providing funding (income) for the vulnerable adult.

(5) Upon the death of a vulnerable adult, the following procedures should be followed:

(a) The family of the vulnerable adult will be contacted to arrange for the burial.

(b) If the family is unable to pay for the burial, APS may suggest a list of other resources to pay burial expenses, such as relatives, religious organizations, insurance, and the County Commission.

(c) If no one accepts responsibility, APS will make contacts to arrange burial, however APS shall not pay for the burial.

(d) APS shall notify SSA, VA, or other sources, of entitlement benefits if APS is acting as the vulnerable adult's protective payee.

(e) APS shall complete a Deceased Client Report form in accordance with DHS policy 05-02.

KEY: vulnerable adults, domestic violence, shelter care facilities, short-term services
May 27, 2009 62A-3-301 et seq.
Notice of Continuation August 21, 2007

R510. Human Services, Aging and Adult Services.
R510-400. Home and Community Based Alternatives Program.
R510-400-1. Purpose.

(1) The Home and Community Based Alternatives program provides a comprehensive array of quality, client centered services. The services are delivered in a variety of community settings designed to provide a choice of service delivery options to the eligible client who can continue to live in their own home, if their needs for social and medical services can be met. Home and Community Based Alternatives services contribute to improving the quality of life and help to preserve the independence and dignity of the recipient. This rule is intended to clarify the obligations and options available to administrators of the program and to ensure compliance with state and federal regulations.

(2) The objective of the Older Americans Act Title IIIB Services is to provide services to frail older clients, including the older client who is a victim of Alzheimer disease and related disorders with neurological and organic brain dysfunction, and to their family.

R510-400-2. Authority.

(1) The Division of Aging and Adult Services is given rulemaking authority by Section 62A-3-104. The Home and Community Based Alternatives program is provided by the Older Americans Act Title IIIB. The Utah State Department of Human Services is the umbrella agency with oversight responsibility provided by the Division of Aging and Adult Services (DAAS). The Home and Community Based Alternatives program is funded from several sources and administered by the Division of Aging and Adult Services.

R510-400-3. Definitions.

(1) Adult means an individual who is 18 years of age or older.

(2) Aging and Aged means an individual who is 60 years of age or older.

(3) Agency means the designated Area Agency on Aging or other sub-contracting agency which may be selected by the Division, if the designated Area Agency on Aging declines to be a contractor or has been determined to be out of compliance with the contract.

(4) Assessment means a complete review of an individual's current strengths and deficits, living environment, social resources and care giving needs.

(5) Assessment Instrument means a document that meets minimum assessment criteria, as approved by DAAS, for documenting the needs of individuals.

(6) Caregiver means an individual who has the primary responsibility of providing care and/or supervision to an adult, three or more times a week.

(7) Care Plan means a written plan which contains a description of the needs of the client, the services necessary to meet those needs, the provider of those services, the funding source, and the goals to be achieved.

(8) Case Management means assessment, reassessment, determination of eligibility, development of a care plan, on-going documentation, arranging client specific services, case recording, client monitoring and follow-up.

(9) Chore Services consists of heavy household chores such as washing floors, windows and walls, tacking down loose rugs and tiles, and moving heavy furniture.

(10) Department means the Utah State Department of Human Services.

(11) Director means the Director of the Agency.

(12) Division means the Utah State Division of Aging and Adult Services.

(13) Emergency means that a vulnerable adult is at risk of death or immediate and serious harm to self or others. Section 62A-3-301(6) through (12).

(14) Equipment, Rent or Purchase means rental or purchase of equipment deemed necessary for the client's care.

(15) Home means an individual's place of residence.

(16) Home Health Aid means basic assistance and health maintenance by an Aide to individuals in a home setting under the direction of appropriate health professionals.

(17) Homemaker Services mean services which provide assistance in maintaining the client's home environment and home management. This includes, but is not limited to, assistance with vacuuming, laundry, dish washing, dusting, cleaning bathroom, changing bed linen (unoccupied bed), cleaning stove and refrigerator, ironing, and garbage disposal; which relate to the client's well being.

(18) Home and Community Based Alternatives Services means a comprehensive array of services that are provided to an individual which enable him to increase self-sufficiency and to maintain their functional independence.

(19) Protective Services means services provided by the Division, including the services of guardian and conservator provided in accordance with Title 75, Utah Uniform Probate Code, to assist persons in need of protection to prevent or discontinue abuse, neglect, or exploitation until that condition no longer requires intervention. The services shall be consistent, if at all possible, with the accustomed lifestyle of the vulnerable adult as provided by Section 62A-3-301(12).

(20) Personal Attendant Services are defined as personal and non-medical supportive services specific to the needs of a medically stable adult experiencing chronic physical or cognitive functional impairments who is capable of directing their own care or who has a surrogate available to direct the care.

(21) Personal Care means assistance with activities of daily living in a home setting to an individual who is unable to perform activities of daily living independently or when the care giver is temporarily absent or requires respite.

(22) Respite means a rest or relief for the primary Caregiver from care giving tasks and responsibilities, to maintain the Caregiver as the primary person delivering care-giving activities.

(23) Risk Score means a score that reflects the amount of risk an individual has of premature institutionalization. Risk score is determined using a DAAS approved assessment instrument that reflects a moderate to high risk of functional, environmental, social resource and care giving needs of an individual.

(24) Screening Tool means an instrument that initially determines the client's level of functioning to determine the need for long-term Home and Community Based Services.

(25) Vulnerable Adult means an elder adult, or an adult who has a mental or physical impairment which substantially affects that person's ability to:

(a) Provide personal protection;

(b) Provide necessities such as food, shelter, clothing, or mental or other health care;

(c) Obtain services necessary for health, safety, or welfare;

(d) Carry out the activities of daily living;

(e) Manage the adult's own resources; or

(f) Comprehend the nature and consequences of remaining in a situation of abuse, neglect, or exploitation. Section 62A-3-301(26).

R510-400-4. Funding Sources.

(1) The Home and Community Based Alternatives program is funded by a variety of Federal, State and local community dollars, program fees, voluntary and public contributions.

(2) The Older Americans Act Title IIIB Services Programs

are funded by Federal dollars allocated by Congress, State matching funds, local matching funds and voluntary contributions.

(3) PROCEDURES-Funding Limitations:

(a) Within each Agency at least 75% of the program funding shall be used to serve clients aged 60 or older.

(b) The Division shall establish the program expenditure limit per client, prior to July 1 of each year.

(c) At the discretion of the Director or designee, waivers of the expenditure limit can be approved using the Expenditure Limit Waiver Process outlined below.

(4) PROCEDURES-Expenditure Limit Waiver Process:

(a) Waivers of the allowed expenditure limit may be granted on an individual basis.

(b) Requests for a waiver must be in writing and approved by the Agency Director or their designee.

(c) Waiver requests, documentation, and accompanying approval or denial must be maintained in the Client's file.

(d) The waiver must be re-approved with each Eligibility Declaration determination.

R510-400-5. Eligibility.

(1) Services may be provided as funds permit to eligible adults as determined by DAAS Policy and Procedures for Home and Community Based Alternatives services.

(2) Older Americans Act Title IIIB Services may be provided to eligible Aging and Aged Adults.

(3) PROCEDURES-Home and Community Based Alternatives Program Eligibility:

(a) The DAAS Eligibility Declaration form shall be used to determine financial eligibility.

(b) Eligibility is determined by the Agency using the following criteria:

(i) Age: Clients must meet the definition of an Adult.

(ii) Income and Assets:

(A) Income and asset guidelines shall be established by the Division prior to July 1 of each year and shall remain in effect until suspended.

(B) The Client's and their spouse's income and assets will be considered in determining eligibility using the DAAS Eligibility Declaration form.

(iii) Frailty level:

(A) The Client's Assessment Risk Score must be at a moderate to high level as measured by a DAAS approved assessment instrument.

(iv) Payer of last resort:

(A) Payer of last resort is the term used to denote that the Alternatives program is liable for payment for care and services only after all other liable third parties have met their legal obligation to pay.

(4) PROCEDURES-Older American Act Titles IIIB Services Program eligibility:

(a) Clients are determined eligible based on age and need. Income and Assets will not be used as a basis for providing services under Older Americans Act Service Programs.

(b) Eligibility is determined by the Agency using the following criteria:

(i) Age: Clients must be 60 years of age or older.

(ii) Need Criterion: The Client must have an Assessment Risk Score at a moderate to high level as measured by a DAAS approved assessment instrument.

R510-400-6. Authorized Services.

(1) The Agency may provide or arrange for an array of Home and Community Based Alternatives services, determined by assessment to be essential to maintain the individual's independence in order for him to remain in the home.

(2) PROCEDURES-Authorized Services:

(a) The Home and Community Based Alternatives services program may also provide an additional array of services based upon client need and which program funding permits that allows clients to remain in their own home. These services include case management and other services such as homemaker, personal care, home health, skilled health care, respite, equipment rental or purchase, emergency response systems or other services as needed. Case Managers, in providing case management and other services as appropriate, are encouraged to use innovation to efficiently and effectively meet client needs.

(b) Older Americans Act Title IIIB Program Services shall be provided as specified in the Older Americans Act 1965 as amended (Sections 306(a)(2)).

R510-400-7. Fees and Voluntary Contributions.

(1) Fees shall be assessed for all clients receiving Home and Community Based Alternatives services. Fees are based on the client's and spouse's adjusted income as determined by the DAAS Eligibility Declaration form and calculated against the Department's Fee Schedule.

(2) Older Americans Act Title IIIB Program participants shall not be assessed fees for receiving Older Americans Act Title IIIB funded services. Clients receiving Title IIIB services shall be given the opportunity to make a confidential donation to the program.

(3) PROCEDURES-Fees:

(a) The Agency shall establish procedures for fee collection. Every reasonable effort shall be made to collect the required fee. Services may be terminated for refusal to pay the required service program fee.

(b) Clients whose income and/or assets are above the maximum eligibility guideline, may purchase Home and Community Based Alternative services at cost.

(c) Waivers for full or partial fees may be granted on an individual basis using the following process:

(i) Case Managers will document the circumstances which necessitate a waiver of the fees.

(ii) The request must be made in writing.

(iii) The Agency Director or their designee must approve the waiver.

(iv) The documentation must be maintained in the Client's files at all times.

(v) All fee waivers must be re-approved with each new request by the Case Manager or on an annual basis.

(A) Clients shall be informed as to the cost of the services they receive under the Home and Community Based Alternatives program and Older American Act Title IIIB Program.

(4) PROCEDURES-Voluntary Contributions:

(a) Each client and family shall be given the opportunity to voluntarily contribute toward the cost of the service program.

R510-400-8. Service Provider Requirements.

(1) Home and Community Based Alternatives Services shall be provided through a public agency, a private licensed Service Provider Agency with at least one year experience in providing home support or home health services, or by an individual providing personal attendant services with demonstrated skills and abilities in providing the required services. The one-year experience requirement may be waived by the AAA Director or designee provided there is adequate documented justification.

(2) PROCEDURES-Service Provider Requirements:

(a) The service provider may be a public or private social service or health care agency.

(b) The agency must have one year of experience in providing in-home services.

(c) The service provider must be appropriately licensed.

(d) The service provider must maintain liability insurance and bonding of all employees.

(e) It is the responsibility of the service provider to:

(i) provide all employees with written instructions based upon the client's Care Plan;

(ii) instruct employees as needed in performing the required tasks

(iii) provide supervision of employees

(iv) inform employees regarding personal liability.

(3) PROCEDURES-Case Load Requirements:

(a) A Case Manager shall be assigned for each Client. Average case load size across all programs the case manager may work shall not exceed fifty (50) clients per available Full Time Equivalent and should be proportionate to the Agency's Case Managers time, case mix, and situation. Exceptions may be made only upon written request to the Division. The Division will review the request and if appropriate, approve a temporary waiver.

(b) Case Manager Qualifications:

(i) Case Management shall be performed by a person with a Bachelor Degree in a social science, health science, or other related field. Exceptions to this requirement may be made for individuals who have year for year experience in these fields, or substitutions on a year for year basis as follows:

(A) additional related education for the experience,

(B) additional full time paid related employment for the education.

(ii) State licensure as a Social Service Worker is recommended as a minimal qualification.

(4) Personal Attendant Services:

(a) Where appropriate, agencies and clients can make use of a Personal Attendant to provide services to clients. Personal Attendant Services are defined as: Personal care and non-medical supportive services, specific to the needs of a medically stable elderly person experiencing chronic physical or cognitive functional impairments, who is capable of directing their own care or who has a surrogate available to direct the care.

(5) Eligibility:

(a) To be eligible for the Personal Attendant Service the individual must be an active consumer on the Home and Community Based Alternatives Program.

(b) The client and their designated Personal Attendant must:

(i) Understand that Personal Attendant services is a service delivery model designed to benefit the designated client.

(ii) Be able to provide management of the employee (personal attendant) to include recruitment, scheduling, discipline and termination, if needed, of individuals eighteen (18) or more years of age.

(iii) Be willing and capable of training and directing the employee.

(iv) Follow-up with the employee regarding First Aid training/certification and provide documentation of such to the Case Manager.

(v) Personal attendant service is available to those clients for whom eligibility has been established and who have an established care plan. Preferably, the client has been receiving services from the Home and Community Based Alternatives program.

(vi) Receive, sign and copy all employee time sheets and submit them to the designated organization by the established deadline. The consumer or the personal representative will be responsible for the verification and accuracy of hours billed by the employee, not to exceed the agreed upon and approved hours on the care plan.

(vii) Complete, maintain and file with the payroll agent all necessary tax information required by the U.S. Internal Revenue Service.

(viii) Demonstrate the skills necessary to supervise direct service employees.

(ix) Provide training to their employee(s) in the areas of confidentiality and services to be provided related to the individual's plan of care. If additional training is needed, the consumer or personal representative will request this from their Case Manager.

(x) Actively participate with the Case Manager in the monitoring and revision of the consumer Care Plan.

(xi) Provide a back-up service plan to the Case Manager that states clearly the manner in which services will be provided as a back-up when the employee is not able to provide services. Back-up services may be provided by individuals who are not employees and who will not be eligible for payment for services provided.

(xii) Develop and maintain in the home of the consumer a notebook that includes a copy of:

(A) The current Care Plan;

(B) The Employee Agreement;

(C) The Consumer/Personal representative Letter of Agreement;

(D) All payroll agent's forms and time sheets;

(E) The Back-up Plan; and

(F) The Training Plan, as needed.

(xiii) Provide periodic feedback to the Case Manager regarding the quality of service being provided by the employee and how effectively the service meets the needs identified in the Care Plan. The consumer or personal representative will report immediately to the Case Manager any abuse or exploitation of the consumer by the employee.

(xiv) Notify the Case Manager when consumer needs change in order to adjust the Care Plan as appropriate.

(xv) Obtain prior authorization for services from the Case Manager.

(xvi) Follow applicable sections of the Home and Community Based Alternatives Program policies and procedures as provided by the Case Manager.

(xvii) Furnish requested copies of all documents related to employment or services that are collected by the consumer and/or the personal representative to the Case Manager and/or payroll agent.

(xviii) Report issues of non-compliance, consumer or personal representative and employee(s) conflict, and/or other significant occurrences to the Case Manager.

R510-400-9. Client Assessment.

(1) The initiation of a DAAS approved Screening Assessment to establish a risk score shall be ten working days or less from the initial referral. Enough information shall be gathered with the client, family or referral source to determine potential eligibility and whether they shall be referred for an Assessment or referred to another agency or community resource.

(2) PROCEDURES-Assessment:

The DAAS approved Assessment shall be completed by the Case Manager to confirm and identify the need for services(s).

(a) Nursing Assessment: An additional assessment or file review by a Registered Nurse may be completed to identify the appropriate level of intervention necessary.

(b) Reassessment: Annually, the Case Manager will complete the areas indicated in the DAAS approved Assessment Instrument for reassessment of the client's service need(s) during the same calendar month as the original assessment whenever possibly.

(c) PROCEDURES-Family and Other Support System Involvement:

(i) The client's family and/or personal support systems shall be encouraged to participate in the Assessment unless the client and case manager determine that they not be included or it is the client's request that they not be included.

R510-400-10. Care Planning.

(1) The client Care Plan shall be developed based upon their current situation and needs as identified in the DAAS approved Assessment.

(2) PROCEDURES-Care Planning:

(a) A standardized Care Plan form designated by the Division shall be used.

(b) The Care Plan will be developed with the client's input.

(c) The Care Plan shall include goals, objectives, methods, services to be provided, discharge or termination goals, time frames, amount and frequency of services being authorized, together with the payment source.

(d) The Care Plan will be signed and dated by the Client or their legal representative, the Case Manager and when applicable, the Registered Nurse.

(e) The Care Plan shall be updated annually at the time of the reassessment or more frequently when changes occur with the service need(s).

(f) All support systems, both formal and informal shall be included as part of the Care Plan.

(g) A copy of the Care Plan shall be given to the client with the original maintained in the client's case file.

(h) Service(s) shall be authorized in the care Plan at the minimum level and for the least amount of service hours that will adequately meet the client's needs.

(i) Home and Community Based Alternatives services shall supplement, but not replace or duplicate, support systems that are in place in sufficient quantity to meet client's needs.

(j) Case Managers should be aware of available agency and community services and should be responsible for coordination of services provided to the client.

(3) PROCEDURES-Service Authorization:

(a) An Agency Service Authorization Form or the Care Plan must be sent to the Serviced Provider requesting specific services for the client.

R510-400-11. Case Management.

(1) Case Management shall be provided to all recipients of Home and Community Based Alternatives services.

(2) PROCEDURES-Case Management:

(a) Case Management shall include an assessment, annual reassessment, three quarterly review and monthly contacts. Other visits or contacts shall be made and documented in accordance with the client's need or as directed in the Care Plan.

(b) A monthly or more frequent contact shall be made with the client, service provider, and/or the client's family.

(c) Assessment and quarterly review, reduction and/or termination of service should be done face to face when possible, with the exception of when the client moves out of the area, enters a nursing facility or dies. Telephone and electronic contacts can be used to communicate adjustments to care plans or service orders, or changes of status.

(d) The Case Manager will record all client contacts and significant changes with a progress note.

(e) The Case Manger is expected to maximize the client's informal support systems.

(f) The Case Manager shall make quarterly reviews during the third month following the Assessment and every third month thereafter. Quarterly Reviews shall be conducted in the client's home and will document the following:

(i) A review of the services being delivered.

(ii) Changes in the client's condition.

(A) Progress toward Care Plan objectives and goals.

(B) Appropriateness of services.

(3) The client's satisfaction and concerns with the service provision.

(4) Status of rental/purchased equipment.

R510-400-12. Record Keeping.

(1) The recipient of Home and Community Based Alternatives program shall have an individual case file that include client eligibility, assessment of the client's needs, care plan, quarterly reviews, progress notes, and when applicable legal documents addressing guardianship, advanced directives or powers of attorney.

(2) PROCEDURES-Confidentiality of Records:

(a) All information and records generated within the Home and Community Based Alternatives Program and Older American Act Title IIIB Programs shall be retained and released in accordance with the Government Records Management Act (GRAMA), pursuant to Section 63G-2-101, et seq.

(b) Information that pertains to Home and Community Based Alternatives program and Older Americans Act Title IIIB Programs shall be classified as "private."

(c) Information that is medical, psychiatric, or psychological in content shall be classified as "controlled."

(d) Clients' case files and service authorizations must be secured in a locked file at the Agency or designated Service Provider.

(e) Home and Community Based Alternatives program and Older Americans Act Title IIIB Programs case records, files, authorizations, and supporting program documentation, shall be kept for five years following termination of services or until all audits initiated within the five years have been completed, whichever is later. After the end of the specified retention period, the documents shall be destroyed according to GRAMA document destruction requirements.

(3) PROCEDURES-Sharing of Records:

(a) The Case Manager shall provide a copy of the completed Care Plan to the client. The completed Assessment may be provided to the Service Provider.

R510-400-13. Client Rights and Responsibilities.

(1) The Agency shall have the responsibility to develop a method to inform all eligible clients of their rights and responsibilities. This shall be evidenced by a signed Clients Rights and Responsibilities Form in the case file.

(2) PROCEDURES-Client Rights:

Client rights shall include:

(a) To be fully informed of their rights and responsibilities governing personal conduct while participating in the programs. This shall be evidenced by a signed and dated Clients Rights and Responsibilities form in the client's file.

(b) To be fully informed of services and related fees for which the Client may be responsible and to be informed of all changes in fees.

(c) To be afforded self-determination through participation in the development of the Care Plan. This includes the right to refuse service(s), referrals to health care institutions or other agencies, and to refuse to participate in research studies.

(d) To be assured confidential treatment and maintenance of records. Clients have the right to approve or refuse the release of their records. However, all information and records generated in these Programs shall be shared pursuant to GRAMA, Section 63G-2-101, et seq.

(e) To be treated with consideration, respect, dignity and individuality, including privacy in care for personal needs.

(f) To be assured that personnel who provide services, are either licensed, certified or registered with the appropriate governmental entity and that they have demonstrated the ability to correctly implement the services for which they are responsible.

(g) To receive proper identification from the individual providing services.

(3) PROCEDURES-Client Responsibilities:

Client Responsibilities shall include:

(a) The Client has the responsibility to report to the Case Manager, any changes in their circumstance that may impact eligibility or need for services.

(b) The Client is responsible for keeping appointments and when unable to do so for any reason, to notify the Case Manager or Service Provider.

(c) The Client is responsible for their actions and their consequences. If she refuses service of does not follow the instructions in the Care Plan, future service may be withheld until she agrees to correct any identified problem(s).

R510-400-14. Grievance Procedures.

(1) The Agency shall have the responsibility to develop procedures for Client Grievance and Fair Hearing.

(2) PROCEDURES-Client Grievance:

Agency Grievance and Fair Hearing Procedures shall address the following process:

(a) An eligible client or clients who has made application for Program Services, whose service has been denied, reduced, or terminated shall be given the opportunity to grieve through a fair hearing when he believes that their interests in laws, regulations, standards or criteria related to the program were violated. Grievance and Fair Hearing procedures shall follow the Agency's contractual agreement with the Division.

(b) The Agency shall assist the client in following the correct procedures to grieve any adverse decision and request a fair hearing.

(c) Any client shall be given the opportunity to appeal to the State level, when she believes that laws, regulations, standards or criteria related to the programs were violated and have not been resolved the Agency process.

R510-400-15. Applicant Lists.

(1) The Agency shall maintain an active applicant list when funding dictates that services cannot be provided for all who have been identified as needing services.

(2) PROCEDURES-Applicant Lists:

(a) The applicant list will be comprised of those persons who have been screened using the DAAS approved Demographic Intake and Risk Screening form and have at least a moderate risk score at the time of screening.

(b) Prioritization of the applicant list shall be ranked by a high to moderate risk score, and the clients with the highest risk are provided services first as funding becomes available.

(c) The applicant list will be re-prioritized with each new potential client added.

(d) For applicants who do not meet applicant list criteria, information will be provided on other community resources that may be available.

R510-400-16. Termination of Services.

(1) The Agency shall allow for the interruption, transfer and for termination for the client receiving Home and Community-based Alternatives Services or Older Americans Act Title IIIB Services as changes in client needs, Agency Provider, circumstances or conditions occur.

(2) PROCEDURE-Temporary Interruption of Service:

(a) Program Services may be interrupted for temporary periods (e.g. Hospitalization, out-of-state visiting, etc.): Such discontinuance of service shall not exceed 90 consecutive days. After this period, the case will either be closed and reopened as a new case with no priority other than Risk Score, or will be reviewed by the agency to determine a resumption of services.

(3) PROCEDURE-Transfer of Services:

(a) When a client transfers from one agency to another, the client's original case file will be sent to the new agency. The transferring agency shall retain a copy of the client's file for Division auditing purposes.

(b) When accepting a client transferring from another agency, the receiving agency may request funding from the transferring agency to cover the client's expenses through the end of the current fiscal year. Any additional services the receiving agency proposes to provide a client being transferred would be the responsibility of the receiving agency, not the transferring agency.

(c) At the end of the fiscal year, the receiving agency will review the transferred client's care plan to determine the clients needs for the upcoming year at which time the agency may choose to maintain, increase, or decrease services as the its situation and funding dictate.

(4) PROCEDURE-Termination of Service:

(a) When a client terminates service, the Case Manager will document in the case file the circumstances that precipitated the termination.

(b) Services may be terminated due to the following circumstances:

(i) When health and safety needs can no longer be met.

(ii) Death of the client.

(iii) Program funding does not allow services to continue.

(iv) The client permanently leaves the state.

(v) The client's financial situation improves beyond eligibility criteria, in which case agencies are encouraged to investigate options for transferring the client to other appropriate programs when discontinuing services. However, in this transfer, the client should not be given special preferences that would place them ahead of other potential clients in an applicant list situation.

(vi) Client chooses to leave the program.

(vii) Client refuses to comply with the care plan or does not pay monthly fees.

R510-400-17. Purchase and Rental of Equipment.

(1) Equipment may be purchased or rented if it is deemed necessary for the client's care, providing no other funding source is available.

(2) Purchased equipment is the property of the Agency. The Agency will develop policy and procedures that address the disposition, inventory and repair of equipment.

(3) PROCEDURE-Purchase or Rental of Equipment:

(a) The Case Manager shall have the client and/or the client's representative sign an agreement if the equipment is to be returned to the Agency when it is no longer needed.

(b) The agency's policy will address the disposition, inventory and repair of equipment.

(c) Equipment shall be reviewed quarterly as part of the quarterly review to assess the need for continued use and condition of equipment.

R510-400-18. Contract Compliance.

(1) The Division is responsible for monitoring Home and Community Based Alternatives Services and Older Americans Act Title IIIB Programs. Each Agency shall be monitored annually.

(2) PROCEDURE-Scheduling:

(a) The Agency shall be notified at least 10 working days prior to an annual monitoring review. The Division will notify the Agency of the procedures, scheduling, monitoring standards and any other relevant information concerning the monitoring visit.

(3) PROCEDURE- Division Monitoring Procedures:

(a) In preparation for the monitoring visit, the Division shall review any corrective action reports, correspondence identifying technical assistance needs, and other pertinent information.

(b) The Division will conduct an entrance interview with the Agency Director or designee.

(c) The Division will monitor service program activities, case records, service expenditures, caseloads and contractual provisions.

(d) The Division will review randomly selected case records and interview the clients and Agency Case Managers as

necessary to complete the monitoring process.

(e) A minimum of 10% or ten case records (whichever is the largest of the case load) will be reviewed. At times more records, up to 100% of program records, may be reviewed if the Division finds significant program inconsistencies, errors in documentation, inadequate provision of service, or any other aspect that the Division deems necessary.

(f) An exit interview will be conducted with the Agency Director or designee. The purpose of this interview is to present findings of the monitoring visit. The findings shall include:

(i) Overall evaluation of the performance of the Home and Community Based Alternatives Services Program.

(ii) Contractual, Policy and Procedure deficiencies.

(iii) Situations where additional review of case files of other documentation is necessary.

(iv) Areas where a plan of correction will be needed.

(v) Identify and recognize positive or innovative aspects of the Agency's service program.

(vi) Client comments.

(g) The Division may request a Department fiscal/contract audit of the Agency. This audit may be requested when the Division documents problems concerning:

(i) Budget balance

(ii) Agency Service Provider sub-contract monitoring.

(iii) Case Management supervision.

(iv) Provider/Client complaints.

(v) Timely payment for service.

(vi) Intake and referral.

(vii) Access problems.

(viii) Eligibility problems.

(h) PROCEDURE-Division Monitoring Report:

(a) The Division shall provide the Agency with a written report of its formal findings within 10 working days of the monitoring visit.

(b) The report will include contractual, policy and procedural compliance status and areas of special concern.

(c) The Division will require a corrective action plan that addresses noncompliance issues as needed.

(4) PROCEDURE-Responding to Reports:

(a) The Agency may appeal issues of disagreement to the Division within 10 working days from receipt of the report. If the Division, upon appeal, concludes that a corrective action must take place, the Agency will implement the action.

(b) A correction action plan will be implemented in accordance with an agreed upon time schedule, but will not exceed 90 days from the time the Division approves the plan.

(c) The Division will provide technical assistance to the Agency, as requested, to complete the correction action plan. The Agency will notify the Division upon implementation of the corrective action plan. The Division may make additionally monitoring visits to the Agency to review records and assure that the corrective action plan requirements were met.

(d) The Division may enact the termination clause of the DHS contract if a corrective action plan is not implemented by the Agency.

R510-400-19. Emergency Interim Service.

(1) Home and Community Based Alternatives Services may be provided to clients when circumstances warrant the emergency provision of service.

(2) PROCEDURES-Emergency Interim Service:

(a) The existing emergency will be identified and documented.

(b) Services may begin immediately and will continue until assessment determines appropriate service needs and levels for the client.

(c) The DAAS approved Assessment will be completed within 5 working days from the initiation of the Emergency Interim Service.

(3) PROCEDURES-Adult Protective Services clients:

(a) Emergency Interim Services may be provided to Adult Protective Services clients when abuse, neglect or exploitation has been substantiated and Home and Community Based Alternatives Services would help eliminate the abuse, neglect or exploitation.

(b) Emergency Interim Services may be provided for up to sixty (60) days under Protective Eligibility. Client financial eligibility, waiting list and fee criterion may be waived or disregarded with substantiated Adult Protective Service Cases.

(c) When as Adult Protective Services Worker determines that the Emergency Interim Services are needed, she will contact the Agency.

(d) As soon as possible, the client shall be assessed for eligibility according to the Home and Community Based Alternatives Services program standards. If during the 60 days the client is determined to no longer meet the Protective Eligibility, the APS Worker shall make referrals in collaboration with the Agency Case Manager to other appropriate agencies for services.

(e) The Agency will ascertain whether it is able to meet the emergency needs relating to the client's disability and/or protective need.

(f) Emergency Interim Services are considered an intermediate step while the Adult Protective Services Worker, works with the client to resolve their current crisis and/or problem. The client's case will remain with the Adult Protective Service Worker during the Emergency Interim Service period. Services will be coordinated between the APS Worker and Agency Case Manager.

(4) PROCEDURES-Protective Eligibility:

(a) The client's situation is an emergency and requires immediate intervention.

(b) The client is capable of consenting to and accepts services.

(c) The client in unable to consent and the Department has a court order authorizing the service referral.

KEY: elderly, home care services, long-term care alternatives
May 27, 2009 62A-3-101 through 62A-3-312
Notice of Continuation August 21, 2007

R512. Human Services, Child and Family Services.
R512-2. Title IV-B Child Welfare/Family Preservation and Support Services and Title IV-E Foster Care, Adoption, and Independent Living.
R512-2-1. Purpose and Authority.

(1) The purpose of this rule is to adopt federal requirements applicable to Titles IV-B and IV-E of the Social Security Act.

(2) This rule is authorized by Section 62A-4a-102.

R512-2-2. Child Welfare/Family Preservation and Support Services.

(1) The Division of Child and Family Services (Child and Family Services) adopts the following federal requirements applicable to Title IV-B, Subparts 1 and 2 for child welfare and family preservation and support services:

(a) 42 USC 620, 621, 622, 623, 624, 625, 626, 629, 629a, 629b, 629c, 629d, 629e as updated through January 3, 2005, incorporated by reference; and

(b) 45 CFR Parts 1355 and 1357 as updated through October 1, 2007, incorporated by reference.

R512-2-3. Title IV-E Foster Care, Adoption, and Independent Living.

(1) Child and Family Services adopts the following federal requirements applicable to Title IV-E Foster Care, Adoption, and Independent Living:

(a) 42 USC 670, 671, 672, 673, 674, 675, 676, 677, and 679, as updated through January 3, 2005, incorporated by reference; and

(b) 45 CFR Part 1356, as updated through October 1, 2007, incorporated by reference.

KEY: child welfare, foster care, adoption, eligibility*
May 27, 2009 **62A-4a-102**
Notice of Continuation August 7, 2007 **62A-4a-105**

R512. Human Services, Child and Family Services.
R512-32. Children with Reportable Communicable Diseases.
R512-32-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for confidentiality and testing of children with reportable communicable diseases.

(2) This rule is authorized by Section 62A-4a-102.

R512-32-2. Definitions.

(1) "Communicable Disease" means any infectious condition reportable to the Utah Department of Health, pursuant to Section 26-6-3. These diseases are listed in the Code of Communicable Disease Rules (R386-702-2 and R386-702-3). In addition, for the purposes of this rule, human immunodeficiency virus (HIV) seropositivity will be considered a communicable disease. Non-reportable minor illnesses such as strep, flu, and colds are excluded from this definition.

(2) "Primary care medical provider" means a person authorized and licensed to supply the daily needs of children in the custody of the Division of Child and Family Services (Child and Family Services). (Other divisions of the Department, for example, the Division of Juvenile Justice Services, shall function under separate communicable disease rules for those youth within their custody and jurisdiction.)

(3) "UDHS" means the Utah Department of Human Services.

(4) "Child and Family Services" means the Division of Child and Family Services.

(5) "UDOH" means the Utah Department of Health, Bureau of Epidemiology or Bureau of Communicable Disease Control.

(6) "HIV Screening" means a laboratory test (Elisa Test) to detect evidence of infection with the HIV; the causative agent of acquired immunodeficiency syndrome (AIDS).

(7) "HIV Seropositivity" means the presence in an individual, as detected by confirmatory laboratory testing (Western Blot Test), of an antibody or antigen to the HIV.

(8) "High Risk Behaviors" means behaviors which may include injectable drug use, sharing intravenous needles and syringes, multiple sex partners, unprotected sex that increase the risks of contracting Hepatitis B, AIDS, HIV disease, and sexually transmitted diseases such as gonorrhea, syphilis, chancroid, granuloma inguinale, chlamydial infections, pelvic inflammatory disease, and lymphogranuloma venereum.

(9) "Children at Risk" means an infant or child born to parent(s) engaging in or who have a history of engaging in high risk behaviors, or a child or youth who has been sexually abused by a person who engages in or has a history of engaging in high risk behaviors.

(10) "Contact" means an individual who has been exposed to a communicable disease through a known mode of transmission.

(11) "Controlled" means a classification of information (medical, psychiatric, or psychological) under the Government Records Access and Management Act (GRAMA), Section 63G-2-304.

R512-32-3. Confidentiality.

(1) In accordance with Section 26-6-27, records containing personal identifiers and information regarding communicable disease are confidential. Such information shall not be disclosed to any person (including UDHS personnel) who does not have a valid and objective need to know. Such persons who may have a valid and objective need to know may include: Child and Family Services administrators, program administrators, supervisor, and caseworker, the foster parent or provider, UDOH, the Guardian ad Litem, the Juvenile Court Judge, and persons providing psychological or medical treatment.

(2) Due to the GRAMA and state confidentiality laws, any documentation in the case record regarding HIV status or any other communicable disease information must be filed under the "Medical/Assessment" section of the case record.

R512-32-4. Identification and Testing of Children with Communicable Disease.

(1) Testing at Agency's Request.

(a) Many medical or laboratory tests to detect communicable disease, including HIV screening, are not routinely performed as part of physical or medical examinations of children in the custody of Child and Family Services. When Child and Family Services has custody and guardianship of a child who may have a communicable disease, the State has the authority to obtain a medical evaluation to determine the child's communicable disease status.

(b) If a foster parent or provider has a reasonable belief that a foster child or the foster child's parent may have a communicable disease, the foster parent or provider shall promptly discuss it with the caseworker.

(c) If the caseworker has a reasonable belief that the child may have a communicable disease, the caseworker is required to contact UDOH promptly for consultation.

(d) A "reasonable belief" includes the following: information received that may indicate the child or the child's parent may be at risk from engaging in or having a history of engaging in high risk behaviors as defined in R512-32-1(8), a child who may be at risk as defined in R512-32-1(9), or medical information received by the caseworker, foster parent, or provider.

(e) Communicable disease testing requires written, informed consent. If Child and Family Services has custody and guardianship of a child, Child and Family Services has the authority to provide written, informed consent for communicable disease testing. If a child under the custody and guardianship of Child and Family Services refuses to be tested, the caseworker is required to contact UDOH, the local health department, and the Attorney General's office immediately upon hearing of the refusal.

(f) When a parent of a child in the custody of Child and Family Services is known or reports to be involved in high risk behaviors, the caseworker shall contact UDOH for consultation.

(g) All contacts with UDOH shall be documented in the child's case record and filed under the "Medical/Assessment" section of that record.

(2) Testing at Minor's Request.

(a) A minor may seek HIV testing without parental or UDHS consent. When the minor requests the test, the right to disclose test results belongs to the minor (Section 26-6-18). If the minor chooses to disclose the test results to UDHS, UDHS cannot disclose the test results to any other person, including the Guardian Ad Litem. Upon disclosure to UDHS of a positive test result, the caseworker shall contact UDOH for consultation and follow up.

(b) When a record of HIV testing is subpoenaed, the caseworker shall immediately contact the Attorney General's office or the Child and Family Services program administrator or deputy director.

R512-32-5. Preparation for Placement in Foster or Out-of-Home Care.

(1) Prior to placing a child with a communicable disease, or upon discovering that a child has a communicable disease, the caseworker, in collaboration with the Fostering Healthy Children RN, will contact the Local Health Department (LHD) in their area for consultation to define the precautions necessary to mitigate any health risks to others. After consultation with the LHD and prior to placing the child, the caseworker shall hold a professional staffing, including the child's primary care

medical provider (as defined in R512-32-1, Definitions), to identify the best placement to meet the child's needs. Once a placement is identified, a Child and Family Team Meeting will be held to address the child's health issues and make sure the caregiver is willing to participate in maintaining the safety of all involved. Additional education and training will be provided as necessary.

R512-32-6. Considerations Regarding Placement of a Child With a Communicable Disease.

(1) A provider's decision to accept placement of a child with a communicable disease shall be made with sufficient knowledge of the specific risks involved, as well as any special accommodations or care requirements. Prior to making this decision, the caseworker shall refer the provider to UDOH for consultation on the nature of the disease, modes of transmission, appropriate infection control measures, special care requirements, and universal precautions.

(2) If, after consultation, the provider accepts the placement, a Communicable Disease Information Acknowledgement form shall be signed by the provider and placed in his or her file, as well as the child's case record under the "Medical/Assessment" section of that record.

(3) If a minor is discovered to have a communicable disease after placement, the consultation and documentation described in R512-32-5(1) and R512-32-5(2) shall be accomplished without delay.

R512-32-7. Pick-Up Orders.

(1) Pick-up orders filed with the Juvenile Court may state that the youth is engaging, or has a history of engaging, in High Risk Behaviors. The order or supplementary forms cannot include information that the child has or may have a communicable disease.

R512-32-8. Returning a Minor to the Parent's Custody.

(1) If a minor in Child and Family Services custody tests positive for the HIV disease and the minor is being returned home, UDOH shall be responsible for informing natural parents of the child's positive test. Both caseworker and UDOH shall coordinate the placement of the child back home. The caseworker shall assist the parents in planning for the child's care and medical follow up needs.

(2) If a minor in Child and Family Services custody tests positive for a communicable disease other than HIV disease and the minor is being returned home, the caseworker is responsible for informing the natural parents of the child's positive test and if needed, referring them to UDOH for consultation and appropriate medical resources.

R512-32-9. When a Minor in Custody Has Been Exposed to a Person Who Has Tested Positive.

(1) When a minor in the custody of Child and Family Services is identified by UDOH as having been exposed to a person who has tested positive, UDOH shall contact the Child and Family Services program administrator or deputy director who shall then contact the appropriate caseworker. The caseworker shall contact UDOH to arrange for the minor to be tested and counseled. The caseworker and provider will follow up on recommended medical treatment and other necessary services.

KEY: child welfare, foster care
May 27, 2009 **62A-4a-102**
Notice of Continuation September 19, 2007 **62A-4a-105**
63G-2-304
26-6-3
26-6-18
26-6-27

R512. Human Services, Child and Family Services.
R512-40. Adoptive Home Studies, Recruitment, Approval.
R512-40-1. Purpose and Authority.

(1) The purpose of this rule is to establish standards for conducting adoptive home studies, recruitment of adoptive homes, and approval of adoptive homes.

(2) This rule is authorized by Section 62A-4a-102.

R512-40-2. Guidelines for Persons Applying for Adoptive Placement of a Child With Special Needs.

(1) Adoptive homes will be approved following the provisions of R501-7. In addition, the following factors will be considered:

(a) Adoptive applicants shall apply in the region where they reside.

(b) Both couples and single individuals may be approved as prospective adoptive parents based upon their ability to provide for children with special needs.

(c) Applicants shall show commitment and stability in existing family relationships which would provide a base for an adoptive child.

(d) The evaluation of the family shall include their strengths and weaknesses. Recommendations shall be made as to the age and type of child who can best fit into the home to ensure the healthy development of the child.

(e) Potential adoptive parents must arrange supervision for the child at times when they are not able to be in the home with the child. Supervision is to be in accordance to the child's age and developmental ability.

(f) A prospective adoptive parent may not be approved for the adoptive placement of a child in state custody unless the prospective adoptive parent and any adults living in the home have completed criminal background checks required by Section 78A-6-308 and P.L. 109-248.

(g) The following factors are critical in the success of adoptive placements and should be factors in approving adoptive applicants:

(i) Commitment to adoption,

(ii) Ability to sustain long-term relationship,

(iii) Proper motivation and realistic expectations,

(iv) Emotional openness and flexibility,

(v) Empathy,

(vi) Strong social support system and knowledge of resources, and

(vii) Stable marital relationship.

(h) The following factors may significantly contribute to adoption disruption and should be considered in approving adoptive applicants:

(i) History of emotional or psychological problem or substance abuse,

(ii) Impulse control disorders,

(iii) Disruptive crisis filled lifestyles,

(iv) Criminal activity,

(v) Serious problems in child rearing,

(vi) Unrealistic expectations of self and child, and

(vii) Marital difficulties and incompatibilities which seriously compromise the ability to meet the needs of the child.

R512-40-3. Follow-Up Services.

(1) A record of the approved home study shall be maintained in the Division of Child and Family Services (Child and Family Services) Management Information System.

(2) Any significant changes in the family's situation shall be documented by revisions or additions on an annual basis in the adoptive study, including revised medical reports, if needed.

(3) At the end of a family's third year as an approved prospective adoptive home, Child and Family Services shall notify the family that their home study will be closed unless the family reapplies for a new home study to be completed.

R512-40-4. Application by Staff of Child and Family Services.

(1) Staff members of Child and Family Services may apply to adopt and may adopt children in State custody in the following manner:

(a) The person applies in the region of residence.

(b) The home study will be completed by staff of another region on a cooperative basis upon the request of the regional director.

(c) Approval of placement of a child in a staff member's home will be by the region having custody of the child. If the prospective adoptive parent is from the same region as the child, the placing committee will consist of the child's caseworker, outside child welfare specialists, and the State Adoption Program Administrator. Supervision will be by the placing region, unless the child and prospective parent are from the same region, in which case, another region will provide supervision.

KEY: adoption

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Notice of Continuation August 7, 2007	**62A-4a-106**
	78A-6-308
	Pub. L. 109-248

R512. Human Services, Child and Family Services.
R512-41. Qualifying Adoptive Families and Adoption Placement.
R512-41-1. Purpose and Authority.

As authorized by Sections 62A-4a-102, 62A-4a-105, and 62A-4a-205.6, Child and Family Services qualifies adoptive parents and individuals for the adoption of children in the custody of Child and Family Services. This rule specifies the requirements used to qualify adoptive parents or individuals and the criteria for adoption placement.

R512-41-2. Definitions.

A. For the purpose of this rule the following definitions apply:

1. Adoptive parent(s) means a family or individual who completes Child and Family Services training for prospective adoptive parent(s) and is approved by a licensed child placement agency or by Child and Family Services.

2. Cohabiting means residing with another person and being involved in a sexual relationship.

3. Involved in a sexual relationship means any sexual activity and conduct between persons.

4. Permanency means the establishment and maintenance of a permanent living situation for a child to give the child an internal sense of family stability and belonging and a sense of self that connects the child to his or her past, present and future.

5. Residing means living in the same household on an uninterrupted or an intermittent basis.

R512-41-3. Requirements for Adoptive Parent(s).

A. Prospective adoptive parent(s) who apply to adopt a child in the custody of Child and Family Services, including kin or Child and Family Services employees, must meet all of the following requirements, pursuant to R512-40-4:

1. complete the adoption training program approved by Child and Family Services;

2. be assessed and approved as adoptive parent(s) following completion of a home study by a licensed child placement agency or by Child and Family Services;

3. obtain a foster care license issued by the Department of Human Services, Office of Licensing, or meet the same standards, or receive a written waiver from Child and Family Services of a standard;

4. receive a determination by Child and Family Services that no conflict of interest exists in the adoption process.

R512-41-4. Adoption Assessment Requirements.

A. An adoption assessment must be consistent with the standards of the Child Welfare League of America (the assessment may be done by a licensed child placement agency or Child and Family Services) and must include the following:

1. an autobiography or psychosocial inventory of prospective adoptive parent(s) and family members;

2. a behavioral assessment of parent(s) and children living at home;

3. a declaration that applicants are not cohabiting in a relationship that is not a legal marriage and in compliance with Section 78B-6-137;

4. a health status verification of parent(s) and children living at home;

5. a verification of financial status;

6. an assessment of home safety and health;

7. a criminal background check of all adults present in the home, including a national fingerprint-based check of prospective adoptive parents that is approved according to criteria specified in Section 62A-2-120;

8. a screening of all adults present in the home against the child abuse data base, including for prospective adoptive parents a check of child abuse registries in any states in which the prospective adoptive parents have resided in the five years prior to application to adopt;

9. an assessment of prospective adoptive parent(s) parenting skills;

10. recommendation of the types of children that may be appropriate for the prospective adoptive parent(s).

R512-41-5. Matching the Child and the Adoptive Parent(s).

A. In the matching process, the selection of adoptive parent(s) will be in the best interest of the child.

B. The decision must be based on a thorough assessment of the child's current and potential development, medical, emotional, and educational needs.

C. The capacity of the prospective adoptive parent(s) to successfully meet the child's needs and to love and accept the child as a fully integrated member of the family must be considered.

D. The child's preference may be considered, if the child has the capacity to express a preference.

E. When possible and appropriate, sibling groups should not be separated.

F. Foster care parent(s) (or other caregiver with physical custody) of the child may be given preferential consideration for adoption if the child has substantial emotional ties with the foster parent(s)/caregiver and if removal of the child from the foster parent(s)/caregiver would be detrimental to the child's well-being.

G. Geographic boundaries alone should not present barriers or delays to the selection of adoptive parent(s).

H. The Indian Child Welfare Act, 25 USC 1901-1963, takes precedent for an adoption of an Indian child who is a member of a federally recognized tribe or Alaskan native village.

I. Placements will be made in accordance with the Interethnic Adoption Act, 42 USC 1996b.

J. Child and Family Services observes the following priorities for adoption of children in Child and Family Services' custody:

1. Child and Family Services gives priority for adoptive placements to families in which both a man and a woman are legally married under the laws of this state or valid proof that a court or administrative order has established a valid common law marriage as specified in Section 30-1-4.5. An individual who is not cohabiting may also be considered as an adoptive parent, if the Region Director determines it is in the best interest of the child.

R512-41-6. Adoption Decision.

A. Permanency decisions should be made in a timely manner recognizing the child's developmental needs and sense of time. Child and Family Services shall make intensive efforts to place the child with adoptive parent(s) within 30 days after the court has freed the child for adoption.

B. Child and Family Services will appoint and convene an adoption committee or committees to select adoptive parent(s) in the best interest of the child and to determine the level of adoption assistance, if any. The committee is also responsible for recommending removal of the child from a placement.

C. The adoption committee will consist of at least three members to include senior-level Child and Family Services staff and one or more members from an outside agency with expertise in adoption or foster care.

D. Anyone who has information regarding the child and the potential matching families may be invited by the committee to present information but not to participate in the deliberations. The committee will reach its decision through consensus. If consensus cannot be reached, the committee will submit their recommendation to the Region Director. The Region Director may confer with the Child and Family Services Director for the

final decision.

E. The committee will make and retain a written record of their proceedings. All proceedings are confidential.

F. Any member of the committee who has a potential conflict of interest must recuse himself or herself from the proceeding.

G. Child and Family Services will send written notification of selection to the adoptive parent(s).

H. Child and Family Services shall provide detailed information about the child to the prospective adoptive parent(s), allowing sufficient time for the prospective adoptive parent(s) to make an informed decision regarding placement of the child. The information given to the prospective adoptive parent(s) must be a full disclosure of all information available and committed to writing. Release of all documents is subject to the Government Records Management Act. The prospective adoptive parent(s) shall be advised of possible financial and medical assistance available to meet the special needs of the child. Child and Family Services and the prospective adoptive parent(s) will acknowledge receipt of the information by signing Child and Family Services' information disclosure form. Child and Family Services shall respond to questions or concerns of the potential adoptive parent(s). The prospective adoptive parent(s) shall have the opportunity to meet the child prior to permanent placement.

I. A family or individual that is not selected for an adoption placement of a specific child shall have no right to appeal the decision, unless the parent(s) not selected for the adoptive placement is the child's current foster parent(s) and the foster parent(s) have completed all requirements. If the foster parent(s) are not selected for the adoptive placement, the foster parent(s) due process rights for removal of a child apply. Foster Parents Due Process, Utah Administrative Code, Human Services Rule, R512-31.

J. When approved adoptive parent(s) agree to accept the placement of a child for adoption, the adoptive parent(s) and a representative from Child and Family Services shall sign an adoption agreement on a form provided by Child and Family Services.

K. When adoptive parent(s) agree to accept the placement of a child who is not free for adoption, the parent(s) shall sign Child and Family Services' Foster Child Adoption agreement.

R512-41-7. Information Regarding the Adoptive Parent(s).

No identifying information regarding adoptive parent(s) shall be released to birth families without the written consent of the adoptive parent(s).

R512-41-8. Placement.

A. Child and Family Services will make every effort to make a smooth and effective transition of the child to the adoptive parent(s) with the cooperation of the foster family and others who have a supportive relationship with the child. All out-of-home requirements continue to be applicable until the adoption is finalized.

B. Adoptive parent(s) will have access to all relevant information in the case record to help them understand and accept the child and preserve the child's history. Child and Family Services will inform adoptive parent(s) of community services and adoption assistance available before and after the adoption is final.

C. Child and Family Services will develop a service plan within 30 days of placement and supervise adoptive parent(s), including frequent visits with the child for at least the first six months after placement.

D. Child and Family Services supervision will continue until the adoption is final.

R512-41-9. Adoption Disruption/Removal of a Child from Adoptive Parent(s) Prior to Finalization.

A. Child and Family Services shall consider removal of a child before an adoption is finalized if adoptive parent(s) request removal or if serious circumstances impair the child's security or development.

B. Prior to removal, Child and Family Services shall respond to adoptive parent(s)' concerns in a timely manner, counsel with the adoptive parent(s) and, if possible and appropriate, offer further treatment, including intensive in-home services or temporary removal of the child from the home for respite purposes.

C. When removal is recommended, the adoption committee shall review the placement progress, present situation, and decide to either continue placement with further services or to remove the child from the home. The Region Director will review and approve the decision.

D. If the adoption committee decides to remove the child, a Notice of Agency Action shall be sent to the adoptive parent(s) notifying them of their due process rights. The adoptive parent(s) shall be offered the same rights as those offered a foster family regarding removal of a child, Utah Administrative Code, Human Services, Rule R512-31.

R512-41-10. Adoption Finalization and Post Adoption.

Before an adoption is final, the adoption committee shall review the placement, authorize finalization, and approve adoption assistance, when appropriate. Utah Administrative Code, Human Services, R512-43.

R512-41-11. Adult Adoptee or Adoptive Parent(s) Request for Records.

The adoption records of Child and Family Services shall be made available to the adoptive parent(s) or adult adoptee upon written request in accordance with the Government Records Access Management Act, Title 63G, Chapter 2. An adult adoptee may also register with the Utah Department of Health Adoption Registry, Section 78B-6-144.

KEY: child welfare, adoption
September 23, 2008 62A-4a-105
Notice of Continuation May 7, 2009 62A-4a-205.6

R512. Human Services, Child and Family Services.
R512-302. Out-of-Home Services, Responsibilities Pertaining to an Out-of-Home Caregiver.
R512-302-1. Purpose and Authority.

(1) The purposes of this rule are to clarify:

(a) Qualification, selection, payment criteria, and roles and responsibilities of a caregiver while a child is receiving Out-of-Home Services, and

(b) Roles and responsibilities of Child and Family Services to a caregiver for a child receiving Out-of-Home Services in accordance with Rule R512-300.

(2) This rule is authorized by Section 62A-4a-102. Sections 62A-4a-105 and 62A-4a-106 authorize Child and Family Services to provide Out-of-Home Services and 42 USC Section 672 authorizes federal foster care. 42 USC Section 672 (2006), and 45 CFR Parts 1355 and 1356 (2008) are incorporated by reference.

R512-302-2. Definitions.

In addition to definitions in R512-300-2, the following terms are defined for the purposes of this rule:

(1) Caregiver means a licensed resource family, also known as a licensed foster family, and may also include a licensed kin provider or a foster family certified by a contract provider that is licensed as a child placing agency. Caregiver does not include a group home or residential facility that provides Out-of-Home Services under contract with Child and Family Services.

(2) Cohabiting means residing with another person and being involved in a sexual relationship.

(3) Involved in a sexual relationship means any sexual activity and conduct between persons.

(4) Out-of-Home Services means those services described in Rule R512-300.

(5) Residing means living in the same household on an uninterrupted or an intermittent basis.

R512-302-3. Qualifying as a Caregiver for a Child Receiving Out-of-Home Services.

(1) An individual or couple shall be licensed by the Office of Licensing as provided in Rule R501-12 to qualify as a caregiver for a child receiving Out-of-Home Services. After initial licensure, the caregiver shall take all steps necessary for timely licensure renewal to ensure that the license does not lapse.

(2) A caregiver qualifying for an initial license and any adults living in the home shall complete criminal background checks required by Section 78A-6-308 and P.L. 109-248 before a child in state custody may be placed in that home.

(3) Child and Family Services or the contract provider shall provide pre-service training required in Rule R501-12-5 after the provider has held an initial consultation with the individual or couple to clearly delineate duties of caregivers.

(4) The curriculum for pre-service and in-service training shall be developed by the contract provider and approved by Child and Family Services according to Child and Family Services' contract with the provider.

(5) Child and Family Services or the contract provider shall verify in writing a caregiver's completion of training required for licensure as provided in Rule R501-12-5.

(6) Child and Family Services or the contract provider shall also verify in writing a caregiver's completion of supplemental training required for serving children with more difficult needs.

(7) Once a license is issued, the caregiver's name and identifying information may be shared with the court, assistant attorney general, guardian ad litem, foster parent training contract provider, resource family cluster group, foster parent associations, the Department of Health, the Foster Care Citizen Review Board, and the child's primary health care providers.

R512-302-4. Selection of a Caregiver for a Child Receiving Out-of-Home Services.

(1) A caregiver shall have the experience, personal characteristics, temperament, and training necessary to work with a child and the child's family to be approved and selected to provide Out-of-Home Services.

(2) An Out-of-Home caregiver shall be selected according to the caregiver's skills and abilities to meet a child's individual needs and, when appropriate, an ability to support both parents in reunification efforts and to consider serving as a permanent home for the child if reunification is not achieved. When dictated by a child's level of care needs, Child and Family Services may require one parent to be available in the home at all times.

(3) An Out-of-Home caregiver shall be selected according to the caregiver's compatibility with the child, as determined by Child and Family Services exercising its professional judgment. The best interest of the child shall be Child and Family Services' primary consideration when making a placement decision.

(a) Child and Family Services may consider the Out-of-Home caregiver's possession or use of a firearm or other weapon, espoused religious beliefs, or choice to school the child outside the public education system in accordance with Section 63G-4-104.

(b) Child and Family Services may consider the child's sex, age, behavior, and the composition of the foster family.

(4) A child in state custody shall be placed with an Out-of-Home caregiver who is fully licensed as provided in Rule R501-12. A child may be placed in a home with a probationary license only if the Out-of-Home caregiver is a child-specific placement.

(5) An Out-of-Home caregiver shall be given necessary information to make an informed decision about accepting responsibility to care for a child. The worker shall obtain all available necessary information about the child's permanency plan, family visitation plans, and needs such as medical, educational, mental health, social, behavioral, and emotional needs, for consideration by the caregiver.

(6) If the court has not given custody to a non-custodial parent or kin provider, to provide safety and maintain family ties, the child shall be placed in the least restrictive placement that meets the child's special needs and is in the child's best interests, according to the following priorities:

(a) A relative of the child.

(b) A friend designated by the custodial parent or guardian of the child, if the friend is a licensed foster parent.

(c) A former foster placement, shelter facility, or other foster placement designated by Child and Family Services.

(7) If a child is reentering custody of the state, the child's former Out-of-Home caregiver shall be given preference as provided in Section 62A-4a-206.1.

(8) A child's placement shall not be denied or delayed on the basis of race, color, or national origin of the Out-of-Home caregiver or the child involved.

(9) Selection of an Out-of-Home caregiver for an Indian child shall be made in compliance with the Indian Child Welfare Act, 25 USC Section 1915 (2007), which is incorporated by reference.

R512-302-5. Child and Family Services' Roles and Responsibilities to a Caregiver for a Child Receiving Out-of-Home Services.

(1) Child and Family Services shall actively seek the involvement of the caregiver in the child and family team process, including participation in the child and family team, completing an assessment, and developing the child and family plan as described in Rule R512-300-4.

(2) The child and family plan shall include steps for

monitoring the placement and a plan for worker visitation and supports to the Out-of-Home caregiver for a child placed in Utah or out of state.

(3) In accordance with Section 62A-4a-205, additional weight and attention shall be given to the input of the child's caregiver in plan development.

(4) The caregiver shall be provided a copy of the completed child and family plan.

(5) The caregiver has a right to reasonable notice and may participate in court and administrative reviews for the child in accordance with 42 USC Section 475(5) and Sections 78A-6-310 and 78A-6-317.

(6) Child and Family Services shall provide support to the caregiver to ensure that the child's needs are met, and to prevent unnecessary placement disruption.

(7) Options for temporary relief may include paid respite, non-paid respite, childcare, and babysitting.

(8) The worker shall provide the caregiver with a portable, permanent record that provides available educational, social, and medical history information for the child and that preserves vital information about the child's life events and activities while receiving Out-of-Home Services.

R512-302-6. Roles and Responsibilities of a Caregiver of a Child Receiving Out-of-Home Services.

(1) An Out-of-Home caregiver shall be responsible to provide daily care, supervision, protection, and experiences that enhance the child's development as provided in a written agreement entered into with Child and Family Services and the child and family plan.

(2) The caregiver shall be responsible to:

(a) Participate in the child and family team process.

(b) Provide input into the assessment and child and family plan development process.

(c) Complete goals and objectives of the plan relevant to the caregiver.

(d) Promptly communicate with the worker the child's progress and concerns and progress in completing the plan or regarding problems in meeting specified goals or objectives in advance of proposed completion time frames.

(e) Support and assist with parental visitation.

(3) The caregiver shall document individualized services provided for the child, when required, such as skills development or transportation.

(4) The caregiver shall maintain and update the child's portable, permanent record to preserve vital information about the child's life events, activities, health, social, and educational history while receiving Out-of-Home Services. The caregiver shall share relevant health and educational information during visits with appropriate health care and educational providers to ensure continuity of care for the child.

R512-302-7. Payment Criteria for a Caregiver of a Child Receiving Out-of-Home Services.

(1) An Out-of-Home caregiver shall receive payments according to the rate established for the child's need level, not upon the highest level of service the caregiver has been trained to provide.

(2) The daily rate for the monthly foster care maintenance payment provides for the child's board and room, care and supervision, basic clothing and personal incidentals, and may also include a supplemental daily payment based upon a child's medical need or to assist with care of a youth's child while residing with the youth in an Out-of-Home placement. Foster care maintenance may also include periodic one-time payments for special needs such an initial clothing allowance, additional needs for a baby, additional clothing, gifts, lessons or equipment, recreation, non-tuition school expenses, and other needs recommended by the child and family team and approved by Child and Family Services.

(3) A caregiver may also be reimbursed for transporting a foster child for visitation with a parent or siblings, to participate in case activities such as child and family team meetings and reviews, and for transporting the child to activities beyond those normally required for a family. The caregiver must document all mileage on a form provided by Child and Family Services.

(4) The caregiver shall submit required documentation to receive payments for care or reimbursement for costs.

R512-302-8. Child Abuse Reporting and Investigation of a Caregiver Providing Out-of-Home Services.

(1) Investigation of any report or allegation of abuse or neglect of a child that allegedly occurs while the child is living with an Out-of-Home caregiver shall be investigated by a contract agency or law enforcement as provided in Section 62A-4a-202.5.

R512-302-9. Removal of a Child from a Caregiver Providing Services.

(1) Removal of a child from a caregiver shall occur as provided in Section 62A-4a-206 and Rule R512-31.

R512-302-10. Cohabitation Not Permitted for Foster Parents.

(1) A foster parent or foster parents must complete a declaration of compliance with Section 78B-6-137 that they are not cohabiting with another person in a sexual relationship. Child and Family Services gives priority for foster care placements to families in which both a man and a woman are legally married or valid proof that a court or administrative order has established a valid common law marriage, Section 30-1-4.5. An individual who is not cohabiting may also be a foster parent if the Region Director determines it is in the best interest of the child. Legally married couples and individuals who are not cohabiting and are blood relatives of the child in state custody may be foster parents pursuant to Section 78A-6-307.

KEY: child welfare

May 27, 2009	**62A-4a-102**
Notice of Continuation August 20, 2008	**62A-4a-105**
	63G-4-104
	78A-6-308
	Pub. L. 109-248

R512. Human Services, Child and Family Services.
R512-306. Transition to Adult Living Services, Education and Training Voucher Program.
R512-306-1. Purpose and Authority.

1) The Education and Training Voucher Program assists individuals in foster care to make a more successful transition to self-sufficiency in adulthood. The Education and Training Voucher program provides the financial resources for postsecondary education and vocational training necessary to obtain employment or to support the individual's employment goals.

2) The Education and Training Voucher Program is authorized by Pub. L. No. 107-133, which is incorporated by reference. 20 USC 1087kk and 20 USC 108711 (2001) are also incorporated by reference.

R512-306-2. Definitions.

1) The following terms are defined for the purposes of this rule:

a) Institution of higher education means a school that:

i. Awards a bachelor's degree or not less than a two-year program that provides credit towards a degree, or

ii. Provides not less than one year of training towards gainful employment, or

iii. Is a vocational program that provides training for gainful employment and has been in existence for at least two years, and that also meets all of the following:

A. Admits as regular students only persons with a high school diploma or equivalent; or who are beyond the age of compulsory school attendance (Section 53A-11-101 and 53A-11-102).

B. Public or non-profit facility; and

C. Accredited or pre-accredited by a recognized accrediting agency that the Secretary of Education determines to be reliable and is authorized to operate in the state.

b) Satisfactory progress means maintaining at least a C grade average or 2.0 on a 4.0 scale on a cumulative basis or equivalent passing status as determined by the educational institution.

c) GED means General Education Development.

d) Division means Division of Child and Family Services.

e) Foster care means substitute care for children in the custody of the Department of Human Services/Division of Child and Family Services and/or Indian Tribes.

f) Full-time means enrollment in the standard number of credit hours for each semester or quarter as defined by the educational institution.

g) Part-time means enrollment in fewer credit hours than the full-time standard as defined by the educational institution.

R512-306-3. Scope of Program.

1) To be eligible for the Education and Training Voucher Program, an individual must meet all of the following requirements:

a) An individual in foster care who has not yet reached 21 years of age, or

b) An individual no longer in foster care, but who received 12 months of Transition to Adult Living services after the age of 14 while in foster care and the court terminated reunification, or

c) An individual no longer in foster care who reached 18 years of age while in foster care and who has not yet reached 21 years of age, or

d) An individual adopted from foster care after reaching 16 years of age and who has not yet attained 21 years of age, and

e) Has an individual educational assessment and individual education plan completed by the Division or their designee;

f) Submit a completed application for the Education and Training Voucher Program;

g) Be accepted to a qualified college, university, or vocational program;

h) Apply for and accept available financial aid from other sources before obtaining funding from the Education and Training Voucher Program;

i) Enroll as a full-time or part-time student in the college, university or vocational program; and

j) Maintain a 2.0 cumulative grade point average on a 4.0 scale or equivalent as determined by the educational institution.

2) The application and attachments will be reviewed and approved by regional Transition to Adult Living program staff or their designee. Individuals meeting all requirements will be accepted for program participation when Education and Training Voucher Program funding is available. If demand exceeds available funding, the Division may establish a waiting list, which will then be awarded to the applicants in the order received on a first come first serve basis for funding or the Division may approve applications for lesser amounts of funding. The individual will receive written notice of approval or denial of the application. If denied or terminated, a written reason for denial will be provided.

3) If an application for benefits under the Education and Training Voucher program is denied, the applicant has the right to appeal the decision through an administrative hearing in accordance with Section as per 63G-4-301 et seq.

4) The individual may participate in the Education and Training Voucher Program until the completion of:

a) the degree or vocational program; or

b) reach age 21.

c) If an individual attains age 21 while enrolled in the Education and Training Voucher Program, the individual may continue in the program until age 23 as long as the individual is attending an accredited or pre-accredited college, university, or vocational program full-time or part-time, is making satisfactory progress, and funding continues to be available. The individual must make a written request and receive a written approval prior to his or her 21st birthday to be continued for eligibility for the Education and Training Voucher Program.

5) The individual must provide ongoing documentation of full-time or part-time enrollment, satisfactory progress as detailed in the individual education plan, additional requests for funding, and any changes in total costs for attendance or other financial aid to the Division in order to continue receiving benefits under the program.

6) A program participant who receives less than a 2.0 GPA in a single grading period will be placed on probationary status and,

a) The individual will receive written notice of probationary status. The individual will have one subsequent grading period to regain or show significant progress toward a 2.0 GPA to continue in the program.

b) Upon completion of a satisfactory grading period, the participant will be notified that the probation period is over.

c) The participant that does not receive satisfactory grades while on probation will receive written notice of loss of eligibility for the Education and Training Voucher Program.

7) An individual under age 21 who has previously been denied acceptance to the program or who lost eligibility for the program due to not making satisfactory progress may reapply for the program at any time.

8) An individual may receive vouchers up to a maximum amount of $5,000 per year through the Education and Training Voucher Program. Amounts are determined by the cost of tuition at specific educational institutions and enrollment status.

a) In accordance with 20 USC 1087kk, the total amount awarded may not exceed the total cost of attendance, as described in R512-306-4, minus:

i) expected contributions from the individual's family; and

ii) estimated financial assistance from other State or Federal grants or programs.

b) Awards are subject to the availability of Division Education and Training Voucher Program funds appropriated for this program.

c) In accordance with 42 USC 677(i)(5), the amount of benefits received through the Education and Training Voucher Program may be disregarded in determining an individual's eligibility for, or amount of, any other Federal or Federally supported assistance.

KEY: foster care, Transition to Adult Living
June 19, 2006 62A-4a-105
Notice of Continuation May 7, 2009 63G-4-301

R592. Insurance, Title and Escrow Commission.
R592-10. Title Insurance Regulation Assessment for Title Insurance Agencies and Title Insurers.
R592-10-1. Authority.

This rule is promulgated by the Title and Escrow Commission (Commission) pursuant to Subsections:

(1) 31A-2-404(2)(d) which requires the Commission to determine by rule the assessment required by 31A-23a-415; and

(2) 31A-23a-415(2)(d) which requires the Commission to establish the amount of costs and expenses that will be covered by the assessment.

R592-10-2. Purpose and Scope.

(1) The purposes of this rule are to:

(a) establish the categories of costs and expenses incurred by the department in administering, investigating and enforcing the provisions of Title 31A, Chapter 23a, Parts IV and V related to the marketing of title insurance and the audits of title agencies;

(b) require the reporting by a title insurance agency and a title insurer of the mailing address and physical location of each office in each county where the title agency or title insurer maintains an office;

(c) establish a calculation method for the calculation of the number of title insurance agency or title insurer offices; and

(d) determine the premium year used in calculating the assessment of title insurers.

(2) This rule applies to all title insurers and title insurance agencies.

R592-10-3. Definitions.

(1) For the purpose of the rule the Commission adopts the definitions as set forth in Sections 31A-1-301, 31A-2-402, and the following:

(a) "Office" means each physical location of a title insurance agency or a title insurer in a county. Office includes any physical location that is open and available to the public.

R592-10-4. Costs and Expenses.

The amount of costs and expenses that will be covered by the assessment imposed by 31A-23a-415 for any fiscal year in which an assessment exists:

(1) will be for a Market Conduct Examiner I as determined by the department's budget as approved by the Utah State Legislature, including any approved salary increases or increases in benefits; and

(2) will include the following expenses:

(a) salary and state paid benefits;

(b) travel expenses, including daily vehicle expenses;

(c) computer hardware and software expenses;

(d) e-commerce expenses;

(e) wireless communications expenses; and

(f) training expenses.

R592-10-5. Office Report.

(1) A title insurance agency and a title insurer shall submit a completed Office Report Form not later than 30 days after the date a change described below occurs in a county where the title insurance agency or title insurer maintains an office:

(a) the opening or closing of an office;

(b) a change of address of an office; or

(c) a change in the manager of an office.

(2) An Office Report Form shall be submitted electronically via email to licensing.uid@utah.gov.

(3) The department's Office Report Form, which is available on the department's website, shall be used to report changes in offices.

(a) An actual copy of the form may be used or may be adapted to a particular word processing system.

(b) If adapted, the content, size, font, and format must be similar.

R592-10-6. Calculation Method for the Calculation of the Number of Title Insurance Agency Offices.

(1) All offices reported in accordance with Section R592-10-5 will be included in the calculation of the title insurance assessment.

(2) An annual assessment calculation for a title insurance agency or title insurer that is calculated using incorrect numbers of offices because the number of offices was incorrectly reported will not be recalculated.

(3) A title insurance agency or title insurer found to have improperly reported their offices may be subject to penalties in accordance with Section R592-10-9.

R592-10-7. Premium Year for Title Insurer Assessment.

(1) The title insurance assessment shall be calculated using direct premiums written during the preceding calendar year.

(2) The direct premiums written shall be taken from the insurer's annual statements for that year.

R592-10-8. Assessment Payment.

(1) An annual assessment shall be paid by the due date on the invoice.

(2) Payments shall be made in accordance with R590-102, Insurance Department Fee Payment Rule.

R592-10-9. Penalties.

A person found, after a hearing or other regulatory process, to be in violation of this rule shall be subject to penalties as provided under 31A-2-308.

R592-10-10. Enforcement Date.

The commissioner will begin enforcing this rule 45 days from the rule's effective date.

R592-10-11. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity will not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
May 19, 2009 **31A-2-201**
Notice of Continuation July 29, 2008 **31A-23a-415**

R592-11. Insurance, Title and Escrow Commission.
R592-11. Title Insurance Producer Annual and Controlled Business Reports.
R592-11-1. Authority.

This rule is promulgated pursuant to:

(1) Section 31A-2-404(2)(a), which requires the Title and Escrow Commission (Commission) to make rules related to title insurance;

(2) Section 31A-23a-413, which requires the annual filing of a report by each title insurance producer, as defined in R592-11-3, containing a verified statement of the producer's financial condition, transactions, and affairs; and

(3) Subsection 31A-23a-503(8), which requires the annual filing of a controlled business report.

R592-11-2. Purpose and Scope.

(1) The purpose of this rule is to establish the form and filing deadline for the Title Insurance Producer Annual Report and Controlled Business Report required by Section 31A-23a-413 and Subsection 31A-23a-503(8)(a).

(2) This rule applies to all title insurance producers as defined in R592-11-3.

R592-11-3. Definition.

For the purpose of this rule the Commission adopts the definitions as set forth in Sections 31A-1-301 and 31A-2-204 and the following:

(1) "Title insurance producer" includes:

(a) a title insurance agency as defined in 31A-1-301(6);

(b) an individual title producer not designated to a title insurance agency; and

(c) an attorney licensed to practice law in Utah who is also an individual title producer not designated to a title insurance agency.

R592-11-4. Title Insurance Producer Annual Report.

(1) Title insurance producers, as defined in R592-11-3, shall file a Title Insurance Producer Annual Report containing the information shown in subsection 2 below.

(2) A Title Insurance Producer Annual Report shall consist of:

(a) a balance sheet and an income and expense statement prepared and presented in conformity with generally accepted accounting principles;

(b) the name and address of each financial institution where a title or escrow trust account is maintained;

(c) unless the producer is an attorney exempted under 31A-23a-204(8), proof of financial protection that complies with Subsection 31A-23a-204(2) consisting of one or more of the following:

(i) a copy of the declarations page of a fidelity bond;

(ii) a copy of the declarations page of a professional liability insurance policy; or

(iii) a copy of the commissioner's approval of equivalent financial protection; and approved by the commissioner;

(d) the name, address, and percentage of ownership of each owner.

(3) A title insurance producer, as defined in R592-11-3, shall file a Title Insurance Producer Annual Report not later than April 30 of each year.

(4) The Title Insurance Producer Annual Report period shall be the preceding calendar year.

(5) A Title Insurance Producer Annual Report will be considered protected data if the producer submitting the report requests classification as a protected record in accordance with Sections 63G-2-305 and 63G-2-309.

R592-11-5. Controlled Business Report.

(1) A title insurance producer, as defined in R592-11-3, shall file an annual Controlled Business Report not later than April 30 of each year.

(2) The Controlled Business Report period shall be the preceding calendar year and shall contain the information required in Subsection 31A-23a-503(8)(a).

(3) A Controlled Business Report is a public record upon filing.

R592-11-6. Electronic Filing of Title Insurance Producer Annual Report and Controlled Business Report.

(1) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted together electronically via email to market.uid@utah.gov.

(2) The Title Insurance Producer Annual Report and the Controlled Business Report shall be submitted not later than April 30 of each year as attachments to the Title Insurance Agency Annual Reports Transmittal Form.

(3) The following report forms, which are available on the department's website, shall be used to submit the Title Insurance Producer Annual Report and the Controlled Business Report:

(a) Title Insurance Producer Annual and Controlled Business Reports Transmittal form; and

(b) Controlled Business Report form.

(4) Actual copies of the forms may be used or may be adapted to a particular word processing system, however, if adapted, the content, size, font, and format shall be similar.

R592-11-7. Penalties.

A person found to be in violation of this rule shall be subject to penalties as provided under Section 31A-2-308.

R592-11-8. Enforcement Date.

The commissioner will begin enforcing this rule 5 days from the rule's effective date.

R592-11-9. Severability.

If any provision or clause of this rule or its application to any person or situation is held invalid, that invalidity shall not affect any other provision or application of this rule which can be given effect without the invalid provision or application, and to this end the provisions of this rule are declared to be severable.

KEY: title insurance
May 19, 2009 **31A-23-313**
Notice of Continuation June 27, 2006 **31A-23-403**

R602. Labor Commission, Adjudication.
R602-7. Adjudication of Discrimination Claims.
R602-7-1. Statutory Authority.

Section 34A-5-107(5)(c) provides a right for a person filing a charge of discrimination with the Utah Antidiscrimination and Labor Division to file a written request to the Division of Adjudication for an evidentiary hearing to review de novo a determination and order issued by the Utah Antidiscrimination and Labor Division. Section 34A-5-107(13) authorizes the Labor Commission to establish rules governing these proceedings.

R602-7-2. Applicability of Rule.

The provisions of R602-7 pertaining to requests for hearing pursuant Section 34A-5-107 (5) (c) supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-8 as to any actions brought pursuant to Section 34A-5-107 (5) (c).

R602-7-3. Adjudication of Actions Commenced Pursuant to Section 34A-5-107(5)(c).

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Request for De Novo Review" pursuant to Section 34A-5-107(5)(c) means a written request filed with the Commission and directed to the Division requesting de novo review of a specific Determination and Order issued by the Utah Antidiscrimination and Labor Division and shall include the following:

A. the name, mailing address and telephone number of the party seeking de novo review and of their attorney, if applicable.

B. the name, mailing address and telephone number of the opposing parties and of their attorney if applicable.

C. the date the Determination and Order was issued by the Utah Antidiscrimination Division.

D. a request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

E. a copy of the initial Charge of Discrimination filed with the Utah Antidiscrimination Division and a copy of the Determination and Order.

iv. "Petitioner" means the charging party in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

v. "Respondent" means the respondent in the original case resulting in the Determination and Order issued by the Utah Antidiscrimination and Labor Division.

b. Scheduling Conference.

Upon receipt of the Request for De Novo Review the Division will schedule a scheduling conference to be attended by the parties and/or their attorneys. Following the scheduling conference the Division will issue a Scheduling Order containing deadlines and requirements for the filing of Petitioner's Statement, deadlines and requirements for the filing of Respondent's Answer, discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of damages claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. Unless otherwise stipulated by the parties or ordered by the administrative law judge, the disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures shall be made in writing, signed and served.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature,

custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

(Aa) Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C.P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reseasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Respondent's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form or requirement for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon his or her own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas.

Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302(c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

d. Notices

i. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

ii. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

R602-7-4. Hearings.

1. Evidentiary hearings shall be conducted formally in accordance with Utah Code Section 63G-4-206. The petitioner shall have the burden of proving the claim of discrimination by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208.

2. In those cases where the Utah Antidiscrimination and Labor Division in its Determination and Order made a reasonable cause finding, the Utah Antidiscrimination and Labor Division shall be given an opportunity at the evidentiary hearing to briefly outline the basis of its Determination. The presentation by the Utah Antidiscrimination and Labor Division shall not be considered evidence by the administrative law judge in issuing an order.

R602-7-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Division in accordance with the provisions of Utah Code Subsection 34A-5-107 (11) and 63G-4-301. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-7-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401.

KEY: discrimination, administrative procedures, hearings, settlements

May 22, 2009 **34A-5-107**
63G-4-102 et seq.

R602. Labor Commission, Adjudication.
R602-8. Adjudication of Utah Occupational Safety and Health Citation Claims.
R602-8-1. Statutory Authority.

Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 provide that an administrative law judge from the Division of Adjudication shall hear and determine timely filed contests of citations issued by Utah Occupational Safety and Health. Sections 34A-1-304, 34A-6-104(1)(c) and 34A-6-301(7)(a) authorize the Labor Commission to promulgate rules governing these proceedings.

R602-8-2. Applicability of Rule.

The provisions of R602-8 pertaining to requests for hearing pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304 supersede the Administrative Rules contained in R602-2, R602-3, R602-4, R602-5, R602-6 and R602-7 as to any actions brought pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

R602-8-3. Adjudication of Actions Commenced Pursuant to Section 34A-6-105, Section 34A-6-303 and Section 34A-6-304.

1. Pleadings and Discovery.

a. Definitions.

i. "Commission" means the Labor Commission.

ii. "Division" means the Division of Adjudication within the Labor Commission.

iii. "Notice of Contest" pursuant to Section 34A-6-303 means a written request filed with the Commission and directed to the Division requesting an evidentiary hearing on a citation issued by the Utah Occupational Safety and Health Division and shall include the following:

A. the name, mailing address and telephone number of the party filing the Notice of Contest and that of their attorney, if applicable.

B. the date and number of the citation issued by the Utah Occupational Safety and Health Division.

C. An admission or denial of the specific facts alleged in support of each violation alleged in the citation and a statement of agreement or disagreement with each proposed penalty set forth in the citation.

D. Any affirmative defenses relied on by the cited party and specific facts in support of the affirmative defenses.

E. A request for relief, specifying the type and extent of relief requested, and a statement of facts supporting the requested relief.

F. A statement requesting or declining an informal conference with the Administrator of Utah Occupational Safety and Health Division.

G. A copy of the citation issued by Utah Occupational Safety and Health Division.

iv. "Petitioner" means Utah Occupational Safety and Health Division.

v. "Respondent" means the person or entity cited by Utah Occupational Safety and Health Division.

b. Scheduling Conference.

Upon receipt of the Notice of Contest the Division will schedule a scheduling conference to be attended by the parties and/or their attorneys. Following the scheduling conference the Division will issue a Scheduling Order containing deadlines and requirements for the litigation including discovery deadlines, motion deadlines and any other deadlines deemed appropriate for the orderly administration of the case as determined by the administrative law judge assigned to the case.

c. Discovery.

i.(A) Required disclosures; Discovery methods.

I. Initial disclosures. Except in cases exempt under subdivision (c)(i)(A)(II) and except as otherwise stipulated or directed by order, a party shall, without awaiting a discovery request, provide to other parties:

Aa. the name and, if known, the address and telephone number of each individual likely to have discoverable information supporting its claims or defenses, unless solely for impeachment, identifying the subjects of the information;

Bb. a copy of, or a description by category and location of, all discoverable documents, data compilations, electronically stored information, and tangible things in the possession, custody, or control of the party supporting its claims or defenses, unless solely for impeachment;

Cc. a computation of any category of fines or penalties claimed by the disclosing party, making available for inspection and copying all discoverable documents or other evidentiary material on which such computation is based, including materials bearing on the nature and extent of injuries suffered; and

Dd. The disclosures required by subdivision (c)(i)(A)(I) shall be made within 14 days after the disclosure meeting of the parties under subdivision (c)(i)(E). A party shall make initial disclosures based on the information then reasonably available and is not excused from making disclosures because the party has not fully completed the investigation of the case or because the party challenges the sufficiency of another party's disclosures or because another party has not made disclosures.

II. Disclosure of expert testimony.

Aa. A party shall disclose to other parties the identity of any person who may be used at hearing to present expert opinion evidence.

Bb. Unless otherwise stipulated by the parties or ordered by the Administrative law judge, this disclosure shall, with respect to a witness who is retained or specially employed to provide expert testimony in the case or whose duties as an employee of the party regularly involve giving expert testimony, be accompanied by a written report prepared and signed by the witness or party. The report shall contain the subject matter on which the expert is expected to testify; the substance of the facts and opinions to which the expert is expected to testify; a summary of the grounds for each opinion; the qualifications of the witness.

III. Prehearing disclosures. A party shall provide to other parties the following information regarding the evidence that it may present at hearing other than solely for impeachment:

Aa. the name and, if not previously provided, the address and telephone number of each witness, separately identifying witnesses the party expects to present and witnesses the party may call if the need arises;

Bb. an appropriate identification of each document or other exhibit, including summaries of other evidence, separately identifying those which the party expects to offer and those which the party may offer if the need arises.

Cc. Disclosures required by subdivision (c)(i)(A)(III) shall be made at least 30 days before hearing.

IV. Form of disclosures. Unless otherwise stipulated by the parties or ordered by the administrative law judge, all disclosures shall be made in writing, signed and served.

V. Methods to discover additional matter. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

B. Discovery scope and limits. Unless otherwise limited by order of the administrative law judge in accordance with these rules, the scope of discovery is as follows:

I. In general. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or

defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

II. A party need not provide discovery of electronically stored information from sources that the party identifies as not reasonably accessible because of undue burden or cost. The party shall expressly make any claim that the source is not reasonably accessible, describing the source, the nature and extent of the burden, the nature of the information not provided, and any other information that will enable other parties to assess the claim. On motion to compel discovery or for a protective order, the party from whom discovery is sought must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the administrative law judge may order discovery from such sources if the requesting party shows good cause, considering the limitations of subsection (c)(i)(B)(III). The administrative law judge may specify conditions for the discovery.

III. Limitations. The frequency or extent of use of the discovery methods set forth in Subdivision (c)(i)(A)(V) shall be limited by the administrative law judge if it determines that:

Aa. the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive;

Bb. the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or

Cc. the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The administrative law judge may act upon his or her own initiative after reasonable notice or pursuant to a motion under Subdivision (c)(i)(C).

IV. Hearing preparation: Materials.

Aa. Subject to the provisions of Subdivision (c)(i)(B)(V) of this rule, a party may obtain discovery of documents and tangible things otherwise discoverable under Subdivision (c)(i)(B)(I) of this rule and prepared in anticipation of litigation or for hearing by or for another party or by or for that other party's representative (including the party's attorney, consultant, surety, indemnitor, insurer, or agent) only upon a showing that the party seeking discovery has substantial need of the materials in the preparation of the case and that the party is unable without undue hardship to obtain the substantial equivalent of the materials by other means. In ordering discovery of such materials when the required showing has been made, the administrative law judge shall protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of an attorney or other representative of a party concerning the litigation.

Bb. A party may obtain without the required showing a statement concerning the action or its subject matter previously made by that party. Upon request, a person not a party may obtain without the required showing a statement concerning the action or its subject matter previously made by that person. If the request is refused, the person may move for an order. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion. For purposes of this paragraph, a statement previously made is (a) a written statement signed or otherwise adopted or approved by the person making it, or (b) a stenographic, mechanical, electrical, or other recording, or a transcription thereof, which is a substantially verbatim recital of an oral statement by the person making it and contemporaneously recorded.

V. Hearing preparation: Experts.

Aa. A party may depose any person who has been identified as an expert whose opinions may be presented at hearing.

VI. Claims of Privilege or Protection of Hearing Preparation Materials.

Aa. Information withheld. When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as hearing preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

Bb. Information produced. If information is produced in discovery that is subject to a claim of privilege or of protection as hearing-preparation material, the party making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has and may not use or disclose the information until the claim is resolved. A receiving party may promptly present the information to the administrative law judge under seal for a determination of the claim. If the receiving party disclosed the information before being notified, it must take reasonable steps to retrieve it. The producing party must preserve the information until the claim is resolved.

C. Protective orders. Upon motion by a party or by the person from whom discovery is sought, accompanied by a certification that the movant has in good faith conferred or attempted to confer with other affected parties in an effort to resolve the dispute without action by the administrative law judge, and for good cause shown, the administrative law judge may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense, including one or more of the following:

I. that the discovery not be had;

II. that the discovery may be had only on specified terms and conditions, including a designation of the time or place;

III. that the discovery may be had only by a method of discovery other than that selected by the party seeking discovery;

IV. that certain matters not be inquired into, or that the scope of the discovery be limited to certain matters;

V. If the motion for a protective order is denied in whole or in part, the administrative law judge may, on such terms and conditions as are just, order that any party or person provide or permit discovery. The provisions of Rule 37(a)(4) U. R. C. P. apply to the award of expenses incurred in relation to the motion.

D. Supplementation of responses. A party who has made a disclosure or responded to a request for discovery with a response is under a duty to supplement the disclosure or response to include information thereafter acquired if ordered by the administrative law judge or in the following circumstances:

I. A party is under a duty to supplement at appropriate intervals disclosures if the party learns that in some material respect the information disclosed is incomplete or incorrect and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing. With respect to testimony of an expert from whom a report is required the duty extends both to information contained in the report and to information provided through a deposition of the expert.

II. A party is under a duty reseasonably to amend a prior response to an interrogatory, request for production, or request for admission if the party learns that the response is in some material respect incomplete or incorrect and if the additional or

corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

E. Disclosure Meeting. The following applies to all cases.

I. Within thirty (30) days of the date of the scheduling order the parties shall meet in person or by telephone to discuss the nature and basis of their claims and defenses, to discuss the possibilities for settlement of the action, to make or arrange for the disclosures required by this rule, to discuss any issues relating to preserving discoverable information and to develop a stipulated discovery plan. Petitioner's counsel shall schedule the meeting. The attorneys of record shall be present at the meeting and shall attempt in good faith to agree upon the disclosure plan.

II. The plan shall include:

Aa. what changes should be made in the form for disclosures under subdivision (c)(i)(A);

Bb. the subjects on which discovery may be needed;

Cc. any issues relating to preservation, disclosure or discovery of electronically stored information, including the form or forms in which it should be produced;

Dd. any issues relating to claims of privilege or of protection as hearing-preparation material;

III. The discovery plan of the parties shall only be filed with the Division as an attachment to any discovery motion.

F. Signing of discovery requests, responses, and objections.

I. Every request for discovery or response or objection thereto made by a party shall be signed by at least one attorney of record or by the party if the party is not represented, whose address shall be stated. The signature of the attorney or party constitutes a certification that the person has read the request, response, or objection and that to the best of the person's knowledge, information, and belief formed after reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response, or objection, and a party shall not be obligated to take any action with respect to it until it is signed.

II. If a certification is made in violation of the rule, the administrative law judge, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney fee.

G. Filing. A party shall only file disclosures or requests for discovery with the Division as an exhibit to a discovery motion.

ii. Subpoenas. Subpoenas may only be issued by the administrative law judge assigned to the case or the presiding judge if the assigned administrative law judge is unavailable. Commission subpoena forms shall be used in all discovery proceedings. Subpoenas shall be issued at least seven business days prior to a scheduled hearing or appearance unless good cause is shown for a shorter period. Witness fees and costs shall be paid by the party requesting the subpoena pursuant to Utah Code Section 34A-1-302 (c).

iii. Parties conducting discovery under this rule shall maintain mailing certificates and follow up letters regarding discovery to submit in the event Division intervention is necessary to complete discovery. Discovery documents shall not be filed with the Division at the time they are forwarded to opposing parties.

iv. Sanctions. Any party who fails to obey an administrative law judge's discovery order shall be subject to the sanctions available under Rule 37, Utah Rules of Civil Procedure.

2. Notices

a. Orders and notices mailed by the Division to the last address of record provided by a party is deemed served on that party.

b. Where an attorney appears on behalf of a party, notice of an action by the Division served on the attorney is considered notice to the party represented by the attorney.

R602-8-4. Hearings.

Evidentiary hearing shall be conducted formally in accordance with Utah Code Section 63G-4-206. Petitioner shall have the burden of proving the factual and legal sufficiency of the citation and penalty by a preponderance of evidence. After the close of the proceedings, the administrative law judge will issue an order pursuant to Utah Code Section 63G-4-208.

R602-8-5. Motions for Review.

1. Any party to an adjudicative proceeding may obtain review of an Order issued by an administrative law judge by filing a written request for review with the Adjudication Division in accordance with the provisions of Utah Code Sections 34A-6-304 and 63G-4-301. Unless a request for review is properly filed, the administrative law judge's order is the final order of the Commission. If a request for review is filed, other parties to the adjudicative proceeding may file a response within 20 calendar days of the date the request for review was filed. Thereafter, the administrative law judge shall:

a. Reopen the case and enter a Supplemental Order after holding such further hearing and receiving such further evidence as may be deemed necessary;

b. Amend or modify the prior order by a Supplemental Order, or

c. Refer the entire case for review.

2. If the administrative law judge enters a Supplemental Order, as provided in this subsection, it shall be final unless a request for review of the same is filed.

R602-8-6. Request for Reconsideration.

A request for reconsideration of an Order on Motion for Review may be allowed and shall be governed by the provision of Utah Code Section 63G-4-302. Any petitioner for judicial review of final agency action shall be governed by the provisions of Utah Code Section 63G-4-401.

KEY: occupational safety and health, administrative procedures, hearings, settlements

May 22, 2009 **34A-6-105**
34A-6-303
34A-6-304
63G-4-102 et seq.

R652. Natural Resources; Forestry, Fire and State Lands.
R652-5. Payments, Royalties, Audits, and Reinstatements.
R652-5-100. Authority.

This rule implements Section 65A-1-4(2) which authorizes the Division of Forestry, Fire and State Lands to adopt rules necessary to fulfill the purposes of Title 65A.

R652-5-200. Payments.

Payments include rentals, royalties or any other financial obligation owed under the terms of a lease, permit or any other agreement.

1. As a matter of convenience, the division allows parties other than the obligee to remit payments to the state on the obligee's behalf; however, this practice in no way relieves the obligee of any statutory or contractual obligations concerning the proper and timely payments or the proper and timely filing of reports. For practical reasons, the division often makes direct requests for reports and other records from parties other than the obligees. Payors should be aware that their actions subject leases to cancellation or subject delinquent royalties to interest charges. It is, therefore, in the best interest of all parties to cooperate in responsibly discharging their obligations to each other and to the state.

2. The obligee bears final responsibility for payments. In order to meet payment obligations of a lease, permit, or other financial contract with the division, payments must be received as defined in subsection 4 of this rule by the appropriate due dates and must be accompanied by the appropriate report.

3. When a change of payor(s) on a property is to occur, the most recent payor of record shall notify the division by letter prior to the change. This shall not be construed, however, to relieve the obligee of the ultimate responsibility.

4. Payments will be considered received if it is either delivered to the division, or if the postmark stamped on the envelope or other appropriate wrapper containing it, is dated on or before the due date. If the post office cancellation mark is illegible, erroneous, or omitted, the payment will be considered timely if the sender can establish by competent evidence that the payment was deposited in the United States mail on or before the date for filing or paying. If the due date or cancellation date falls upon a regular non-workday or legal holiday, the payment shall be considered timely if received as defined herein by the next business day.

5. Payments will be enforced even though a division order is incomplete or because of other irregularities.

6. A return check fee, in accordance with the Division fee schedule will be charged on all checks returned by the bank.

7. Any financial obligation not received by its contractual due date will initiate a written cancellation notice by certified mail, return receipt requested. The cancellation date for any lease/permit or other contractual agreement unless otherwise specified in this rule, is defined as 30 days after the postmark date stamped on Post Office Form 3800, Receipt for Certified Mail. In the event payment is not received by the division on or before the cancellation date, the lease, permit or other contractual agreement will be subject to cancellation, forfeiture or termination without further notice.

A default in the payment of any installment of principal or interest due under the terms of any land purchase agreement not received by the division more than 30 days after the due date shall initiate a certified billing, return receipt requested. If all sums then due and payable are not received within 90 days after the mailing of the certified notice on Post Office Form 3800, the division may elect any of the remedies as outlined in R652-80-600(5). If the cancellation date falls on a weekend or holiday, payment will be accepted the next business day until 5 p.m.

8. A late penalty of 6% or $10, whichever is greater, shall be charged after failure to pay any financial obligation, excluding royalties as provided in R652-5-300(2), within the time limit under which such payment is due.

9. Rental payments received after the due date which do not include a late fee will be returned to the lessee by certified mail, return receipt requested. A check will only be accepted for the full amount due.

R652-5-300. Royalties.

1. Royalty Reports and Reporting Periods

(a) All royalty payments shall be made payable to the Division of Forestry, Fire and State Lands and shall be accompanied by a certified royalty report on a form specified by the division. Check stubs or other report forms are unacceptable and do not satisfy the reporting requirement of this section.

(b) Any report not sufficiently complete and accurate to enable the division to deposit the royalty to the correct fund must be promptly corrected or amended by the payor. Failure to provide such a report may, after proper notification, subject the lease to cancellation.

2. Interest on Delinquent Royalties

Interest shall be compounded semiannually based on the average adjusted prime rate, rounded to the nearest full percent, for each six-month period computed from April to September and October to March, plus 4%. The interest rate will be subject to change at six month intervals every July 1st and January 1st. This interest rate will be applied to any delinquent royalties and will be in effect until payment is received. However, interest will not be assessed for prior period adjustments or amendments except for amounts of additional royalties due discovered during any audit action. Also, interest will not be accrued or billed for amounts less than $10.

R652-5-400. Audits.

The division shall have the right at reasonable times and intervals to audit the books and records of any lessee/permittee/payor and to inspect the leased/permitted premises and conduct field audits for the purpose of determining whether there has been compliance with the rules or the terms of agreement.

R652-5-500. Reinstatements.

1. The director may reinstate the following specific leases, permits, and easements, in the event of their cancellation, upon filing of a request for reinstatement, the payment of all late fees, reinstatement fees, and rental fees in arrears, based on a written finding that a reinstatement would be in the best interest of the beneficiaries:

(a) Special use leases issued using a competitive process within 60 days of cancellation.

(b) Special use leases issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

(c) Grazing permits within 60 days of cancellation with the exception that grazing permits cancelled for reasons of non-payment of grazing fees may be reinstated by the director without a written finding.

(d) General permits within 60 days of cancellation.

(e) Easements within 60 days of cancellation provided that:

i) if the easement term is perpetual, then the easement shall be amended so that the term is 30 years beginning as of the original effective date. However, if the remaining number of

years on an easement so amended is less than 15, the ending date of the easement shall be set so that there will be 15 years remaining in the easement;

ii) if the easement term is not perpetual, easements shall be reinstated only for the balance of the original term; and

iii) the applicant for an easement reinstatement agrees to pay the difference between what was originally paid for the easement and what the division would charge for the easement at the time the request for reinstatement is submitted.

(f) Materials permits within 60 days of cancellation.

(g) Materials permits issued without using a competitive process within 60 days of cancellation if:

i) there are no apparent competing interests,

ii) the cost of requiring a competitive process would be excessive in light of the potential revenue,

iii) a negotiated settlement appears to present greater opportunity for increased compensation than a competitive settlement, or

iv) there exists compelling reason establishing that the best interests of the trust would be met by waiving the competitive process.

2. The director may reinstate any application for lease, permit, easement, exchange, or sale cancelled pursuant to R652-30-500(5)(a) or R652-40-700(4)(a) upon the filing of a request for reinstatement and the payment of applicable reinstatement fees, and based on a written finding that a reinstatement would be in the best interest of the beneficiaries.

KEY: administrative procedures
May 26, 2009 **65A-1-4(2)**
Notice of Continuation April 2, 2007

R652. Natural Resources; Forestry, Fire and State Lands.
R652-20. Mineral Resources.
R652-20-100. Authority.

This rule implements Section 65A-6-2 which authorizes the Division of Forestry, Fire and State Lands to establish rules for the issuance of mineral leases and management of state owned lands and mineral resources.

R652-20-200. Mineral Leases--Issuance.

Applications are made for and the division shall issue separate mineral leases on the following classifications of mineral substances:

1. Metalliferous Minerals - shall include Aluminum, Antimony, Arsenic, Beryllium, Bismuth, Chromium, Cadmium, Cerium, Columbium, Cobalt, Copper, Fluorspar, Gallium, Gold, Germanium, Hafnium, Iron, Indium, Lead, Mercury, Manganese, Molybdenum, Nickel, Platinum, Group Metals, Radium, Silver, Selenium, Scandium, Rare Earth Metals, Rhenium, Tantalum, Tin, Thorium, Tungsten, Thallium, Tellurium, Vanadium, Uranium, Ytterbium, and Zinc.

2. Oil, Gas, and Hydrocarbon - shall include oil, natural gas, elaterite, ozocerite, and other hydrocarbons (whether the same be found in solid, semi-solid, liquid, vaporous, or any other form) including tar, bitumen, asphaltum, and maltha, and other gases. The oil, gas, and hydrocarbon category shall not include coal, oil shale, or gilsonite.

3. Oil Shale - shall include any sedimentary rock containing kerogen.

4. Coal - shall include black or brownish-black solid fossil fuel that has been subjected to the natural processes of coalification and which falls within the classification of coal by rank: I anthracite, II Bituminous, III Sub-Bituminous, IV Lignitic.

5. Potash - shall include the chlorides, sulfates, carbonates, borates, silicates, and nitrates of potassium.

6. Phosphate - shall mean any phosphate rock containing one or more phosphate minerals such as calcium phosphate and shall include all phosphatized limestones, sandstones, shales, and igneous rocks.

7. Clay Minerals - Kaolin, Bentonite, Ball Clay, Fire Clay, Fuller Earth, Common Clay, and Shale.

8. Building Stone and Limestone - Flagstone, Granite, Quartzite, Sandstone, Slate, Marble, Travertine, Dolostone, and Limestone whether dimensioned crushed, or calcined.

9. Gemstone and Fossil - Agate, Amber, Beryl, Calcite, Chert, Coral, Corundum, Diamond, Feldspar, Garnet, Geodes, Jade, Jasper, Olivine, Opal, Pearl, Quartz, septarian Nodules, Spinel, Spodumene, Topaz, Tourmaline, Turquoise, and Zircon; and Coquina, Petrified Wood, Trilobites, and Other Fossilized Flora and Fauna.

10. Gypsum - Alabaster, Anhydrite, Gypsite, Satin Spar, and Selenite.

11. Gilsonite.

12. Volcanic Material - Lava Rock; Volcanic Pyroclastic Material including Ash, Blocks, Bombs, and Tuff; and Volcanic Glass Material including Perlite, Pitchstone, Pumice, Scoria, and Vitrophyre.

13. Industrial Sands - Abrasive Sands, Filler Sands, Foundry Sands, Frac Sands, Glass Sands, Lime Sands, Magnetic Sands, Silica Sands, and other uncommon sands used in industrial applications.

14. Mineral Salts (Great Salt Lake) - Refer to R652-20-3100, R652-20-3200.

R652-20-300. Non-Classified Minerals.

A person may make application for and the division may issue leases covering other minerals not included in R652-20-200 classifications. These leases are on terms and conditions as the division finds to be in the best interest of the state of Utah.

R652-20-400. Close Association Minerals.

A mineral lease issued as to any category shall include other minerals found in a close association with the expressly leased minerals when the expressly leased minerals cannot reasonably be mined or removed separately.

R652-20-600. Bed of Navigable Lake or River.

A mineral lease on any section of land lying in the bed of any navigable lake or river will normally only be issued inclusive of all lake or river bed lands available for lease within the section.

R652-20-700. Non-Contiguous Tracts.

A separate application is filed for each non-contiguous tract of land sought to be leased, unless all of the tracts sought to be leased fall entirely within a single township. This rule shall not apply to mineral salt leases within Great Salt Lake.

R652-20-800. Size of Leasable Tract.

Except for good cause shown, no mineral lease is issued for a tract less than a quarter-quarter section or surveyed lot, except where the land owned by the state within any quarter-quarter section or surveyed lot is less than the whole thereof, in which case the lease will be issued only on the entire area owned and available for lease by the state within the quarter-quarter section or surveyed lot.

R652-20-900. Lease Acreage Limitations.

Mineral leases are limited to no more than 2,560.00 acres or four sections. The acreage limitation shall not apply to mineral salt leases within Great Salt Lake (R652-20-3100).

R652-20-1000. Rentals and Royalties.

1. Rentals

(a) Rental for the first lease year is at the rate of $1 per acre, or fractional part thereof, per annum, regardless of percentage of state ownership in any given acre of land. Subsequent rental paying dates shall be on or before the annual anniversary date of the effective date of the lease, the effective date of the lease being the first day of the month following the date on which the lease is issued.

(b) Any overpayment of advance rental occurring from mineral lease applicant's incorrect listing of acreage of lands described in the application may be credited toward the applicant's rental account.

(c) Minimum annual rental on any mineral lease is $20.

(d) The division shall accept lease payments made by any party, but the acceptance of lease payments shall not be deemed to be a recognition of any interest of the payee in the lease.

2. Royalty Provisions

The following production royalty rates shall apply to all classified mineral leases, as listed in R652-20-200, issued on or after the effective date of the applicable adjusted royalty rate. Mineral leases entered into prior to the effective date of adjusted royalty rates shall retain the royalty rate as specified in the lease agreement.

(a) Royalty rates on substances under oil, gas, and hydrocarbon leases.

TABLE

Oil	12-1/2%	-	Sulfur	12-1/2%
Gas	12-1/2%	-	Other hydrocarbon substances	6-1/4%(1)

(1) The rental paid for the lease year shall be credited against production royalties as they accrue for that lease year, but not against advance or minimum royalties unless allowed by the mineral lease.

(2) During the first ten years of production and increasing annually thereafter at the rate of 1% to a maximum of 16-2/3%.

(b) Royalty rates on mineral commodities, coal, and solid hydrocarbons.

TABLE

Coal	8%	Phosphate	5%
Oil Shale (1)	5%	Potash and Associated Minerals	5%
Asphaltic/Bituminous Sands (2)	7%	Gypsum	5%
Gilsonite	10%	Clay	5%
Met. Minerals:		Geothermal Resources	10%
Fissionable	8%	Building Stone/Limestone (except 2% for calcined lime)	5%
Non-Fissionable	4%		
Gemstone/Fossil(3)	10%	Volcanic Materials	5%
Magnesium	1-1/2%	Industrial sands	5%
Salt (Sodium chloride) (4)	$0.50/dry ton		

(1) 5% during the first five years of production and increasing annually thereafter at the rate of 1% to a maximum of 12-1/2%.

(2) May be escalated after the first five years of production at the rate of 1% per annum to maximum of 12-1/2%.

(3) Requires payment of annual minimum royalty of $5 per acre.

(4) Beginning January 1, 2001, the royalty rate per ton will be adjusted annually by the Producer Price Index for Industrial Commodities as provided under R652-20-1000(e) using 1997 as the base year.

(c) Notwithstanding the terms of oil, gas, and hydrocarbon lease agreements, gas and natural gas liquid reports, and their required royalty payments, are required to be received by the division on or before the last day of the second month succeeding the month of production. This extension of payment and reporting time for gas and NGL does not alter the payment and reporting time for oil and condensate royalty which must be received by the division on or before the last day of the calendar month succeeding the month of production, as currently provided in the lease form.

(d) Readjustment of salt royalties on royalty agreements negotiated before July 9, 1992.

i) The division is obligated to receive full value for the public trust resources leased to persons for profit. This obligation includes obtaining a fair royalty for salt produced from the waters of Great Salt Lake. The division shall readjust the royalty rate for sodium chloride on all royalty agreements negotiated prior to July 9, 1992. The royalty rate will be readjusted in accordance with analysis done by the Utah Bureau of Economic and Business Research, Office of Energy and Resource Planning and division staff and with a rule change approved by the Board of State Lands and Forestry on July 9, 1992 to increase the royalty on salt from $0.10 per ton to a rate per ton approximately equivalent to three percent of gross value of dry salt. The division has determined this rate to be $0.50 per dry ton. The royalty rate shall be phased in as provided in Subsections (ii) and (iii).

ii) Effective January 1, 1997, the royalty rate for sodium chloride shall be $0.20 per dry ton. Effective January 1, 1998 and on each January 1 thereafter, the royalty rate for sodium chloride shall be increased by the lesser of $0.10 per dry ton or $0.10 per dry ton times the percent of salt in brine by weight at the point of intake for each lessee divided by the percent of salt by weight derived from samples at sampling point LVG4 as measured by the Utah Geological Survey for the current year. The method for calculating the percent salt in brine from Utah Geological Survey and company data shall be determined by the division, but shall include a weighted average of samples taken at low and high water and of samples taken at different depths at the sampling point. The point of sampling for each producer shall be determined by the division after considering factors including the location of the intake canal, point of diversion for water rights, and placement of intake pumps.

iii) The annual adjustment under Subsection(ii) shall continue until the royalty rate for a lessee is $0.50 per dry ton or an amount per ton as determined under Subsection (e), whichever is greater, at which time subsequent annual adjustments shall be determined in accordance with Subsection (e).

(e) Effective January 1, 2001 or the date on which the royalty paid by a lessee reaches $0.50 per dry ton, whichever is later, the royalty rate for sodium chloride will be adjusted annually by the Producer Price Index for Industrial Commodities using the following formula: $.50 times the Producer price index for Industrial Commodities for the current year divided by the Producer Price Index for Industrial Commodities for 1997.

R652-20-1100. Rental Credit.

The rental paid for the lease year shall be credited only against the production royalties as they accrue for that lease year.

R652-20-1200. Record of Application and Deficient Applications.

Applications for mineral leases, except in the case of simultaneous filing, are received for filing in the office of the division during office hours. Except as provided, all the applications received, whether by U.S. Mail or by personal delivery over the counter, are immediately stamped with the date of filing. If an application is determined to be deficient, it is returned to the applicant with instructions for its amendment or completion.

If the application is resubmitted in satisfactory form within 15 days from the date of the instructions, it shall retain its original filing time. If the application is resubmitted at any later time, it is deemed filed at the time of resubmission.

R652-20-1300. Order of Filing Conflict.

Except in cases of simultaneous filing, in the event that two or more applications for the same land bear a date stamp showing the said applications were filed at the same time, then the division shall determine which applicant is awarded a lease by public drawing.

R652-20-1400. Newly Acquired Lands.

The term "newly acquired lands" as used in this rule shall include those lands transferred to the state of Utah by the federal government. If these transferred lands are encumbered by a federal mineral lease at the time of transfer, they are deemed to be newly acquired as of the date when the lands first become available for leasing by the state and not as of the date when the encumbered lands are first transferred to the state.

R652-20-1500. Minimum Bid/Simultaneous Filing.

The bid shall at least equal the rental rate for the substance to be leased and shall be the rental for the first year of the lease.

R652-20-1600. Posting Dates/Simultaneous Filing.

Notices of the offering of lands for simultaneous filing will run for 15 business days and are posted at times to insure that all bid openings are on the last Monday of that month, or on the first business day following the last Monday of that month, if the last Monday falls on a legal state holiday.

R652-20-1700. Sealed Envelopes/Simultaneous Filing.

Applications shall be submitted in sealed envelopes marked for simultaneous filing.

R652-20-1800. Application Refund.

If application, or any part thereof, is rejected, money tendered for rental or rejected portion may be refunded or credited.

R652-20-1900. Application Withdrawal.

Should an applicant desire to withdraw his application, the applicant must make a written request. If the request is received prior to the time the division approves the application, all money tendered by the applicant, except the filing fee, is refunded. If the request is received after approval, then, unless the applicant accepts the offered lease, all money tendered is forfeited to the state.

R652-20-2000. Application Withdrawal Under Simultaneous Filing.

Applicants desiring to withdraw an application which has been filed under the simultaneous filing procedure, must make a written request. If the request is received before sealed bids for rental have been opened, all money tendered by the applicant, except the filing fee, shall be refunded. If the request is received after sealed bids for rental have been opened, and if the applicant's rental offer is high, then unless the applicant accepts the offered lease, all money tendered is forfeited to the state.

R652-20-2100. Failure of State's Title.

Should it be found necessary to reject an application or to terminate an existing lease, excepting applications or leases approved through simultaneous leasing procedure, due to failure of state's land title, then only advance rental paid for the year in which title failure is discovered is refunded. All other advance rentals and fees paid on the application or lease are forfeited to the state.

R652-20-2200. Lease Provisions.

In order to affect the purposes of development of mineral resources owned by the state of Utah, the following provisions, terms and conditions shall apply to all mineral lessees/leases:

1. Preference Rights for Unleased Minerals--Any state mineral lessee who discovers any minerals on lands leased from the state of Utah which are not included within his lease shall have a preference right to a state mineral lease covering these unleased minerals, provided the unleased minerals at the time of discovery are not included within a mineral lease or mineral lease application of another party. The preference right lease is issued upon a lease form in current use by the state of Utah. The preference right lease is subject to the rental, royalty, and development requirements as provided in the lease form. The preference right shall not extend to any unleased minerals on state lands which have been withdrawn from mineral leasing. The preference right shall continue for a period of 60 days after the discovery of unleased minerals, provided the applicant notifies the division within the ten days after the discovery and makes application to lease the unleased minerals within 60 days after the date of discovery.

2. Lease Term Exclusion--If drilling operations are being diligently pursued on the leased premises at the end of the term, including any valid extension of any oil and gas lease, the term of the lease shall automatically extend for a term of two additional years. Upon written application by lessee and satisfactory showing of due diligence in prosecution of drilling operations, an extension rider is issued by the division. Application for extension rider shall be filed by the lessee within 30 days prior to expiration of the fixed term of any valid extension of the lease.

3. Cultural, Paleontological, and Biological Resources--The division may require the lessee to:

(a) provide a cultural, paleontological or biological survey on lands under mineral lease; and

(b) be responsible for reasonable mitigative actions as specified by the division. Surveys conducted in performance for another state or federal agency may be submitted to the division when the survey is also required by the division.

4. Geologic Data--Lessee or operator shall keep a log of geologic data accumulated or acquired by lessee within the land area described in the lease. This log shall show the formations encountered and any other geologic information reasonably required by lessor and shall be available upon request by the division. A copy of the log, as well as any data related to exploration drill holes, shall be deposited with the division upon termination of the lease.

5. Assignments, Subleases and Overriding Royalties

(a) Definitions

i) A total assignment is an assignment of undivided total interest.

ii) An interest assignment is an assignment of any working interest less than the undivided total, except overriding royalty interests.

iii) A partial assignment is an assignment of part of the lands in a lease and a segregation of the assigned lands into a separate lease.

(b) Any mineral lease may be assigned or subleased as to all or part of the acreage, to any person, firm, association, or corporation qualified to hold a state lease, provided, however, that all assignments and subleases are approved by the division. No assignment or sublease is effective until approval is given. Any assignment or sublease made without approval is void.

(c) Unless otherwise authorized by the division, an assignment of a portion of a lease covering less than a quarter-quarter section, a surveyed lot, an assignment of a separate zone, or a separate deposit is not approved.

(d) An assignment or sublease shall take effect the first day of the month following the approval of the assignment or sublease by the division. The assignor or sublessor or surety, if any, shall continue to be responsible for performance of any and all obligations as if no assignment or sublease had been executed until the effective date of the assignment or sublease. After the effective date of any assignment of sublease, the assignee or sublessee is bound by the terms of the lease to the same extent as if the assignee or sublessee were the original lessee, any conditions in the assignment to the contrary notwithstanding.

(e) A partial assignment of any lease shall segregate the assigned or retained portions thereof and, after the effective date, release or discharge the assignor from any obligation thereafter accruing with respect to the assigned lands. Segregated leases shall continue in full force and effect for the primary term of the original lease or as further extended pursuant to the terms of the lease.

(f) An assignment or transfer of a lease, interest herein, or of an overriding royalty must be a good and sufficient legal instrument, properly executed and acknowledged, and should clearly set forth the serial number of the lease, the land involved, and the name and address of the assignee, and the interest transferred.

(g) An assignment must affect or concern only one lease or a portion thereof, except for good cause shown.

(h) Any assignment which would create a cumulative overriding royalty in excess of the production royalty payable to the state as landowner of the state mineral lease will not be approved by the division. Any agreement to create or any assignment creating overriding royalties or payments out of production removed or sold from the leased lands is subject to the division, after notice and hearing, to require the proper parties thereto to suspend or modify the royalties or payments out of production in such a manner as may be reasonable when and during such period of time as they may constitute any undue economic burden upon the reasonable operations of this lease.

(i) Assignment instructions are as follows:

i) Prepare and execute the assignments in duplicate, complete with acknowledgments.

ii) Each copy of the assignment shall have attached thereto

an acceptance of assignment duly executed by the assignee.

iii) All assignments forwarded to or deposited with the division must be accompanied by the prescribed fee.

6. Lease Amendments--When the division approves the amendment of existing mineral leases by substituting a new lease form for the existing form(s), the amended lease will retain the effective date of the original lease.

R652-20-2300. Lessee Rights.

Mineral exploration, oil and gas drilling, or other operations which disturb the surface of lands contained within or above state mineral lease lands require surface rehabilitation of the disturbed area as approved by the division, and as required by the laws administered by the Utah Division of Oil, Gas and Mining.

R652-20-2400. Operations Notification Period.

1. At least 60 days prior to the commencement of mineral exploration, mining or other operations which disturb the surface of lands contained within or above a state mineral lease, lessee shall submit plans for operations to the Division of Forestry, Fire and State Lands. The division shall review and make an environmental assessment and endorse or stipulate changes in lessee's plan of operation within the review period. Where feasible, the division's review shall be conducted concurrently with those of other agencies. Review by another state or federal agency may be accepted by the division in lieu of a separate division review. Following review, the division may require the lessee to adopt a special rehabilitation program required by lessor for the particular property in question. Lessee shall not commence operations upon the land without a plan of operation approved by the division.

2. Before any operator or lessee shall commence actual drilling operations of any well or prior to commencing any surface disturbance associated with the activity on lands contained within a state mineral lease, the operator or lessee shall simultaneously file with the division a legible copy of the application for permit to drill (APD), as is filed with the Division of Oil, Gas, and Mining.

The division will review any request for drilling operation and will grant approval, providing that the contemplated location and operations are not in violation of any rules, order, or policy. Division approval of the application for permit to drill on mineral resources administered by the Division of Forestry, Fire and State Lands is required prior to approval by the Division of Oil, Gas, and Mining. Notice of approval by the Division of Forestry, Fire and State Lands will be given in an expeditious manner to the Division of Oil, Gas, and Mining.

3. All lessees or designated operators under state mineral leases have responsibility to be aware of notification requirements and operating rules promulgated by the Division of Oil, Gas and Mining with regard to mineral exploration, mining, or oil and gas drilling on lands within the state of Utah. Lessees or operators shall fully comply with all the rules or requirements and provide timely notifications, mine plans, well completion reports, or other information as may be requested.

R652-20-2500. Multiple Mineral Development (MMD) Area Designation.

1. The division may designate any state land under its authority as a multiple mineral development area. In designated multiple mineral development areas the division may require, in addition to all other terms and conditions of the mineral lease, that the lessee furnish a bond or evidence of financial responsibility as specified by the division, to assure that the state and other mineral lessees shall be indemnified and held harmless from and against unreasonable and all unnecessary damage to mineral deposits or improvements caused by the conduct of the lessee on state lands. Written notice shall be given to all mineral lessees holding a mineral lease within the multiple mineral development area. Thereafter, in order to preserve the value of mineral resources the division may impose any reasonable requirements upon any mineral lessee who intends to conduct any mineral activity within the multiple mineral development area. The lessee is required to submit advance written notice of any activities to occur within the multiple mineral development area to the division and any other information that the division may request. All activities within the multiple mineral development area are to be deferred until the division has specified the terms and conditions under which the mineral activity is to occur and has granted specific permission to conduct the activity. The division may hold public meetings regarding the mineral development within the multiple mineral development area.

2. The division may grant a mineral lease extension under a multiple mineral development area designation, providing that the mineral lessee or operator requests an extension prior to the lease expiration date, and that the lessee or operator would have otherwise been able to request a lease extension as provided in Section 65A-6-4(4).

R652-20-2600. Term of Mineral Lease.

The term of all mineral leases included in any cooperative or unit plan of oil and gas development or operation in which the division has joined, or shall hereafter join, shall be extended automatically for the term of the unit or cooperative agreement. Rentals on leases so extended shall be at the rate specified in the lease, subject to the change in rates as may be demanded by the lessor on any lease readjustment date as authorized by the lease.

R652-20-2700. Lease Continuation.

Any lease which is eliminated from any such cooperative or unit plan of development or operation, or any lease which is in effect at the termination of the cooperative or unit plan of development or operation, unless relinquished, shall continue in effect for the fixed term of the lease, or for two years after its elimination from the plan or agreement or the termination thereof, whichever is longer, and so long thereafter as the leased substances are produced in paying quantities. Rentals under the lease shall continue at the rate specified in the lease.

R652-20-2800. Bonding.

1. Prior to commencement of any operations on a state mineral lease, the lessee or designated operator shall post with the division a bond in the form and amount as may be determined by the division to assure compliance with all terms and conditions of the lease.

2. The bond required for an oil and gas, geothermal, or minerals exploration project shall be:

(a) a statewide blanket bond in the minimum amount of $80,000 covering exploration operations on all state of Utah mineral leases held by lessee which shall be in an amount at least equal to the accumulative amount of individual project bonds as set forth below; or

(b) a project bond covering an individual exploration project involving one or more state of Utah mineral leases. The amount of the project bond will be determined by the division at the time lessee gives notice of proposed operations. This bond will not be less than $5,000 per acre of surface disturbance, or in the case of an oil and gas or geothermal well:

TABLE

WELL DEPTH	BOND AMOUNT
0- 3,000 ft.	$10,000
3,000-10,000 ft.	20,000
Greater than 10,000 ft.	40,000

3. The bond required for construction and operation of a

mine or minerals production plant shall be determined by the division on basis of an approved mining and reclamation plan or plan of development and operations. This bond may be posted with the Division of Oil, Gas and Mining providing written consent is first obtained from the Division of Forestry, Fire and State Lands. Existing project bonds on the same lease(s) may be incorporated into this mine or minerals production plant bond.

4. All bonds posted on mineral leases may be used for payment of all monies, rentals, and royalties, due the state as lessor; including:

(a) costs of reclamation, damages to the surface and improvements thereon, and any other costs which arise by operation of the lease and accrue to the lessor.

(b) lessee's compliance with all other terms and conditions of the lease, and rules, and policies relating thereto of the Board of State Lands and Forestry, Division of Forestry, Fire and State Lands, Board of Oil, Gas, and Mining, and Division of Oil, Gas, and Mining.

This bond shall be in effect even if the lessee or designated operator has conveyed all or part of the leasehold interest to a sublessee(s), assignee(s), or subsequent operator(s), until the bond may be released by the state as lessor, or until the lessee or designated operator fully satisfies the above-described obligations, or until the bond is replaced with a new bond posted by a sublessee, assignee, or new designated operator.

5. Bonds may be accepted in any of the following forms:

(a) Surety bond with an approved corporate surety registered in Utah.

(b) Cash deposit. The state will not be responsible for any investment returns on cash deposits.

(c) Certificate of deposit in the name of "Utah Division of Forestry, Fire and State Lands and lessee, c/o lessee's address", with an approved state or federally insured banking institution registered in Utah. The certificate of deposit must have a maturity date no greater than 12 months, be automatically renewable, and be deposited with the division. The lessee will be entitled to and receive the interest payments. All certificates of deposit must be endorsed by the lessee prior to acceptance by the director.

(d) Other forms of surety as may be acceptable to the Utah Division of Forestry, Fire and State Lands.

6. Any lessee or designated operator forfeiting a bond is denied approval of any future exploration or mining on state lands, except by compensating the state for previous defaults and posting the full bond amount estimated for reclamation or lease performance and reclamation on subsequent operations.

7. Bonds may be increased at any time in reasonable amounts as the Division of Forestry, Fire and State Lands may order, providing lessor first gives lessee 30 days written notice stating the increase and the reason for the increase.

8. The division shall waive the filing of a bond for any period during which a bond meeting the requirements of this section is on file with another agency.

R652-20-3000. Mineral Lease Application--Lake or Stream Bed.

1. Applications for mineral leases for lands within the bed of a lake or stream will be rejected unless:

(a) the lake or stream has been judicially determined to have been navigable at the time of statehood or was, in the reasonable judgment of the division, navigable at the time; or

(b) the issuance to applicant of a lease on the navigable lake or navigable stream bed would serve to protect the applicant as the owner, or holder of mineral rights, on abutting riparian uplands.

2. Any lessee or operator proposing, or conducting, exploration or mining operations in the bed of a navigable lake or stream shall, prior to the commencement of operations, file the notification and obtain such permits as may legally be required by any and all local, state, or federal governmental agencies, having jurisdiction over these activities. In no event will the lessee or operator cause pollution or salinity in any navigable lake or stream to exceed these limits which are set by ordinance, law or inter-governmental treaty.

R652-20-3100. Great Salt Lake--Salt and Other Mineral Resources.

1. Salts and other minerals in the waters of Great Salt Lake are reserved to the state and shall be sold only upon a royalty basis and under the terms and provisions as specified in the royalty agreement as herein provided for in this rule and all other terms and conditions as the division deems necessary in the best interest of the state.

2. The term "salts and other minerals" as used in this rule shall include all salts and other minerals contained in solution or suspension in the waters of Great Salt Lake, and shall not include salts or other minerals that have precipitated out or have settled on the bottom of the lake.

3. Royalty agreement applications shall be made upon forms provided by the division and shall be in accordance with the laws and rules governing applicant qualifications, application and lease form.

4. Royalty agreements for salts and other minerals contained in waters of Great Salt Lake, shall require the following advance royalty payment which may be applied against royalties which may thereafter accrue during the same calendar year for which the advance royalty is paid.

(a) $10,000 per annum for all royalty agreements in which the lessee therein also obtains a lease of land within Great Salt Lake.

(b) $5,000 per annum for all royalty agreements in which the lessee therein does not obtain a surface or mineral lease of state lands within Great Salt Lake.

c. Royalty agreements for sodium chloride salts shall require on or before January 1st of each year, an advance royalty of not less than $1,000, which sum may be applied against royalties which may thereafter accrue during the same calendar year for which the advance royalty is paid.

5. Royalties shall be paid upon a calendar year basis. The minimum royalty for the balance of the calendar-year in which the agreement is executed shall be prorated in proportion to the time remaining.

6. The gross market value of the products shipped, upon which the royalty payments are to be paid, shall not include amounts expended for bags, boxes, receptacles, or other costs directly related to or necessary in the shipping of any product.

7. Royalty agreements shall contain provisions necessary to effect the purpose of this rule, including: the rights of the vendee; the term of the royalty agreement; annual rental and royalties; rights reserved to the vendor; bonds; reporting of technical data; operation requirements; vendees consent to suit in any dispute arising under the terms of the royalty agreement or as a result of operations carried on under the royalty agreement; procedures for notification; transfers of interest by vendee; establishment of water rights and water usage; discovery of other minerals; terms and conditions of royalty agreement forfeiture; protection of the state from liability from all actions of the vendee; and all other provisions that the division deems necessary to protect the interest of the state and to fulfill the purpose of this rule.

R652-20-3200. Mineral Salts Leases Within Great Salt Lake.

1. Mineral leases for mineral salts on land within Great Salt Lake, shall be issued pursuant to the provisions of this rule, and other applicable laws and rules governing the issuance of mineral leases on state owned lands or mineral resources.

2. Definitions: The term "state land within Great Salt

Lake", as used in this section, shall include all state lands lying within the exterior boundary lines of the meander-line around the lake as surveyed by the United States. The term "salts", as used in this section, shall mean, chlorides, sulphates, carbonates, boratex, silicates, oxides, nitrates and associated minerals existing at the surface and to the extent of their continuous depth, but shall not include the salts and other minerals contained in solution or suspension in the waters of Great Salt Lake as defined in R652-20-3100.

3. All mineral lessees granted a mineral salts lease under this section must have a royalty agreement as provided under R640-20-3100. This royalty agreement shall be a minimum royalty of $10,000.

4. Leases issued pursuant to this rule shall grant the lessee the right to mine, extract, or remove salts from the surface of the lands covered thereby, together with the right to use so much of the surface as is necessary for all purposes incident to the extraction of salts and other minerals from brines of Great Salt Lake or the surface of the lands covered by the lease.

5. These leases shall provide a rental of $1 per acre per annum and shall be coterminous with R652-20-3100. Ten years after date of issuance, the rental thereunder shall increase from $1 per acre to $2 per acre per annum.

6. Leases issued pursuant to this rule shall contain provisions necessary to affect the purpose of this rule, including, the following provisions: the rights of the lessee; the term of the lease; annual rental and royalties; rights reserved to the lessor; bonds; reporting of technical data; operation requirements; lessees consent to suit in any dispute arising under the terms of this lease or as a result of operations carried on under this lease; procedures for notification; transfers of interest by lessee; establishment of water rights and water usage; discovery of other minerals; terms and conditions of lease forfeiture; protection of the state from liability from all actions of the lessee; and all other provisions that the division deems necessary to protect the interest of the state and to fulfill the purpose of this rule.

R652-20-3400. Geothermal Steam Leases.

Geothermal steam resources contained in or under lands of the state of Utah are reserved to the state and shall be sold only upon a lease and royalty basis. Applications shall be made upon forms provided by the division and shall be subject to all applicable minerals management statutes and rules and the following provisions:

1. Geothermal steam leases are issued only on lands where the state of Utah owns both the surface and mineral rights, unless lessee agrees to accept as part of his lease agreement the "Addendum to Geothermal Steam Lease and Agreement", adopted by the Board of State Lands and Forestry on March 20, 1974.

2. Lessee shall file the required bond prior to the commencement of any operations on lands of the state.

R652-20-3600. Special Lease Agreement--Documentation.

1. Application for Special Lease Agreement for mineral lease on state lands held by other state agencies shall be in accordance with mineral rules applying to lands held by the Division of Forestry, Fire and State Lands, provided however, that Special Lease Agreement Applications shall be accompanied by the following documentation to be submitted by the applicant at the time of application for each tract of land contained in the application:

(a) A complete chain of title indicating all conveyances and mineral reservations.

(b) A plat map showing the exact location, dimensions, and legal description of the land.

(c) Written consent of the state agency using or holding the land.

2. Special Lease Agreement - Forms

Special Lease Agreements issued for mineral lease on state lands held by other state agencies shall be on forms approved by the division, provided however, that the state agency holding these lands may stipulate special terms and conditions to be added to the lease to mitigate impact of the lease or lessee's operations upon that state agency's land.

R652-20-4000. Readjustment Rule.

1. Any lease, except an oil, gas and hydrocarbon lease, which is subject to a readjustment provision may be readjusted as follows:

(a) Any term or condition of a lease may be readjusted including the rent, royalty, minimum rental, or minimum royalty provisions of the lease.

(b) The division shall give notice to the lessee at least one year prior to readjustment. Failure to give notice prior to a date a lease is eligible for readjustment shall not waive or prejudice the right of the division to readjust the lease at a later date.

(c) The readjusted terms shall become effective on the date specified by the division at the time the readjusted terms are sent to the lessee.

(d) Failure of the lessee to accept the terms of any readjustment shall be considered a violation of the provisions of the lease and shall subject the lease to forfeiture.

2. In the event of a conflict between this section and the terms of a readjustment provision in a lease, the lease terms shall supersede to the extent of the conflict.

KEY: royalties, salt, primary term, administrative procedures

May 26, 2009 65A-6-2

Notice of Continuation April 2, 2007 65A-6-4(3)

R652. Natural Resources; Forestry, Fire and State Lands.
R652-70. Sovereign Lands.
R652-70-100. Authority.

This rule provides for the management and classification of the surface of sovereign lands in Utah, which include but are not limited to, the beds of Bear Lake, the Great Salt Lake, Utah Lake, the Jordan River, and the summer channel of the Bear River, and portions of the beds of the Green and Colorado Rivers. Should any other lakes or streams be declared navigable by the courts, the beds of such lakes or streams would fall under the authority of these rules. It also provides for the issuance of special use leases, general permits and easements on sovereign lands and the procedures and fees necessary to obtain these rights of use. This rule implements Article XX of the Utah Constitution, and Section 65A-10-1.

R652-70-200. Classification of Sovereign Lands.

Sovereign lands may be classified based upon their current and planned uses. A synopsis of some possible classes and an example of each class follows. For more detailed information, consult the management plan for the area in question.

1. Class 1: Manage to protect existing resource development uses. The Utah State Park Marinas on Bear Lake and on Great Salt Lake are areas where the current use emphasizes development.

2. Class 2: Manage to protect potential resource development options. For example, areas adjacent to Class 1 areas which have the potential to be developed.

3. Class 3: Manage as open for consideration of any use. This might include areas which do not currently show development potential but which are not now, or in the foreseeable future, needed to protect or preserve the resources.

4. Class 4: Manage for resource inventory and analysis. This is a temporary classification which allows the division to gather the necessary resource information to make a responsible classification decision.

5. Class 5: Manage to protect potential resource preservation options. Sensitive areas of wildlife habitat may fall into this class.

6. Class 6: Manage to protect existing resource preservation uses. Cisco Beach on Bear Lake is an example of an area where the resource is currently being protected.

R652-70-300. Categories of Leases, Permits, and Easements.

The division may issue Special Use Leases for terms of one to 51 years, and General Permits for terms of one to 30 years for surface uses, excluding grazing uses on sovereign lands. Grazing permits and mineral leases are considered separately under the range resource management rules and the mineral lease rules. Easement terms and conditions shall be prescribed in the particular easement document. Any lease, permit, or easement, issued by the division on sovereign lands, is subject to a public trust; and any lease, permit, or easement may be revoked at any time if necessary to fulfill public trust responsibilities.

1. Special Use Leases: Uses may include the following:

(a) Commercial: Income producing uses such as marinas, recreation piers or facilities, docks, moorings, restaurants, or gas service facilities.

(b) Industrial: Uses such as oil terminals, piers, wharves, mooring.

(c) Agricultural/Aquacultural: Any use which utilizes the bed of a navigable lake or stream to grow or harvest any plant or animal.

(d) Private Uses: Non-income producing uses such as piers, buoys, boathouses, docks, water-ski facilities, houseboats, moorings, not qualifying for a general permit under R652-70-300(2)(c).

2. General Permit: Uses may include the following:

(a) Public agency uses such as public roads, bridges, recreation areas, or wildlife refuges having a statewide public benefit.

(b) Public agency protective structures such as dikes, breakwaters and flood control workings.

(c) Private recreational uses such as any facility for the launching, docking or mooring of boats which is constructed for the use of the adjacent upland owner. An adjacent upland owner is defined as any person who owns adjacent upland property which is improved with, and used solely for a single-family dwelling.

3. Easements: Applications for easements not meeting the criteria of R652-70-300(2) shall follow the rules and procedures outlined in the division's rules governing the issuance of easements.

R652-70-400. Lease and General Permit Provisions.

The provisions for special use leases and general permits on sovereign lands shall be the same as those found in R652-30 Special Use Leases.

R652-70-500. Lease and General Permit Payments, and Audits.

The rules for lease and general permit payments and audits on sovereign lands are the same as those found in R652-30 Special Use Leases.

R652-70-600. Lease Rates.

1. Procedures for determining fair market value for surface leases are found in R652-30-400. Where these general procedures can not readily be applied, fair market value for sovereign lands may also be determined by multiplying the market value, as determined by the county assessor or, if none, then as determined by the State Tax Commission, of the adjacent upland by 30%.

2. Procedures for determining lease rates are described in R652-30 Special Use Leases. Lease rates for sovereign lands may also be determined by multiplying the fair market value, as determined by R652-70-600(1), by the current division - determined interest rate and then prorating that amount by a season of use adjustment as determined by the division.

3. Regardless of lease rate determined by R652-70-600(2), no Special Use Lease shall be issued for an amount less than the minimum lease rate determined by the division.

R652-70-700. Permit Rates.

1. No application fee shall be charged for public agency use of sovereign lands if the director determines that the agency use enhances public use and enjoyment of sovereign land.

2. No rental shall be charged for public agency use of sovereign lands if the director determines that a commensurate public benefit accrues from the use.

3. The division shall establish rental rates for any private recreational use of sovereign land as outlined under R652-70-300(2)(c). The adjacent upland owner shall also pay to the division, in accordance with its current fee schedule, the division's expenses in issuing a general permit.

4. The director may negotiate a filing fee for general permits with impacted governmental agencies. This would be a one-time package fee for currently existing uses of sovereign lands. Future application for use will be treated under the existing fee schedule or may be authorized by the amendment of an existing permit, after payment of an amendment fee pursuant to R652-4.

5. The director may enter into agreements with state agencies having regulatory authority on navigable lakes and rivers to allow these agencies to authorize public agency use of sovereign land provided that:

(a) the use is consistent with division policies and

coordinated with other activities of the division;

(b) the applicant has an existing general permit in good standing under which the proposed use can be placed pursuant to R652-70-700(3);

(c) a commensurate public benefit accrues from the use, as indicated by criteria provided in the agreement;

(d) the proposed use meets the criteria required by the state agency; and

(e) the proposed use is consistent with the principles of multiple use and sustained yield as defined in Section 65A-1-1.

R652-70-800. Applicant Qualifications.

Any person who is qualified to do business in the state of Utah, and is not in default under the laws of the state of Utah relative to qualifications to do business within the state, and not in default on any previous agreements with the division, shall be a qualified applicant for a lease, permit, or easement on sovereign land.

R652-70-900. Applications.

Application for a Special Use Lease or General Permit shall be on forms provided by the division or exact copies thereof. Applications must be accompanied by plans which include references to the relationship of the proposed use to the various water surface elevations of the lake or stream as well as the relationship of the proposed use to the lake or stream boundary and vicinity at the site of the proposed use. The application must also include a description of the proposal's relationship to the classification system found in the appropriate master plan and outlined in R652-70-200. Where applicable, applications must be accompanied by a copy of local building permits, a copy of the Army Corps of Engineer permit, and a copy of any additional permits required by the Division of Parks and Recreation.

R652-70-1000. Deficient Applications.

Incomplete applications, and applications not accompanied by filing fees when required, shall not be accepted for filing. The division will notify the applicant of any deficiency.

R652-70-1100. Additional Approvals.

Nothing in these rules shall excuse a person making an application for a general permit, lease, or easement from obtaining any additional approvals lawfully required by any local, state, or federal agency, including, local zoning boards, or any other local regulatory entity, the Division of Parks and Recreation, the State Engineer, the Division of Oil, Gas and Mining, the United States Army Corps of Engineers, the United States Coast Guard, or any other local, state, or federal agency.

R652-70-1200. Dredging and Filling Requires Approval.

The placing of dredged or fill material, refuse or waste material, intended as or becoming fill material, on the beds of any navigable water in the state of Utah shall require written approval by the division.

R652-70-1300. Excavated or Dredged Channels, and Basins.

Excavated or dredged channels or basins will only be authorized by the director on a showing of reasonable necessity. Material removed during excavation or dredging shall be carried and deposited at a point above normal flood water levels, unless the applicant can satisfy the director that an alternative plan for disposition of the material is feasible and will not have an unreasonably adverse effect upon other values, including water quality. Additional conditions may be stipulated in the permit.

R652-70-1400. Approval Not Required to Repair Existing Facilities.

Approval is not required by the division to clean, maintain, or to make repairs to existing facilities authorized by a permit or lease in good standing. Approval is required to replace, enlarge, or extend the facilities, or for any activity which would disturb the surface of the bed of any navigable water, or which would cause any rock or sediment to enter a navigable body of water.

R652-70-1500. Docks, Piers, and Similar Structures.

All docks, piers, or similar structures shall be constructed to protrude as nearly as possible at right angles to the general shoreline and to not interfere with docks, piers, or similar structures presently existing or likely to be installed to serve adjacent facilities. The structures may extend to a length that will provide access to a water depth that will afford sufficient draft for water craft customarily in use on the particular body of water during the normal low water period.

R652-70-1600. Retaining Walls and Bulkheads.

Retaining walls and bulkheads will not be authorized below the ordinary high water mark without a showing of extraordinary need.

R652-70-1700. Breakwaters and Jetties.

1. Breakwaters and jetties will not be authorized below the normal low water mark without a showing of extraordinary need. This shall not apply to floating breakwaters secured by piling or other approved anchoring devices and used to protect private property from recurring wind, wave, or ice damage.

2. The director may approve streambank stabilization practices concurrently with the issuance of streambed alteration permits issued by the Division of Water Rights if the director determines that the proposed practice is consistent with public trust management.

R652-70-1800. Overhead Clearance.

Overhead clearance between the ordinary high water mark and any structure, pipeline, or transmission line must be sufficient to pass the largest vessel which may reasonably be anticipated to use the subject waters in the vicinity of the easement.

R652-70-1900. Camping and Motor Vehicles.

1. The division may restrict camping on the beds of navigable lakes and rivers. Except as provided elsewhere in this rule, motor vehicles are prohibited from driving or parking on these lands at all times, except that those areas supervised by the Division of Parks and Recreation or other enforcement entity, and posted as open to vehicle use, will be open to vehicle use.

2. Persons found in violation of 65A-3-1(1)(g-h) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court.

R652-70-2000. Existing Uses.

Every person using sovereign lands without a current permit or lease shall, within 60 days of notification by the division, submit an application as provided under R652-70-900.

R652-70-2100. Authorization of Existing Uses.

Authorization of the following uses may be recognized following compliance with Section R652-70-2000:

1. Uses existing on December 31, 1968, whether they were such as to be entitled to issuance of a permit or not.

2. Rights previously granted an applicant by the Division of Forestry, Fire and State Lands.

R652-70-2200. Violations.

The following acts or omissions shall subject a person to a civil penalty as provided in Section 65A-3-1(3):

1. A violation of the provisions of Section 65A-3-1(1-2);

2. A violation of any special order of the director

applicable to the bed of a navigable water; or

3. Refusal to cease and desist from any violation in regards to the bed of a navigable water after having been notified to do so, in writing, by the director by personal service or certified mail, within the time provided in the notice, or within 30 days of service of the notice if no time is provided.

R652-70-2300. Management of Bear Lake Sovereign Lands.

(1) Lands lying below the ordinary high water mark of Bear Lake as of the date of statehood are owned by the state of Utah and shall be administered by the division as sovereign lands.

(2) Upon application for a specific use of state lands near the boundary of Bear Lake, or in the event of a dispute as to the ownership of the sovereign character of the lands near the boundary of Bear Lake, the division may evaluate all relevant historical evidence of the lake elevation, the water erosion along the shoreline, the topography of the land, and other relevant information to determine the relationship of the land in question to the ordinary high water mark.

(3) In the absence of evidence establishing the ordinary high water mark as of the date of statehood, the division shall administer all the lands within the bed of Bear Lake and lying below the level of 5,923.68 feet above mean sea level, Utah Power and Light datum, as being sovereign lands.

(4) The division, after notice to affected state agencies and any person with an ownership in the land, may enter into agreements to establish boundaries with owners of land adjoining the bed of Bear Lake; provided that the agreements shall not set a boundary for sovereign lands below the level of 5,923.68 feet above mean sea level.

(5) From October 1 through April 30, motor vehicle use and camping or picnicking will be allowed on the exposed lake bed with the following restrictions:

(a) Motor vehicles will not be allowed on lands administered by the Division of Parks and Recreation.

(b) The established speed limit is 20 miles per hour.

(c) Except as necessary to launch or retrieve watercraft, motor vehicles are not allowed within 100 feet of the water's edge. Travel parallel to the water's edge is allowed, outside of the 100 foot zone.

(d) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 6 a.m.

(e) No campfires or fireworks are allowed.

(6) From May 1 through September 30, motor vehicle use and camping or picnicking will be allowed on the exposed lake bed with the following restrictions:

(a) Areas posted by the division are off limits to motorized vehicles.

(b) The established speed limit is 15 miles per hour.

(c) Except as necessary to launch or retrieve watercraft, motor vehicles are not allowed within 100 feet of the waters edge.

(d) Unless posted otherwise, or to access a camping or picnicking spot, no motor vehicles may travel parallel to the waters edge.

(e) Camping and use of motorized vehicles are prohibited between the hours of 10 p.m. and 7 a.m.

(f) No campfires or fireworks are allowed.

(7) Persons found in violation of 65A-3-1(1) and 65A-3-1(2) are subject to the criminal penalties set forth in 76-3-204 and 76-3-301 as determined by the court as well as civil damages set forth in 65A-3-1(3).

R652-70-2400. Recreational Use of Navigable Rivers.

1. Navigable rivers include the Bear River, Jordan River, and portions of the Green and Colorado rivers. On the Green River the navigable portions presently recognized as being owned by the state are generally described as from Dinosaur National Monument to the mouth of Sand Wash, and from the mouth of Desolation Canyon at Swazey's Rapid, also known as Twelve Mile Rapid, to the north boundary of Canyonlands National Park. On the Colorado River the navigable portions presently recognized as being owned by the state are generally described as from the mouth of Castle Creek to the east boundary of Canyonlands National Park and from the mouth of Cataract Canyon to the Arizona state line. Except as specified, this Section applies to recreational navigation on these waters.

2. Each group conducting an overnight float trip is required to possess and utilize a washable, reusable toilet system that allows for disposal of solid human body waste through an authorized sewage system.

3. All garbage, trash, human waste and pet waste must be carried off the river and disposed of properly.

4. For a float trip that takes place on the Colorado River between the mouth of Castle Creek and Potash, where toilet facilities and sewage and trash receptacles are available, these provided facilities may be used in lieu of reusable toilets and carrying out garbage, trash, and waste products.

5. The maximum group size for overnight river trips is limited to 25 persons. Two or more groups may not camp together if the resulting group size exceeds 25 persons at a campsite.

6. Each group on an overnight float trip is required to possess a durable metal fire pan at least 12 inches wide, with a lip of at least 1.5 inches around its outer edge, and to utilize this fire pan to contain campfires.

7. Only driftwood may be used as firewood. No cutting of firewood is allowed except in designated areas. Ashes and charcoal accumulated during a trip must be carried out and disposed of properly.

8. A right of entry permit from the division and a special recreation permit from the federal agency managing the land through which the river flows are required for commercial float trips.

9. For the Green River from Green River State Park to Canyonlands National Park, each noncommercial group floating the river shall have in the group's possession a valid interagency noncommercial river trip permit and shall abide by its terms. This permit will be issued free of charge by the Division, the Division of Parks and Recreation, the Bureau of Land Management, authorized outfitters and authorized private landowners. Subsection R652-70-2400(8) applies to commercial trips.

KEY: sovereign lands, permits, administrative procedures
May 26, 2009 65A-10-1
Notice of Continuation April 2, 2007

R652. Natural Resources; Forestry, Fire and State Lands.
R652-90. Sovereign Land Management Planning.
R652-90-100. Authority.

This rule implements Sections 65A-2-2 and 65A-2-4 which requires that planning procedures be developed for sovereign lands, and for the opportunity for the public to participate in the planning process.

R652-90-200. Scope.

This rule sets forth the planning procedures for natural and cultural resources on sovereign land as required by law. These procedures establish comprehensive land-management policies using multiple-use, sustained-yield principles in order to make the interest of the beneficiary paramount. Management plans shall guide the implementation of stated management objectives, and provide direction for land-use decisions and activities on sovereign lands. One or more of the following plans, as defined in R652-1-200, shall be implemented pursuant to 65A-2-2:

(1) Comprehensive management plans;
(2) Resource plans;
(3) Site-specific plans.

R652-90-300. Initiation of Planning Process.

1. A comprehensive planning process is initiated by the designation of a planning unit as planning priorities are established by the division.

2. Resource Management planning is initiated by the division's identification and determination that there is a need for such a plan.

3. In the absence of a comprehensive management plan or a resource management plan exists for sovereign land, site-specific planning shall be initiated either by:

(a) an application for a sovereign land use, or

(b) the identification by the division of an opportunity for commercial gain in a specific area.

R652-90-400. Site-Specific Planning.

1. When the division conducts site-specific planning it shall consider:

(a) a comparative evaluation of the commercial gain potential of the proposed use with competing or existing uses;

(b) the effect of the proposed use on adjoining sovereign lands;

(c) an evaluation of the proposed use or action with regard to natural and cultural resources, if appropriate;

(d) the notification of, and environmental analysis of, the proposed use provided by the public, federal, state, and municipal agencies through the Resource Development Coordinating Committee (RDCC) process; and

(e) any further notification and evaluations as required by applicable rules.

2. During the site-specific planning process, the director may determine that a comprehensive management plan be prepared. In making such a determination, the director may consider:

(a) the amount of public interest in the natural and cultural resources of the area;

(b) any unique attributes of the land;

(c) the potential for conflicts with other land uses; and

(d) the opportunities for commercial gain of the sovereign land resources by development of a comprehensive or resource management plan, exchange of the land or other options in lieu of those set forth in the application.

R652-90-500. Notification and Public Comment.

1. Once a planning unit is designated for a comprehensive management plan, notice shall be sent to the Governor's Office of Planning and Budget for inclusion in the RDCC agenda packet and, if appropriate, the weekly status report.

2. The division shall conduct at least one public meeting in the vicinity of a planning unit that has been designated for a comprehensive management plan.

(a) The meeting shall provide an opportunity for public comment regarding the issues to be addressed in the plan.

(b) The public meeting(s) shall be held at least two weeks after notice in a local newspaper.

(c) Notice of public meeting(s) shall be sent directly to lessees of record, local government officials and the Office of Planning and Budget for inclusion in the RDCC agenda packet and weekly status report. A mailing list shall be maintained by the division.

(d) Additional public meetings may be held.

3. Notice that a site-specific or resource planning effort is under way shall be given to:

(a) affected parties as required by rule for exchange, or lease;

(b) the Governor's Office of Planning and Budget for inclusion in the RDCC Project Management System for public and agency notification and comment.

R652-90-600. Public Review.

1. Comprehensive management plans shall be published in draft form and sent to persons on the mailing list established under R652-90-400, the Governor's Office of Planning and Budget, and other persons upon request.

(a) A public comment period of at least 45 days shall commence upon receipt of the draft in the Governor's Office of Planning and Budget.

(b) All public comment shall be acknowledged pursuant to 65A-2-4(2).

(c) The division's response to the public comment shall be summarized in the final comprehensive management plan.

(d) Comments received after the public comment period shall be acknowledged but need not be summarized in the final plan.

2. Resource plans shall be published and made available upon request.

(a) Persons wishing to comment on these plans may do so at any time.

(b) The division shall acknowledge all written comments.

3. Upon completion of a site-specific planning process, the Record of Decision or other document summarizing final division action and relevant facts shall be provided to any persons requesting notice from the division.

R652-90-700. Interim Management.

1. Once the planning process is initiated, and for the purpose of effective interim management, the division may designate a primary intended land use or withdraw land in the planning unit from any or all surface or subsurface land use for the duration of the planning process or 18 months, whichever is less.

2. At the onset of a management planning process, a primary intended land use may be designated for land that is reasonably expected to be used for a combination of mineral, industrial, recreational, residential and other uses.

(a) During the planning process, surface actions which will adversely affect the primary intended land use shall be subject to a maximum term of five years and the prohibition of surface disturbance which will foreclose future use options.

(b) The primary intended land use may be changed during the planning process in response to new management opportunities.

3. Any application for activities covered by a current withdrawal shall be held in abeyance. At the conclusion of the planning process, the director may deny an application or any part thereof which is inconsistent with the completed plan, or continue to process all other applications which have been held

in abeyance.

4. A lease which expires during the planning processes may be extended only for the duration of the withdrawal. Extensions granted under this provision are exempt from the requirement of R652-30-1000.

R652-90-800. Multiple-Use Framework.

Comprehensive management plans shall consider the following multiple-use factors to achieve sovereign land-management objectives:

1. The highest and best use(s) for the sovereign land resources in the planning unit.

2. Present and future use(s) for the sovereign land resources in the planning unit;

3. Suitability of the sovereign lands in the planning unit for the proposed uses;

4. The impact of proposed use(s) on other sovereign land resources in the planning unit;

5. The compatibility of possible use(s) as proposed by general public comments, application from prospective users or division analysis; and

6. The uniqueness, special attributes and availability of resources in the planning unit.

R652-90-900. Joint Planning.

The division may participate in joint planning with other land management agencies.

R652-90-1000. Amendments to Management Plans.

1. The division shall follow the management direction, policies and land use proposals presented in comprehensive management plans. When unforeseen circumstances arise which may require a change in plans, the division shall adhere to the following procedure for amendments to comprehensive management plans:

(a) notify affected lessees, beneficiaries, local and other affected government entities;

(b) submit the proposed amendment to the RDCC for review and comment; and

(c) conduct a public meeting in the affected area to provide an opportunity for comment, after giving two weeks' notice in a local newspaper. The division shall acknowledge all written comments.

2. Resource plans may be amended by the division without public notice.

3. Site-specific plans may be amended by the director at any time following issuance provided that the amendment:

(a) does not materially affect any person's rights or obligations, and

(b) is consistent with existing policy or rule.

R652-90-1100. Termination of Planning.

Prior to issuance of a final planning document, a planning process may be suspended or terminated by the division.

R652-90-1200. Environmental Assessments.

1. The RDCC process provides an environmental assessment for purposes of sovereign land management. The public may comment on proposed sovereign land uses through the RDCC and other public notification processes.

2. Any additional environmental impact analysis shall be at the director's discretion based on a written determination that additional evaluation is consistent with division duties.

KEY: management, public meetings, environmental assessment, land use
May 26, 2009 65A-2-4
Notice of Continuation April 2, 2007

R708. Public Safety, Driver License.
R708-26. Learner Permit Rule.
R708-26-1. Purpose.

The purpose of the rule is to set forth the restrictions to be imposed on a person driving a motor vehicle with a learner's permit.

R708-26-2. Authority.

This rule is authorized by Subsection 53-3-104(1)(c).

R708-26-3. Definitions.

"Learner permit" means a temporary restricted driving permit issued by the Driver License Division to a qualified person who has not completed all the requirements to obtain a full driving privilege.

R708-26-4. Restrictions.

The restrictions set forth in Section 53-3-210.5 for a driver holding a learner permit shall be printed on the permit along with any other restrictions deemed necessary by the Driver license Division.

KEY: learner permit
December 9, 2008 **53-3-210**
Notice of Continuation April 7, 2009

R710. Public Safety, Fire Marshal.
R710-2. Rules Pursuant to the Utah Fireworks Act.
R710-2-1. Adoption.

Pursuant to Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, the Utah Fire Prevention Board adopts rules establishing minimum safety standards for retail storage, handling, and sale of class C common state approved explosives; minimum requirements for placement and discharge of display fireworks; and requirements for importer, wholesaler, display or special effects operator licenses.

There is further adopted as part of these rules the following codes which are incorporated by reference:

1.1 International Fire Code (IFC), 2006 edition, as published by the International Code Council, Inc. (ICC), except as amended by provisions listed in R710-2-9, et seq.

1.2 National Fire Protection Association (NFPA), Standard 1123, Code for Fireworks Display, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.3 National Fire Protection Association (NFPA), Standard 1126, Standard for the Use of Pyrotechnics Before a Proximate Audience, 2006 edition, as published by the National Fire Protection Association, except as amended by provisions listed in R710-2-9, et seq.

1.4 Copies of the above codes are on file in the Office of Administrative Rules and the State Fire Marshal's Office.

R710-2-2. Definitions.

2.1 "Authority having jurisdiction (AHJ)" means such county and municipal officers who are charged with the enforcement of state and municipal laws; consisting of all fire enforcement officials including designated staff from the Utah State Department of Public Safety.

2.2 "ICC" means International Code Council, Inc.

2.3 "IFC" means International Fire Code.

2.4 "NFPA" means National Fire Protection Association.

2.5 "Permanent structure" means a non-movable building, securely attached to a foundation, housing a business.

2.6 "Person" means an individual, company, partnership or corporation.

2.7 "Pre-packaged means that the product is wrapped in a clear plastic wrap or other equivalent material to prevent the fuse of the class C common state approved explosive from being accessible to the customer.

2.8 "Resale" means the act of reselling class B or C explosives to a new party.

2.9 "SFM" means the State Fire Marshal.

2.10 "Tent" means a temporary structure, enclosure or shelter constructed of fabric or pliable material supported by any manner except by air or the contents it protects.

2.11 "Temporary Stands and Trailers" means a non-permanent structure used exclusively for the sale of fireworks.

2.12 "UCA" means Utah Code Annotated.

R710-2-3. General Requirements.

3.1 No person shall engage in any type of retail storage or sale of class C common state approved explosives, without first having obtained a license to sell fireworks from the authority having jurisdiction, if required.

3.2 If a municipality or county in which fireworks are offered for sale, requires a seller to obtain a license, it shall be available at the store or stand for presentation upon request to authorized public safety officials.

3.3 All fireworks retail sales locations shall be under the direct supervision of a responsible person who is 18 years of age or older.

3.4 Those selling fireworks at retail sales locations shall be at least 16 years of age or older.

3.5 A salesperson shall remain at the sales location at all times unless suitable locking devices or secured metal storage containers are provided to prevent the unauthorized access to the merchandise by others.

3.6 Class C common state approved explosives shall not be sold to any person under the age of 16 years, unless accompanied by an adult.

3.7 All retail sales locations shall be kept clear of dry grass or other combustible material for a distance of at least 25 feet in all directions.

3.8 Storage of class C common state approved explosives shall not be located in residences to include attached garages.

3.9 "No Smoking" signs shall be conspicuously posted at all sales and storage locations.

3.10 A sign, clearly visible to the general public, shall be posted at all fireworks sales locations, indicating the legal dates for discharge of fireworks.

3.11 All retail sales locations shall be equipped with an approved, portable fire extinguisher having a minimum 2A rating.

R710-2-4. Indoor Sales.

4.1 Display of class C common state approved explosives inside of buildings shall be so located to ensure constant visual supervision.

4.2 In all retail sales locations in permanent structures, the area where class C common state approved explosives are displayed or stored shall be at least 50 feet from any flammable liquid or gas, or other highly combustible material.

4.3 In permanent structures, retail sales displays of Class C common state approved explosives shall not be placed in locations that would impede egress from the building.

4.4 Class C common state approved explosives shall only be stored, handled, displayed, and sold as packaged units, with unexposed fuses, within a permanent structure.

4.5 Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

4.6 Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

4.7 Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

4.8 Rack storage of Class C common state approved explosives inside of buildings is prohibited.

R710-2-5. Temporary Stands, Trailers and Tents.

5.1 Temporary stands, trailers and tents less than 200 square feet used for the retail sales of class C common state approved explosives shall be constructed in compliance with local rules, or if none, in accordance with nationally recognized practice. Tents having an area in excess of 200 square feet shall comply with IFC, Chapter 24.

5.2 The general public shall not be allowed to enter a temporary stand or trailer.

5.3 Each stand, trailer or tent less than 200 square feet shall have a minimum three foot wide unobstructed aisle, running the length of the stand, trailer or tent.

5.4 All tents where customers enter inside shall have a minimum three foot wide unobstructed aisle and two separate exits located a reasonable distance apart and so located that if one is blocked the other will be available.

5.5 The area used for sales of class C common state approved explosives in stands, trailers or tents shall be arranged

to permit the customer to only touch or handle pre-packaged class C common state approved explosives. All non pre-packaged class C common state approved explosives shall be displayed in a manner which prevents the fireworks from being handled by the customer without the direct intervention of the retailer who shall be able to maintain visual contact with the customer.

5.6 Temporary stands, trailers or tents for the sale of class C common state approved explosives shall be located at least 50 feet from other stands, trailers, tents, LPG, flammable liquid or gas storage and dispensing units.

5.7 If the stand or trailer is used for the overnight storage of class C common state approved explosives, it shall be equipped with suitable locking devices to prevent unauthorized entry. Tents shall not be used for overnight storage of class C common state approved explosives unless on site security is provided.

5.8 No person shall be allowed to sleep in any temporary stand, trailer or tent in which class C common state approved explosives are stored or sold.

5.9 Stands, trailers or tents shall not be illuminated or heated by any device requiring an open flame or exposed heating elements. All heaters shall be approved by the authority having jurisdiction (AHJ).

5.10 All illumination shall be installed in accordance with the temporary wiring section of the National Electric Code and approved by the authority having jurisdiction (AHJ).

R710-2-6. List of Approved Class C Common State Approved Explosives.

6.1 The State Fire Marshal shall test and approve any Class C common state approved explosive before it is placed on the approved list as required in UCA 53-7-222(1).

6.2 The State Fire Marshal shall publish a list of approved class C common state approved explosives each year as required in UCA 53-7-222(1)(b).

6.3 The testing shall be conducted annually or as needed.

6.4 Any firework that bears the "California State Fire Marshal Safe and Sane Registered Fireworks Seal" is exempted from the testing process and can be placed on the approved list.

R710-2-7. Importer, Wholesaler, Display or Special Effects Operator Licenses.

7.1 Application for a importer, wholesaler, display or special effects operator license shall be made in writing on forms provided by the SFM.

7.2 Application for a license shall be signed by the applicant. If the application is made by a partnership, it shall be signed by all partners. If the application is made by a corporation or association, it shall be signed by a principal officer.

7.3 Original licenses shall be valid from the date of issuance through December 31st of the year in which issued. Licenses issued on or after October 1st, will be valid through December 31st of the following year.

7.4 Application for renewal of license shall be made before January 1st of each year. Application for renewal shall be made in writing on forms provided by the SFM.

7.5 The SFM may refuse to renew any license pursuant to Section 8 of these rules. The applicant, upon such refusal, shall also have those rights as are granted by Section 8 of these rules.

7.6 Every licensee shall notify the SFM, in writing, within thirty (30) days, of any change of his address or location.

7.7 No licensee shall conduct his licensed business under a name other than the name which appears on his license.

7.8 No license shall be issued to any person as licensee who is under twenty-one (21) years of age.

7.9 The holder of any license shall submit such license for inspection upon request of the SFM, his duly authorized deputies, or any authorized enforcement official.

7.10 Every person who wishes to secure a display or special effects operator original license shall demonstrate proof of competence by:

7.10.1 Successfully passing an open book written examination and obtaining a minimum grade of seventy percent (70%).

7.10.2 Examinations will be given according to the following requirements:

7.10.2.1 The applicant is allowed to use the statute, the administrative rule, and the NFPA standard that applies to the certification examination. Any other materials to include cellular telephones are prohibited in the examination room.

7.10.2.2 Completion of the certification examination will not be allowed if it appears to the test administrator that the applicant has not prepared to take the examination.

7.10.2.3 Each certification examination taken has a time limit of two hours to completion. Leaving the office or testing location before the completion of the examination voids the examination and will require the examination to be retaken by the applicant.

7.10.2 Submit written verification with the application of having completed a display or special effects operators safety class or demonstrate previous experience acceptable to the SFM.

7.10.3 Submit written verification with the application that the applicant has worked with a licensed display or special effects operator for at least three shows or demonstrate previous experience acceptable to the SFM.

7.11 The written examination stated in Section 7.10(a) shall be valid for five years from the date of the examination.

7.12 At the end of the five year period the licensed display or special effects operator shall take a re-examination. The re-examination shall be open book and sent to the license holder at least 60 days before the renewal date. The re-examination shall focus on the changes in the last 5 years to the adopted standards. The license holder is responsible to complete the re-examination and return it to the Division in time to renew and also comply with the requirements listed in Section 7.13.

7.13 After the issuance of the original license, and each year thereafter, the display or special effects operator shall complete a minimum of one fireworks performance annually or attend an operator safety class annually or work with another licensed display or special effects operator with a show annually to demonstrate proof of competence.

7.14 When the license has expired for more than one year, an application shall be made for an original license and the initial requirements shall be completed as required in Section 7.10 of these rules.

7.15 Every person who wishes to secure an importer, wholesaler, display or special effects operators license shall be at least 21 years of age.

7.16 Every licensed display or special effects operator shall complete the Pyrotechnician's After Action Report for Fireworks Display form within ten (10) working days after the conclusion of any display or special effects show and send it to the State Fire Marshal.

R710-2-8. Adjudicative Proceedings.

8.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

8.2 The issuance, renewal, or continued validity of a license may be denied, suspended or revoked, if the SFM, or his authorized deputies finds that the applicant, person employed for, the person having authority and management of a concern commits any of the following violations:

8.2.1 The person or applicant is not the real person in interest.

8.2.2 The person of applicant provides material misrepresentation or false statement on the application.

8.2.3 The person or applicant refuses to allow inspection by the AHJ.

8.2.4 The person or applicant for a license does not possess the qualifications of skill or competence to conduct operations for which application is made, as evidenced by failure to pass the examination or demonstrate practical skills.

8.2.5 The person or applicant has been convicted of one or more federal, state or local laws.

8.2.6 Failure to accurately complete the Pyrotechnician's After Action Report for Fireworks Display form.

8.2.7 The person or applicant has been convicted of a violation of the adopted rules or been found by a Board administrative proceeding to have violated the adopted rules.

8.2.8 Any offense or finding of unlawful conduct, or there is or may be, a threat to the public's health or safety if the applicant or person were granted a license or certificate of registration.

8.2.9 There are other factors upon which a reasonable and prudent person would rely to determine the suitability of the applicant or person to safely and competently engage in the practice of servicing portable fire extinguishers.

8.3 A person may request a hearing on a decision made by the AHJ, by filing an appeal to the Board within 20 days after receiving final notice from the AHJ.

8.4 All adjudicative proceedings, other than criminal prosecution, taken by the AHJ to enforce the Utah Fire Prevention and Safety Act, and these rules, shall commence in accordance with UCA, Section 63G-4-201.

8.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

8.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

8.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

8.8 After a period of three years from the date of revocation, the Board shall review the submitted written application of a person whose license or certificate of registration has been revoked. After timely notice to all parties involved, the Board shall convene to review the revoked persons application, and that person shall be allowed to present themselves and their case before the Board. After the hearing, the Board shall direct the SFM to allow the person to complete the licensing or certification process or shall direct that the revocation be continued.

8.9 Judicial review of all final Board actions resulting from informal adjudicative proceedings shall be conducted pursuant to UCA, Section 63G-4-402.

R710-2-9. Amendments and Additions.

9.1 The following are amendments and additions to the codes and standards adopted to regulate class C common state approved explosives, placement and discharge of display fireworks, and importer, wholesaler, display or special effects operator licenses, as adopted in Section 1 of these rules:

9.2 IFC, Chapter 33, Section 3301.2.1 and 3301.2.2 is deleted, and rewritten to read as follows:

9.2.1 For the following periods of time: June 1 through July 31; December 1 through January 5; and 30 days before and up to 5 days after the Chinese New Year; class C common state approved explosives may be stored for retail sale as follows:

9.2.1.1 The retail seller shall notify the local fire authority to where the class C common state approved explosives are to be stored.

9.2.1.2 Class C common state approved explosives shall not be stored in residences to include attached garages.

9.2.1.3 The local fire authority shall approve the storage site of the class C common state approved explosives and may use the following guidelines for acceptable places of storage:

9.2.1.3.1 In self storage units where the owner allows it.

9.2.1.3.2 In a temporary stand or trailer used for the retail sales of Class C common state approved explosives, which must be locked or secured when not open for business.

9.2.1.3.3 In a locked or secured truck, trailer, or other vehicle at an approved location.

9.2.1.3.4 In a locked or secured container, garage, shed, barn, or other building, which is detached from an inhabited building.

9.2.1.3.5 Wholesalers warehouse.

9.2.1.3.6 An approved Group M occupancy.

9.2.1.3.7 In a locked or secured metal container adjacent to the temporary stand, trailer or tent that is acceptable to the authority having jurisdiction.

9.2.1.3.8 Any other structure or location approved by the authority having jurisdiction.

9.2.2 All other periods of time, except those stated in Section 9.2(1) of these rules, the storage, use, and handling of fireworks are prohibited, except as follows:

9.2.2.1 The storage and handling of fireworks are allowed as required in IFC, Chapter 33 and these rules.

9.2.2.2 The use of fireworks for display is allowed as set forth in IFC, Chapter 33 and these rules.

R710-2-10. Fire Department Displays.

10.1 As required in UCA 53-7-223(1) and as allowed for fire departments in UCA 53-7-202(9)(b), the fire department's involvement in the discharge of display fireworks is allowed only for the discharge of display fireworks in that fire departments community or communities it has a contract to protect.

10.2 Within 10 working days after the conclusion of a fireworks display, the fire chief or an assigned fire department member shall complete a Pyrotechnician's After Action Report and send it to the State Fire Marshal.

10.3 Any fire department member that will be involved in the discharge site as defined in NFPA 1123, shall complete a fireworks display safety class yearly to be allowed in the discharge area during the display.

10.4 Any fireworks purchased by a community or fire department outside of the State of Utah shall require the securing of an annual importers license as required in UCA 53-7-224.

KEY: fireworks
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R710. Public Safety, Fire Marshal.
R710-9. Rules Pursuant to the Utah Fire Prevention Law.
R710-9-1. Title, Authority, and Adoption of Codes.

1.1 These rules shall be known as the "Rules Pursuant to the Utah Fire Prevention Law", and may be cited as such, and will be hereafter referred to as "these rules".

1.2 These rules are promulgated in accordance with Title 53, Chapter 7, Section 204, Utah Code Annotated 1953, as amended.

1.3 These rules are adopted by the Utah Fire Prevention Board to provide minimum rules for safeguarding life and property from the hazards of fire and explosion, for board meeting conduct, procedures to amend incorporated references, establishing amendments and additions to the adopted codes, establishing board subcommittees, enforcement of the rules of the State Fire Marshal, and deputizing Special Deputy State Fire Marshals.

1.4 There is adopted as part of these rules the following code which is incorporated by reference:

1.4.1 International Fire Code (IFC), 2006 edition, excluding appendices, as promulgated by the International Code Council, Inc., except as amended by provisions listed in R710-9-6, et seq.

1.5 There is further adopted as part of these rules the following codes which are also incorporated by reference and supercede the adopted standards listed in the International Fire Code, 2006 edition, Chapter 45, Referenced Standards, as follows:

1.5.1 National Fire Protection Association (NFPA), NFPA 10, Standard for Portable Fire Extinguishers, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.2 National Fire Protection Association (NFPA), NFPA 13, Standard for Installation of Sprinkler Systems, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.3 National Fire Protection Association (NFPA), NFPA 13D, Standard for the Installation of Sprinkler Systems in One and Two Family Dwellings and Manufactured Homes, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.4 National Fire Protection Association (NFPA), NFPA 13R, Standard for the Installation of Sprinkler Systems in Residential Occupancies up to and including Four Stories in Height, 2007 edition, except as amended by provisions listed in R710-9-6, et seq.

1.5.5 National Fire Protection Association (NFPA), NFPA 70, National Electric Code, 2008 edition, as adopted by the Uniform Building Standards Act, Title 58. Chapter 56, Section 4, Utah Code Annotated 1953 and the Utah Administrative Code R156-56-701. Wherever there is a section, figure or table in the International Fire Code (IFC) that references "ICC Electrical Code", that reference shall be replaced with "National Electric Code".

1.5.6 National Fire Protection Association (NFPA), NFPA 72, National Fire Alarm Code, 2007 edition, except as amended in provisions listed in R710-9-6, et seq.

1.5.7 National Fire Protection Association (NFPA), NFPA 101, Life Safety Code, 2006 edition, except as amended in provisions listed in R710-9-6, et seq. Wherever there is a section, figure or table in NFPA 101 that references "NFPA 5000 - Building Construction and Safety Code", that reference shall be replaced with the "International Building Code".

1.5.8 National Fire Protection Association (NFPA), NFPA 160, Standard for Flame Effects Before an Audience, 2006 edition, except as amended by provisions listed in R710-9-6, et seq.

1.6 National Fire Protection Association (NFPA), NFPA 96, Standard for Ventilation Control and Fire Protection of Commercial Cooking Operations, 2008 edition, except as amended by provisions listed in R710-9-6, et seq.

R710-9-2. Definitions.

2.1 "Appreciable Depth" means a depth greater than 1/4 inch.

2.2 "Authority Having Jurisdiction (AHJ)" means the State Fire Marshal, his authorized deputies, or the local fire enforcement authority.

2.3 "Board" means Utah Fire Prevention Board.

2.4 "Division" means State Fire Marshal.

2.5 "ICC" means International Code Council, Inc.

2.6 "IFC" means International Fire Code.

2.7 "Institutional occupancy" means asylums, mental hospitals, hospitals, sanitariums, homes for the aged, residential health care facilities, children's homes or institutions, or any similar institutional occupancy.

2.8 "LFA" means Local Fire Authority.

2.9 "NFPA" means National Fire Protection Association.

2.10 "Place of assembly" means where 50 or more people gather together in a building, structure, tent, or room for the purpose of amusement, entertainment, instruction, or education.

2.11 "SFM" means State Fire Marshal or authorized deputy.

2.12 "Sub-Committee" means Fire Prevention Board Budget Sub-Committee or Amendment Sub-Committee.

2.13 "UCA" means Utah Code Annotated, 1953.

R710-9-3. Conduct of Board Members and Board Meetings.

3.1 Board meetings shall be presided over and conducted by the chairman and in his absence the vice chairman or the chairman's designee.

3.2 A quorum shall be required to approve any action of the Board.

3.3 The chairman of the Board and Board members shall be entitled to vote on all issues considered by the Board. A Board member who declares a conflict of interest or where a conflict of interest has been determined, shall not vote on that particular issue.

3.4 Meetings of the Board shall be conducted in accordance with an agenda, which shall be submitted to the members by the division, not less that 21 days before the regularly scheduled Board meetings.

3.5 Public notice of Board meetings shall be made by the Division as prescribed in UCA Section 52-4-6.

3.6 The division shall provide the Board with a secretary who shall prepare minutes and shall perform all secretarial duties necessary for the Board to fulfill its responsibility. The minutes of Board meetings shall be completed and sent to Board members at least 14 days prior to the scheduled Board meeting.

3.7 A Board members standing on the Board shall come under review after two unexcused absences in one year from regularly scheduled board meetings. The Board members name shall be submitted to the governors office for status review.

R710-9-4. Deputizing Persons to Act as Special Deputy State Fire Marshals.

4.1 Special deputy state fire marshals may be appointed by the SFM to positions of expertise within the regular scope of the Fire Marshal's Office.

4.2 Pursuant to Section 53-7-101 et seq., special deputy state fire marshals may also be appointed to assist the Fire Marshal's Office in establishing and maintaining minimum fire prevention standards in those occupancy classifications listed in the International Fire Code.

4.3 Special deputy state fire marshals shall be appointed after review by the State Fire Marshal in regard to their qualifications and the overall benefit to the Office of the State Fire Marshal.

4.4 Special deputy state fire marshals shall be appointed by completing an oath and shall be appointed for a specific period of time.

4.5 Special deputy state fire marshals shall have a picture identification card and shall carry that card when performing their assigned duties.

R710-9-5. Procedures to Amend the International Fire Code.

5.1 All requests for amendments to the IFC shall be submitted to the division on forms created by the division, for presentation to the Board at the next regularly scheduled Board meeting.

5.2 Requests for amendments received by the division less than 21 days prior to any regularly scheduled meeting of the Board may be delayed in presentation until the next regularly scheduled Board meeting.

5.3 Upon presentation of a proposed amendment, the Board shall do one of the following:

5.3.1 accept the proposed amendment as submitted or as modified by the Board;

5.3.2 reject the proposed amendment;

5.3.3 submit the proposed amendment to the Board Amendment Subcommittee for further study; or

5.3.4 return the proposed amendment to the requesting agency, accompanied by Board comments, allowing the requesting agency to resubmit the proposed amendment with modifications.

5.4 The Board Amendment Subcommittee shall report its recommendation to the Board at the next regularly scheduled Board meeting.

5.5 The Board shall make a final decision on the proposed amendment at the next Board meeting following the original submission.

5.6 The Board may reconsider any request for amendment, reverse or modify any previous action by majority vote.

5.7 When approved by the Board, the requesting agency shall provide to the division within 45 days, the completed ordinance.

5.8 The division shall maintain a list of amendments to the IFC that have been granted by the Board.

5.9 The division shall make available to any person or agency copies of the approved amendments upon request, and may charge a reasonable fee for multiple copies in accordance with the provisions of UCA, 63-2-203.

R710-9-6. Amendments and Additions.

The following amendments and additions are hereby adopted by the Board for application statewide:

6.1 International Fire Code - Administration

6.1.1 IFC, Chapter 1, Section 105.6.16 is amended to add the following section: 11. The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.1.2 IFC, Chapter 1, Section 109.2 is amended as follows: On line three after the words "is in violation of this code," add the following "or other pertinent laws or ordinances".

6.2 International Fire Code - Definitions

6.2.1 IFC, Chapter 2, Section 202, Educational Group E, Day care is amended as follows: On line three delete the word "five" and replace it with the word "four".

6.2.2 IFC, Chapter 2, Section 202, Institutional Group I, Group I-1 is amended to add the following: On line ten add "Type 1" in front of the words "Assisted living facilities".

6.2.3 IFC, Chapter 2 Section 202, Institutional Group I, Group I-2 is amended as follows: On line four delete the word "five" and replace it with the word "three". On line eleven after the words "Detoxification facilities" delete the rest of the section, and add the following: "Ambulatory surgical centers with two or more operating rooms where care is less than 24 hours, outpatient medical care facilities for ambulatory patients (accommodating more than five such patients in each tenant space) which may render the patient incapable of unassisted self-preservation, and Type 2 assisted living facilities. Type 2 assisted living facilities with five or fewer persons shall be classified as a Group R-4. Type 2 assisted living facilities with at least six and not more than 16 residents shall be classified as a Group I-1 facility.

6.2.4 IFC, Chapter 2, Section 202, Institutional Group I, Group I-4, day care facilities, Child care facility is amended as follows: On line three delete the word "five" and replace it with the word "four". Also on line two of the Exception delete the word "five" and replace it with the word "four".

6.2.5 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-1 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.2.6 IFC, Chapter 2, Section 202 General Definitions, Occupancy Classification, Residential Group R-2 is amended to add the following: Exception: Boarding houses accommodating 10 persons or less shall be classified as Residential Group R-3.

6.3 International Fire Code - General Precautions Against Fire

6.3.1 IFC, Chapter 3, Section 304.1.2 is amended as follows: Delete the current line six and add the following in it's place: "the Utah Administrative Code, R652-122-200, Minimum Standards for Wildland Fire Ordinance."

6.3.2 IFC, Chapter 3, Section 311.1.1 is amended as follows: On line ten delete the words "International Property Maintenance Code and the" from this section.

6.3.3 IFC, Chapter 3, Section 311.5 is amended as follows: On line two delete the word "shall" and replace it with the word "may".

6.3.4 IFC, Chapter 3, Section 315.2.1 is amended to add the following: Exception: Where storage is not directly below the sprinkler heads, storage is allowed to be placed to the ceiling on wall mounted shelves that are protected by fire sprinkler heads in occupancies meeting classification as light or ordinary hazard.

6.4 International Fire Code - Emergency Planning and Preparedness

6.4.1 IFC, Chapter 4, Section 404.2(7) is amended as follows: After the word "buildings" add "to include sororities and fraternity houses".

6.5 International Fire Code - Building Services and Systems

6.5.1 IFC, Chapter 6, Section 607.3 is deleted and rewritten as follows: Firefighter service keys shall be kept in a "Supra - Stor-a-key" elevator key box or similar box with corresponding key system that is adjacent to the elevator for immediate use by the fire department. The key box shall contain one key for each elevator, one key for lobby control, and any other keys necessary for emergency service. The elevator key box shall be accessed using a 6049 numbered key. All existing elevator key box locks that do not use the numbered 6049 key shall be changed to the 6049 key by December 31, 2011.

6.5.2 IFC, Chapter 6, Section 609.1 is amended to add the following: On line three after the word "Code" add the words "and NFPA 96".

6.6 International Fire Code - Fire Protection Systems

6.6.1 IFC, Chapter 9, Section 901.2 is amended to add the following: The code official has the authority to request record drawings ("as builts") to verify any modifications to the previously approved construction documents.

6.6.2 IFC, Chapter 9, Section 902.1 Definitions, RECORD DRAWINGS is deleted and rewritten as follows: Drawings ("as builts") that document all aspects of a fire protection system as

installed.

6.6.3 IFC, Chapter 9, Section 901.6 is amended to add the following:

The owner or administrator of each building shall insure the inspection and testing of water based fire protection systems as required in Rule R710-5, Automatic Fire Sprinkler System Inspecting and Testing.

6.6.4 IFC, Chapter 9, Section 903.2.1.2 is amended to add the following subsection: 4. An automatic fire sprinkler system shall be provided throughout Group A-2 occupancies where indoor pyrotechnics are used.

6.6.5 IFC, Chapter 9, Section 903.2.3(2) is deleted and rewritten as follows: Where a Group F-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.6 IFC, Chapter 9, Section 903.2.6(2) is deleted and rewritten as follows: Where a Group M fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.7 IFC, Chapter 9, Section 903.2.7 Group R, is amended to add the following: Exception: Detached one- and two-family dwellings and multiple single-family dwellings (townhouses) constructed in accordance with the International Residential Code for one- and two-family dwellings.

6.6.8 IFC, Chapter 9, Section 903.2.7 is amended to add the following: Exception: Group R-4 fire areas not more than 4500 gross square feet and not containing more than 16 residents, provided the building is equipped throughout with an approved fire alarm system that is interconnected and receives its primary power from the building wiring and a commercial power system.

6.6.9 IFC, Chapter 9, Section 903.2.8(2) is deleted and rewritten as follows: A Group S-1 fire area is located more than three stories above the lowest level of fire department vehicle access; or

6.6.10 IFC, Chapter 9, Section 903.2.9 is deleted and rewritten as follows: Group S-2. An automatic sprinkler system shall be provided throughout buildings classified as parking garages in accordance with Section 406.2 or where located beneath other groups.

6.6.10.1 Exception 1: Parking garages of less than 5,000 square feet (464m2) accessory to Group R-3 occupancies.

6.6.10.2 Exception 2: Open parking garages not located beneath other groups if one of the following conditions are met:

6.6.10.2.1 a. Access is provided for fire fighting operations to within 150 feet (45 720mm) of all portions of the parking garage as measured from the approved fire department vehicle access, or

6.6.10.2.2 b. Class I standpipes are installed throughout the parking garage.

6.6.11 IFC, Chapter 9, Section 903.2.9.1 is deleted and rewritten as follows: Commercial parking garages. An automatic sprinkler system shall be provided throughout buildings used for storage of commercial trucks or buses.

6.6.12 IFC, Chapter 9, Section 903.3.5 is amended by adding the following at the end of the section: The potable water supply to automatic fire sprinkler systems and standpipe systems shall be protected against backflow in accordance with the International Plumbing Code as amended in the Utah Administrative Code, R156-56-707, Utah Uniform Building Standard Act Rules.

6.6.13 IFC, Chapter 9, Section 903.6 is amended to add the following subsection: 903.6.2 Group A-2 occupancies. An automatic fire sprinkler system shall be provided throughout existing Group A-2 occupancies where indoor pyrotechnics are used.

6.6.14 IFC, Chapter 9, Section 904.11 is deleted and rewritten as follows: Commercial Cooking Systems. The automatic fire extinguishing system for commercial cooking systems shall be of a type recognized for protection of commercial cooking equipment and exhaust systems. Pre-engineered automatic extinguishing systems shall be tested in accordance with UL300 and listed and labeled for the intended application. The system shall be installed in accordance with this code, its listing and the manufacturer's installation instructions. The Exception in Section 904.11 is not deleted and shall remain as currently written in the IFC.

6.6.15 IFC, Chapter 9, Sections 904.11.3 and 904.11.3.1 is deleted and rewritten as follows:

6.6.15.1 Existing automatic fire extinguishing systems used for commercial cooking that use dry chemical is prohibited and shall be removed from service.

6.6.15.2 Existing wet chemical fire extinguishing systems used for commercial cooking that are not UL300 listed and labeled are prohibited and shall be either removed or upgraded to a UL300 listed and labeled system.

6.6.16 IFC, Chapter 9, Section 904.11.4 is amended to add the following subsection: 904.11.4.2. Existing automatic fire sprinkler systems protecting commercial cooking equipment, hood, and exhaust systems that generate appreciable depth of cooking oils shall be replaced with a UL300 system that is listed and labeled for the intended application.

6.6.17 IFC, Chapter 9 Section 904.11.6.4 is amended to add the following: Automatic fire extinguishing systems located in occupancies where usage is limited and less than six consecutive months, may be serviced annually if the annual service is conducted immediately before the period of usage, and approval is received from the AHJ.

6.6.18 IFC, Chapter 9, Section 905.11 is deleted.

6.6.19 IFC, Chapter 9, Section 907.2.10.1.4 is created as follows: Carbon monoxide alarms. Carbon monoxide alarms shall be installed on each habitable level of a dwelling unit or sleeping unit in Groups R-2, R-3, R-4, and I-1 equipped with fuel burning appliances.

6.6.20 IFC, Chapter 9, Section 907.2.10.2 is amended as follows: On line two, line five, and line one of the Exception, the word "smoke" is deleted.

6.6.21 IFC, Chapter 9, Section 907.2.10.3 is amended as follows: On line two and line five, the word "smoke" is deleted. On line nine after the word "closed", add the following sentence: "Approved combination smoke and carbon monoxide detectors shall be permitted."

6.6.22 IFC Chapter 9, Section 907.2.10.4 is amended as follows: On line five after "NFPA 72" add "and NFPA 720, as applicable".

6.6.23 IFC, Chapter 9, Section 907.3 is deleted and rewritten as follows: An approved automatic fire detection system shall be installed in accordance with the provisions of this code and NFPA 72. Devices, combinations of devices, appliances and equipment shall be approved. The automatic fire detectors shall be smoke detectors, except an approved alternative type of detector shall be installed in spaces such as boiler rooms where, during normal operation, products of combustion are present in sufficient quantity to actuate a smoke detector.

6.6.24 IFC, Chapter 9, Sections 907.3.1, 907.3.1.1, 907.3.1.2, 907.3.1.3, 907.3.1.4, 907.3.1.5, 907.3.1.6, 907.3.1.7, and 907.3.1.8 are deleted.

6.6.25 IFC, Chapter 9, Section 907.3.2 is amended to add the following: On line three after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.26 IFC, Chapter 9, Section 907.3.2.3 is amended to add the following: On line one after the word "occupancies" add "and detached one- and two-family dwellings and multiple single-family dwellings (townhouses)".

6.6.27 IFC, Chapter 9, Section 907.20.5 is amended to add the following sentences: Increases in nuisance alarms shall

require the fire alarm system to be tested for sensitivity. Fire alarm systems that continue after sensitivity testing with unwarranted nuisance alarms shall be replaced as directed by the AHJ.

6.7 International Fire Code - Means of Egress

6.7.1 IFC, Chapter 10, Section 1008.1.8.3 is amended to add the following:

6.7.1.1 5. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require specialized security measures for their safety, approved access controlled egress may be installed when all the following are met:

6.7.1.1.1 5.1 The controlled egress doors shall unlock upon activation of the automatic fire sprinkler system or the automatic fire detection system.

6.7.1.1.2 5.2 The facility staff can unlock the controlled egress doors by either sensor or keypad.

6.7.1.1.3 5.3 The controlled egress doors shall unlock upon loss of power.

6.7.1.1.4 5.4 The secure area or unit with controlled egress doors shall be located at the level of exit discharge in Type V construction.

6.7.1.2 6. Doors in Group I-1 and I-2 occupancies, where the clinical needs of the patients require approved, listed delayed egress locks, they shall be installed on doors as allowed in IFC, Section 1008.1.8.6. The secure area or unit with delayed egress locks shall be located at the level of exit discharge in Type V construction.

6.7.2 IFC, Chapter 10, Section 1009.3 is amended as follows: On line five of Exception 4 delete "7.75" and replace it with "8". On line seven of Exception 4 delete "10" and replace it with "9".

6.7.3 IFC, Chapter 10, Section 1009.10, is amended to add the following exception: 6. In occupancies in Group R-3, as applicable in Section 101.2 and in occupancies in Group U, which are accessory to an occupancy in Group R-3, as applicable in Section 101.2, handrails shall be provided on at least one side of stairways consisting of four or more risers.

6.7.4 IFC, Chapter 10, Section 1012.3 is amended to add the following: Exception: Non-circular handrails serving an individual unit in a Group R-1, Group R-2 or Group R-3 occupancy with a perimeter greater than 6 1/4 inches (160mm)shall provide a graspable finger recess area on both sides of the profile. The finger recess shall begin within a distance of 3/4 inch (19mm) measured vertically from the tallest portion of the profile and achieve a depth of at least 5/16 inch (8mm) within 7/8 inch (22mm) below the widest portion of the profile. This required depth shall continue for at least 3/8 inch (10mm) to a level that is not less than 1 3/4 inches (45mm) below the tallest portion of the profile. The minimum width of the handrail above the recess shall be 1 1/4 inches (32mm) to a maximum of 2 3/4 inches (70mm). Edges shall have a minimum radius of 0.01 inch (0.25mm).

6.7.5 IFC, Chapter 10, Section 1013.2 is amended to add the following exception: 3. For occupancies in Group R-3 and within individual dwelling units in occupancies in Group R-2, as applicable in Section 101.2, guards shall form a protective barrier not less than 36 inches (914mm).

6.7.6 IFC, Chapter 10, Section 1015.2.2 is amended to add the following sentence at the end of the section: Additional exits or exit access doorways shall be arranged a reasonable distance apart so that if one becomes blocked, the others will be available.

6.7.7 IFC, Chapter 10, Section 1028.2 is amended to add the following: On line six after the word "fire" add the words "and building".

6.8 International Fire Code - Explosives and Fireworks

6.8.1 IFC, Chapter 33, Section 3301.1.3, Exception 4 is amended to add the following sentence: The use of fireworks for display and retail sales is allowed as set forth in UCA 53-7-220 and UCA 11-3-1.

6.8.2 IFC, Chapter 33, Section 3308.12 is a new section as follows: Display of Class C common state approved explosives inside of buildings protected throughout with an automatic fire sprinkler system shall not exceed 25 percent of the area of the retail sales floor or exceed 600 square feet, whichever is less.

6.8.3 IFC, Chapter 33, Section 3308.13 is a new section as follows: Display of Class C common state approved explosives inside of buildings not protected with an automatic fire sprinkler system shall not exceed 125 pounds of pyrotechnic composition. Where the actual weight of the pyrotechnic composition is not known, 25 percent of the gross weight of the consumer fireworks, including packaging, shall be permitted to be used to determine the weight of the pyrotechnic composition.

6.8.4 IFC, Chapter 33,Section 3308.14 is a new section as follows: Display of Class C common state approved explosives inside of buildings shall not exceed a height greater than six feet above the floor surface.

6.8.5 IFC, Chapter 33, Section 3308.15 is a new section as follows: Rack storage of Class C common state approved explosives inside of buildings is prohibited.

6.9 International Fire Code - Flammable and Combustible Liquids

6.9.1 IFC, Chapter 34, Section 3401.4 is amended to add the following at the end of the section: The owner of an underground tank that is out of service for longer than one year, shall receive a Temporary Closure Notice from the Department of Environmental Quality and a copy shall be given to the AHJ.

6.9.2 IFC, Chapter 34, Section 3405.5.1 is deleted and rewritten as follows: Corridor installations. Where wall-mounted dispensers containing alcohol-based hand rubs are installed in corridors, they shall be in accordance with all of the following: 1. Level 2 and Level 3 aerosol containers shall not be allowed in corridors. 2. The maximum capacity of each Class I or II liquids dispenser shall be 41 ounces and the maximum capacity of each Level I aerosol dispenser shall be 18 ounces. 3. The maximum quantity allowed in a corridor within a control group area shall be 10 gallons of Class I or II liquids or 1135 ounces of Level I aerosols or a combination of Class I or II liquids and Level I aerosols not to exceed in total the equivalent of 10 gallons. 4. Projections into a corridor shall be in accordance with Section 1003.3.3.

6.9.3 IFC, Chapter 34, Section 3406.1 is amended to add the following special operation: 8. Sites approved by the AHJ.

6.9.4 IFC, Chapter 34, Section 3406.2 is amended to add the following: On line five after the words "borrow pits" add the words "and sites approved by the AHJ".

6.10 International Fire Code - Liquefied Petroleum Gas

6.10.1 IFC, Chapter 38, Section 3809.12, is amended as follows: In Table 3809.12, Doorway or opening to a building with two or more means of egress, with regard to quantities 720 or less and 721 - 2,500, the currently stated "5" is deleted and replaced with "10".

6.10.2 IFC, Chapter 38, Section 3809.14 is amended as follows: Delete 20 from line three and replace it with 10.

6.11 National Fire Protection Association

6.11.1 NFPA 72, Chapter 2, Section 2.2 is amended to add the following NFPA standard: NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, 2007 edition.

6.11.2 NFPA 72, Chapter 4, Section 4.3.2.2(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.3 NFPA 72, Chapter 4, Section 4.3.3(2) is deleted and rewritten as follows: National Institute of Certification in Engineering Technologies (NICET) fire alarm level II certified personnel.

6.11.4 NFPA 72, Chapter 4, Section 4.4.3.7.2 is amended to add the following sentence: When approved by the AHJ, the audible notification appliances may be deactivated during the investigation mode to prevent unauthorized reentry into the building.

6.11.5 NFPA 72, Chapter 4, Section 4.4.5 is deleted and rewritten as follows: Automatic smoke detection shall be provided at the location of each fire alarm control unit(s), notification appliance circuit power extenders, and supervising station transmitting equipment to provide notification of fire at the location.

6.11.5.1 NFPA 72, Chapter 4, Section 4.4.5, Exception No. 1: When ambient conditions prohibit installation of automatic smoke detection, automatic heat detection shall be permitted.

6.11.6 NFPA 72, Chapter 6, Section 6.8.5.9 is amended to add the following section: 6.8.5.9.3 Automatic fire pumps shall be supervised in accordance with NFPA 20, Standard for the Installation of Stationary Pumps for Fire Protection, and the AHJ.

6.11.7 NFPA 72, Chapter 7, Section 7.4.1.2 is amended as follows: On line three delete "110dBA" and replace it with "120dBA".

6.11.8 NFPA 72, Chapter 8, Section 8.3.4.7 is amended as follows: On line two, after the word "notified" insert the words "without delay".

6.11.9 NFPA 72, Chapter 10, Section 10.2.2.5.1 is deleted and rewritten as follows: Service personnel shall be qualified and experienced in the inspection, testing and maintenance of fire alarm systems. Qualified personnel shall meet the certification requirements stated in Utah Administrative Code, R710-11-3, Fire Alarm System Inspecting and Testing.

R710-9-7. Fire Advisory and Code Analysis Committee.

7.1 There is created by the Board a Fire Advisory and Code Analysis Committee whose duties are to provide direction to the Board in the matters of fire prevention and building codes.

7.2 The committee shall serve in an advisory position to the Board, members shall be appointed by the Board, shall serve for a term of three years, and shall consist of the following members:

7.2.1 A representative from the State Fire Marshal's Office.

7.2.2 The Code Committee Chairman of the Fire Marshal's Association of Utah.

7.2.3 A fire marshal or fire inspector from a local fire department or fire district.

7.2.4 A representative from the Department of Health.

7.2.5 The Chief Elevator Inspector from the Utah Labor Commission.

7.2.6 A representative from the Department of Human Services.

7.2.7 A representative from Forestry, Fire and State Lands.

7.3 This committee shall join together with the Uniform Building Code Commission Fire Protection Advisory Committee to form the Unified Code Analysis Council.

7.4 The Council shall meet as directed by the Board or as directed by the Building Codes Commission or as needed to review fire prevention and building code issues that require definitive and specific analysis.

7.5 The Council shall select one of it's members to act in the position of chair and another to act as vice chair. The chair and vice chair shall serve for one year terms on a calendar year basis. Elections for chair and vice chair shall occur at the meeting conducted in the last quarter of the calendar year.

7.6 The chair or vice chair of the council shall report to the Board or Building Codes Commission recommendations of the Council with regard to the review of fire and building codes.

R710-9-8. Enforcement of the Rules of the State Fire Marshal.

8.1 Fire and life safety plan reviews of new construction, additions, and remodels of state owned facilities shall be conducted by the SFM, or his authorized deputies. State owned facilities shall be inspected by the SFM, or his authorized deputies.

8.2 Fire and life safety plan reviews of new construction, additions, and remodels of public and private schools shall be completed by the SFM, or his authorized deputies, and the LFA.

8.3 Fire and life safety plan reviews of new construction, additions, and remodels of publicly owned buildings, privately owned colleges and universities, and institutional occupancies, with the exception of state owned buildings, shall be completed by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall complete the plan review.

8.4 The following listed occupancies shall be inspected by the LFA. If not completed by the LFA, the SFM, or his authorized deputies shall inspect.

8.4.1 Publicly owned buildings other than state owned buildings as referenced in 9.1 of this rule.

8.4.2 Public and private schools.

8.4.3 Privately owned colleges and universities.

8.4.4 Institutional occupancies as defined in Section 9-2 of this rule.

8.4.5 Places of assembly as defined in Section 9-2 of this rule.

8.5 The Board shall require prior to approval of a grant the following:

8.5.1 That the applying fire agency be actively participating in the statewide fire statistics reporting program.

8.5.2 The Board shall also require that the applying fire agency be actively working towards structural or wildland firefighter certification through the Utah Fire Service Certification System.

R710-9-9. Fire Prevention Board Budget and Amendment Sub-Committees.

9.1 There is created two Fire Prevention Board Sub-Committees known as the Budget Subcommittee and the Amendment Subcommittee. The subcommittees membership shall be appointed from members of the Board.

9.2 Membership on the Sub-Committee shall be by appointment of the Board Chair or as volunteered by Board members. Membership on the Sub-Committee shall be limited to four Board members.

9.3 The Sub-Committee shall meet as necessary and shall vote and appoint a chair to represent the Sub-Committee at regularly scheduled Board meetings.

R710-9-10. Repeal of Conflicting Board Actions.

All former Board actions, or parts thereof, conflicting or inconsistent with the provisions of this Board action or of the codes hereby adopted, are hereby repealed.

R710-9-11. Validity.

The Utah Fire Prevention Board hereby declares that should any section, paragraph, sentence, or word of this Board action, or of the codes hereby adopted, be declared invalid, it is the intent of the Utah Fire Prevention Board that it would have passed all other portions of this action, independent of the elimination of any portion as may be declared invalid.

R710-9-12. Adjudicative Proceedings.

12.1 All adjudicative proceedings performed by the agency shall proceed informally as set forth herein and as authorized by UCA, Sections 63G-4-202 and 63G-4-203.

12.2 If a city, county, or fire protection district refuses to establish a method of appeal regarding a portion of the IFC, the

appealing party may petition the Board to act as the board of appeals.

12.3 A person may request a hearing on a decision made by the SFM, his authorized deputies, or the LFA, by filing an appeal to the Board within 20 days after receiving final decision.

12.4 All adjudicative proceedings, other than criminal prosecution, taken by the SFM, his authorized deputies, or the LFA, to enforce the Utah Fire Prevention and Safety Act and these rules, shall commence in accordance with UCA, Section 63G-4-201.

12.5 The Board shall act as the hearing authority, and shall convene as an appeals board after timely notice to all parties involved.

12.6 The Board shall direct the SFM to issue a signed order to the parties involved giving the decision of the Board within a reasonable time of the hearing pursuant to UCA, Section 63G-4-203.

12.7 Reconsideration of the Board's decision may be requested in writing within 20 days of the date of the decision pursuant to UCA, Section 63G-4-302.

12.8 Judicial review of all final Board actions resulting from informal adjudicative proceedings is available pursuant to UCA, Section 63G-4-402.

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R746. Public Service Commission, Administration.
R746-360. Universal Public Telecommunications Service Support Fund.
R746-360-1. General Provisions.

A. Authorization -- Section 54-8b-15 authorizes the Commission to establish an expendable trust fund, known as the Universal Public Telecommunications Service Support Fund, the "universal service fund," "USF" or the "fund," to promote equitable cost recovery and universal service by ensuring that customers have access to basic telecommunications service at just, reasonable and affordable rates, consistent with the Telecommunications Act of 1996.

B. Purpose -- The purposes of these rules are:

1. to govern the methods, practices and procedures by which:

a. the USF is created, maintained, and funded by end-user surcharges applied to retail rates;

b. funds are collected for and disbursed from the USF to qualifying telecommunications corporations so that they will provide basic telecommunications service at just, reasonable and affordable rates; and,

2. to govern the relationship between the fund and the trust fund established under 54-8b-12, and establish the mechanism for the phase-out and expiration of the latter fund.

C. Application of the Rules -- The rules apply to all retail providers that provide intrastate public telecommunications services.

R746-360-2. Definitions.

A. Affordable Base Rate (ABR) -- means the monthly per line retail rates, charges or fees for basic telecommunications service which the Commission determines to be just, reasonable, and affordable for a designated support area. The Affordable Base Rate shall be established by the Commission. The Affordable Base Rate does not include the applicable USF retail surcharge, municipal franchise fees, taxes, and other incidental surcharges.

B. Average Revenue Per Line -- means the average revenue for each access line computed by dividing the sum of all revenue derived from a telecommunications corporation's provision of public telecommunications services, including, but not limited to, revenues received from the provision of services in both the interstate and intrastate jurisdictions, whether designated "retail," "wholesale," or some other categorization, all revenues derived from providing network elements, services, functionalities, etc. required under the Federal Telecommunications Act of 1996, Pub. L. 104-104,110 Stat.56 or the Utah Telecommunications Reform Act, Laws of Utah 1995, Chapter 269, all support funds received from the Federal Universal Service Support Fund, and each and every other revenue source or support or funding mechanism used to assist in recovering the costs of providing public telecommunications services in a designated support area by that telecommunications corporation's number of access lines in the designated support area.

C. Basic Telecommunications Service -- means a local exchange service consisting of access to the public switched network; touch-tone, or its functional equivalent; local flat-rated, unlimited usage, exclusive of extended area service; single-party service with telephone number listed free in directories that are received free; access to operator services; access to directory assistance, lifeline and telephone relay assistance; access to 911 and E911 emergency services; access to long-distance carriers; access to toll limitation services; and other services as may be determined by the Commission.

D. Designated Support Area -- means the geographic area used to determine USF support distributions. A designated support area, or "support area," need not be the same as a USF proxy model's geographic unit. The Commission will determine the appropriate designated support areas for determining USF support requirements. Unless otherwise specified by the Commission, the designated support area for a rate-of-return regulated Incumbent telephone corporation shall be its entire certificated service territory located in the State of Utah.

E. Facilities-Based Provider -- means a telecommunications corporation that uses its own facilities, a combination of its own facilities and essential facilities or unbundled network elements obtained from another telecommunications corporation, or a telecommunications corporation which solely uses essential facilities or unbundled network elements obtained from another telecommunications corporation to provide public telecommunications services.

F. Geographic Unit -- means the geographic area used by a USF proxy cost model for calculating costs of public telecommunications services. The Commission will determine the appropriate geographic area to be used in determining public telecommunications service costs.

G. Net Fund Distributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues collected by that company, when the former amount is greater than the latter amount.

H. Net Fund Contributions -- means the difference between the gross fund distribution to which a qualifying telecommunications corporation is entitled and the gross fund surcharge revenues generated by that company, when the latter amount is greater than the former amount.

I. Trust Fund -- means the Trust Fund established by 54-8b-12.

J. USF Proxy Model Costs -- means the total, jurisdictionally unseparated, cost estimate for public telecommunications services, in a geographic unit, based on the forward-looking, economic cost proxy model(s) chosen by the Commission. The level of geographic cost disaggregation to be used for purposes of assessing the need for and the level of USF support within a geographic unit will be determined by the Commission. These models shall be provided by the Commission by January 2, 2001.

K. Universal Service Fund (USF or fund) -- means the Universal Public Telecommunications Service Support Fund established by 54-8b-15 and set forth by this rule.

R746-360-3. Duties of Administrator.

A. Selection of Administrator -- The Division of Public Utilities will be the fund administrator. If the Division is unable to fulfill that responsibility, the administrator, who must be a neutral third party, unaffiliated with any fund participant, shall be selected by the Commission.

B. Cost of Administration -- The cost of administration shall be borne by the fund; unless administered by a state agency.

C. Access to Books -- Upon reasonable notice, the administrator shall have access to the books of account of all telecommunications corporations and retail providers, which shall be used to verify the intrastate retail revenue assessed in an end-user surcharge, to confirm the level of eligibility for USF support and to ensure compliance with this rule.

D. Maintenance of Records -- The administrator shall maintain the records necessary for the operation of the USF and this rule.

E. Report Forms -- The administrator shall develop report forms to be used by telecommunications corporations and retail providers to effectuate the provisions of this rule and the USF. An officer of the telecommunications corporation or retail provider shall attest to and sign the reports to the administrator.

F. Administrator Reports -- The administrator shall file reports with the Commission containing information on the average revenue per line calculations, projections of future USF

needs, analyses of the end-user surcharges and Affordable Base Rates, and recommendations for calculating them for the following 12-month period. The report shall include recommendations for changes in determining basic telecommunications service, designated support areas, geographic units, USF proxy cost models and ways to improve fund collections and distributions.

G. Periodic Review -- The administrator, under the direction of the Commission, shall perform a periodic review of fund recipients to verify eligibility for future support and to verify compliance with all applicable state and federal laws and regulations.

H. Proprietary Information -- Information received by the administrator which has been determined by the Commission to be proprietary shall be treated in conformance with Commission practices.

I. Information Requested -- Information requested by the administrator which is required to assure a complete review shall be provided within 45 days of the request. Failure to provide information within the allotted time period may be a basis for withdrawal of future support from the USF or other lawful penalties to be applied.

R746-360-4. Application of Fund Surcharges to Customer Billings.

A. Commencement of Surcharge Assessments -- Commencing June 1, 1998, end-user surcharges shall be the source of revenues to support the fund. Surcharges will be applied to intrastate retail rates, and shall not apply to wholesale services.

B. Surcharge Based on a Uniform Percentage of Retail Rates -- The retail surcharge shall be a uniform percentage rate, determined and reviewed annually by the Commission and billed and collected by all retail providers.

C. Surcharge -- The surcharge to be assessed shall equal 0.45 percent of billed intrastate retail rates.

R746-360-5. Fund Remittances and Disbursements.

A. Remitting Surcharge Revenues --

1. Telecommunications corporations, not eligible for USF support funds, providing telecommunications services subject to USF surcharges shall collect and remit surcharge revenues to the Commission as follows:

a. if the average monthly USF surcharge collections over the prior six months was ten dollars or greater, within 45 days after the end of each month,

b. if the average monthly USF surcharge collections over the prior six months was less than ten dollars, the telecommunications corporation may accrue the USF surcharge collections and submit the accrued collections on a semiannual basis.

2. Telecommunications corporations eligible for USF support funds shall make remittances as follows:

a. Prior to the end of each month, the fund administrator shall inform each qualifying telecommunications corporation of the estimated amount of support that it will be eligible to receive from the USF for that month.

b. Net fund contributions shall be remitted to the Commission within 45 calendar days after the end of each month. If the net amount owed is not received by that date, remedies, including withholding future support from the USF, may apply.

3. The Commission will forward remitted revenues to the Utah State Treasurer's Office for deposit in a USF account.

B. Distribution of Funds -- Net Fund distributions to qualifying telecommunications corporations for a given month shall be made 60 days after the end of that month, unless withheld for failure to maintain qualification or failure to comply with Commission orders or rules.

R746-360-6. Eligibility for Fund Distributions.

A. Qualification --

1. To qualify to receive USF support funds, a telecommunications corporation shall be designated an "eligible telecommunications carrier," pursuant to 47 U.S.C. Section 214(e), and shall be in compliance with Commission orders and rules. Each telecommunications corporation receiving support shall use that support only to provide basic telecommunications service and any other services or purposes approved by the Commission.

2. Additional qualification criteria for Incumbent telephone corporations - In addition to the qualification criteria of R746-360-6A.1.,

a. Non-rate-of-return Incumbent telephone corporations, except Incumbent telephone corporations subject to pricing flexibility pursuant to 54-8b-2.3 shall make Commission approved, aggregate rate reductions for public telecommunications services, provided in the State of Utah, equal to each incremental increase in USF distribution amounts received after December 1, 1999.

b. Rate-of-return Incumbent telephone corporations shall complete a Commission review of their revenue requirement and public telecommunications services' rate structure prior to any change in their USF distribution which differs from a prior USF distribution, beginning with the USF distribution for December, 1999.

B. Rate Ceiling -- To be eligible, a telecommunications corporation may not charge retail rates in excess of the Commission determined Affordable Base Rates for basic telecommunications service or vary from the terms and conditions determined by the Commission for other telecommunications services for which it receives Universal Service Fund support.

C. Lifeline Requirement -- A telecommunications corporation may qualify to receive distributions from the fund only if it offers Lifeline service on terms and conditions prescribed by the Commission.

D. Exclusion of Resale Providers -- Only facilities-based providers, will be eligible to receive support from the fund. Where service is provided through one telecommunications corporation's resale of another telecommunications corporation's service, support may be received by the latter only.

R746-360-7. Calculation of Fund Distributions in Non-rate-of-Return Regulated Incumbent Telephone Corporation Territories.

A. Use of Proxy Cost Models -- The USF proxy cost model(s) selected by the Commission and average revenue per line will be used to determine fund distributions within designated support areas.

B. Use of USF Funds --Telecommunications corporations shall use USF funds to support each primary residential line in active service which it furnishes in each designated area.

C. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between USF proxy model cost estimates of costs to provide residential Basic Telecommunications Service in the designated support area and the product of the Incumbent telephone corporation's Average Revenue per line, for the designated support area, times the number of Incumbent telephone corporation's active residential access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the Incumbent telephone corporation's average residential access line support amount for the respective designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active residential access lines in the

designated support area, times the eligible telecommunications corporation's number of active residential access lines.

D. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

E. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-8. Calculation of Fund Distributions in Rate-of-Return Incumbent Telephone Corporation Territories.

A. Determination of Support Amounts --

1. Incumbent telephone corporation - Monies from the fund will equal the numerical difference between the Incumbent telephone corporation's total embedded costs of providing public telecommunications services, for a designated support area, less the product of the Incumbent telephone corporation's Average Revenue Per Line, for the designated support area, times the Incumbent telephone corporation's active access lines in the designated support area.

2. Telecommunications corporations other than Incumbent telephone corporations - Monies from the fund will equal the respective Incumbent telephone corporation's average access line support amount for the designated support area, determined by dividing the Incumbent telephone corporation's USF monies for the designated support area by the Incumbent telephone corporation's active access lines in the designated support area, times the eligible telecommunications corporation's number of active access lines in the designated support area.

B. Lifeline Support -- Eligible telecommunications corporations shall receive additional USF funds to recover any discount granted to lifeline customers, participating in a Commission-approved Lifeline program, that is not recovered from federal lifeline support mechanisms.

C. Exemptions -- Telecommunications corporations may petition to receive an exemption for any provision of this rule or to receive additional USF support, for use in designated support areas, to support additional services which the Commission determines to be consistent with universal service purposes and permitted by law.

R746-360-9. One-Time Distributions From the Fund.

A. Applications for One-Time Distributions -- Telecommunications corporations, whether they are or are not receiving USF funds under R746-360-7 or R746-360-8, potential customers not presently receiving service because facilities are not available, or customers receiving inadequate service may apply to the Commission for one-time distributions from the fund for extension of service to a customer, or customers, not presently served or for amelioration of inadequate service.

1. These distributions are to be made only in extraordinary circumstances, when traditional methods of funding and service provision are infeasible.

2. One-time distributions will not be made for:

a. New subdivision developments;

b. Property improvements, such as cable placement, when associated with curb and gutter installations; or

c. Seasonal developments that are exclusively vacation homes.

i. Vacation home is defined as: A secondary residence which is primarily used for recreation and is unoccupied for a period of four consecutive weeks per year.

3. An application for a one-time distribution may be filed with the Commission by an individual or group of consumers desiring telephone service or improved service, a telecommunications corporation on behalf of those consumers, the Division of Public Utilities, or any entity permitted by law to request agency action. An application shall identify the service(s) sought, the area to be served and the individuals or entities that will be served if the one-time distribution is approved.

4. Following the application's filing, affected telecommunications corporations shall provide engineering, facilities, costs, and any other pertinent information that will assist in the Commission's consideration of the application.

5. In considering the one-time distribution application, the Commission will examine relevant facts including the type and grade of service to be provided, the cost of providing the service, the demonstrated need for the service, whether the customer is within the service territory of a telecommunications corporation, whether the proposed service is for a primary residence, the provisions for service or line extension currently available, and other relevant factors to determine whether the one-time distribution is in the public interest.

B. Presumed Reasonable Amounts and Terms -- Unless otherwise ordered by the Commission, the maximum one-time distribution will be no more than $10,000 per customer for customers of rate-of-return regulated companies. For customers of non-rate of return companies, the maximum one-time distribution shall be calculated so that the required customer payments would equal the payments required from a customer of a rate-of-return regulated company. The Commission will presume a company's service or line extension terms and conditions reasonable, for a subscriber in connection with one-time universal service fund distribution requests, if the costs of service extension, for each extension, are recovered as follows:

1. For rate-of-return regulated Local Exchange Carriers who request USF One-Time Distribution support for facility placement: The first $2,500 of cost coverage per account is provided by the company; and for cost amounts exceeding $2,500 per account up to two times the statewide average loop investment per account for rate-of-return regulated telecommunication companies, as determined annually by the Division of Public Utilities, the company will pay 50 percent of the costs of the project.

2. For non-rate-of-return Local Exchange Carriers who request USF One-Time Distribution support for facility placement the first $2,500 of cost coverage per account is provided by the company; and all other costs are shared between the customer and the fund as provided herein.

3. For projects that exceed $2,500 per account, but are equal to or less than $10,000 per account, the customer shall pay 25 percent of the costs that exceed $2,500. For projects that exceed $10,000 per account, but are equal to or less than $20,000 per account, the customer shall pay 50 percent of the costs that are greater than $10,000 plus the previously calculated amount. For projects exceeding $20,000 per account the customer shall pay 75 percent of the cost above $20,000 until the State Universal Service Support Fund has paid the maximum amount as provided herein, any project costs above that level will be paid for 100 percent by the customer.

4. The State Universal Service Support Fund shall pay the difference between the sum of the defined company contributions plus customer contribution amounts and the total project cost up to the maximum amount provided herein.

5. Other terms and conditions for service extension shall be reviewed by the Commission in its consideration of an application and may be altered by the Commission in order to approve the use of universal service funds through the requested one-time distribution.

C. Combination of One-Time Distribution Funds with Additional Customer Funds and Future Customer Payment

Recovery --

1. At least 51 percent of the potential customers must be full-time residents in the geographic area being petitioned for and must be willing to pay the initial up-front contribution to the project as calculated by the Commission or its agent.

2. Qualified customers in the area shall be notified by the telecommunications corporation of the nature and extent of the proposed service extension including the necessary customer contribution amounts to participate in the project. Customer contribution payments shall be made prior to the start of construction. In addition to qualified customers, the Local Exchange Company needs to make a good faith effort to contact all known property owners within the geographic boundaries of the proposed project and invite them to participate on the same terms as the qualified customers. Local Exchange Companies may ask potential customers to help in the process of contacting other potential customers.

3. New developments and empty lots will not be considered in the cost analysis for USF construction projects unless the property owner is willing to pay the per account costs for each lot as specified in this rule.

4. Potential customers who are notified and initially decline participation in the line extension project, but subsequently decide to participate, prior to completion of the project, may participate in the project if they make a customer contribution payment, prior to completion of the project, of 105 percent of the original customer contribution amount.

5. For a period of five years following completion of a project, new customers who seek telecommunications service in the project area, shall pay a customer contribution payment equal to 110 percent of the amount paid by the original customers in the project.

6. The telecommunications corporation shall ensure that all customer contribution payments required by R746-360-9(C)(3), (4), and (5) are collected. Funds received through these payments shall be sent to the universal service fund administrator. The company is responsible for tracking and notification to the Commission when the USF has been fully compensated. All monies will be collected and reported by the end of each calendar year, December 31st.

7. For each customer added during the five-year period following project completion, the telecommunications corporation and new customers shall bear the costs to extend service pursuant to the company's service or line extension terms and conditions, up to the telecommunications corporation's original contribution per customer for the project and the customer contributions required by this rule. The company may petition the Commission for a determination of the recovery from the universal service fund and the new customer for costs which exceed this amount.

D. Impact of Distribution on Rate of Return Companies -- A one-time distribution from the fund shall be recorded on the books of a rate base, rate of return regulated LEC as an aid to construction and treated as an offset to rate base.

E. Notice and Hearing -- Following notice that a one-time distribution application has been filed, any interested person may request a hearing or seek to intervene to protect his interests.

F. Bidding for Unserved Areas -- If only one telecommunications corporation is involved in the one-time distribution request, the distribution will be provided based on the reasonable and prudent actual or estimated costs of that company. If additional telecommunications corporations are involved, the distribution will be determined on the basis of a competitive bid. The estimated amount of the one-time distribution will be considered in evaluating each bid. Fund distributions in that area will be based on the winning bid.

R746-360-10. Altering the USF Charges and the End-User Surcharge Rates.

The uniform surcharge shall be adjusted periodically to minimize the difference between amounts received by the fund and amounts disbursed.

R746-360-11. Support for Schools, Libraries, and Health Care Facilities. Calculation of Fund Distributions.

The Universal Service Fund rules for schools, libraries and health care providers, as prescribed by the Federal Communications Commission in Docket 96-45, 97-157 Sections X and XI, paragraphs 424 - 749, of Order issued May 8, 1996, and CFR Sections 54.500 through 54.623 inclusive, incorporated by this reference, is the prescribed USF method that shall be employed in Utah. Funding shall be limited to funds made available through the federal universal service fund program.

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R994. Workforce Services, Unemployment Insurance.
R994-405. Ineligibility for Benefits.
R994-405-1. Determining the Reason for Separation.

When a job ends and a claim is filed, the Department must determine the reason for the separation. If there is more than one separation from the same employer, eligibility for benefits will be based on the reason for the last separation occurring prior to the date the claim is filed. However, an existing prior denial of benefits which resulted in a disqualification based on a prior separation from the same employer, will continue until the claimant has earned six times the weekly benefit amount on the claim in which the disqualification took place.) Charge decisions will also be made on the last separation as provided in rule R994-307-101(1)(a)(i). A separation decision will be made and may affect eligibility even if the employer is not covered by the Act except no separation decision will be made on noncovered self employment cases.

R994-405-2. Separations From a Temporary Help Company (THC).

THC is defined in R994-202-102. Because the THC is the employer, eligibility for benefits of employees of a THC and the THC's liability for claims will be based on the reason for separation from the THC and not the reason for the separation from the client company.

(1) If the claimant reports back to the THC within a reasonable period of time after the claimant's last assignment ends and no work is offered because no work is available, the separation is a reduction of force, regardless of the reason the claimant left the last assignment except as provided in paragraph (2) of this section. A reasonable period of time is generally considered to be whatever is stipulated in the employment contract between the claimant and the THC but must be at least two business days. The claimant must contact the THC prior to filing a claim for benefits with the Department for the separation to be considered a reduction of force.

(2) If a claimant is no longer able to perform the type of work previously performed for the THC and the THC agrees to send the claimant out on work he or she is able to do, it is considered a quit and the THC may be eligible for relief of charges.

(3) If the claimant fails to contact the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends, the separation is a quit and not a reduction of force.

(4) If the claimant files a new claim or reopens an existing claim prior to contacting the THC for another assignment, the job separation is a quit, even if the claimant subsequently contacts the THC within a reasonable period of time.

(5) If the claimant contacts the THC for a new assignment within a reasonable period of time after the claimant's last assignment ends and the claimant refuses a new assignment, the job separation is a quit if the new assignment is similar to the previous assignments. The separation is a reduction of force and an offer of new work if the new assignment is substantially different from the previous assignments. The job duties, wages, hours, and conditions of the new assignment should be considered in determining the similarity of the new assignment.

(6) If the THC refuses to the send the claimant out on any new assignments it is a discharge. This includes instances where the claimant previously left an ongoing assignment or the client company prevented the claimant from completing an ongoing assignment.

R994-405-3. Professional Employer Organizations (PEO).

(1) PEO is defined in R994-202-106 and must be licensed pursuant to Sections 31A-40-301 through 306. PEOs are also known as employee leasing companies. PEOs are treated differently from a THC because the assignments are usually not of a temporary nature.

(2) When a client company contracts with a PEO, the PEO becomes the employer of the client company's employees. Because the client company is no longer the employer, a job separation has occurred. The job separation is a reduction of force and the client company is not eligible for relief of charges.

(3) When the contract between a PEO and a client company ends, a separation occurs. Regardless of the circumstances or which entity is the moving party, the affected employees are considered separated due to a reduction of force, and the PEO is not eligible for relief of charges. Any offers of work extended to affected employees subsequent to the termination of the contract shall be considered offers of new work and shall be adjudicated in accordance with 35A-4-405(3) and R994-405-301 et seq.

(4) If the contract between the client company and the PEO remains in effect and the claimant's assignment with the client company ends, the PEO, or the client company acting on the PEO's behalf, must provide written notice to the claimant instructing the claimant to contact the PEO within a reasonable time for a new assignment. A reasonable time to contact the PEO is generally considered to be two working days after the assignment ends. The written notice must be provided to the claimant when the assignment ends and must be provided even if the PEO has a contract with the claimant requiring the claimant to contact the PEO when an assignment ends.

(5) If the PEO or client company does not provide written notice as referenced in paragraph (4) of this section, unemployment benefits will be determined based on the reason the assignment with the client company ended.

(6) If the PEO provides the notice referenced in paragraph (4) of this section and the claimant contacts the PEO as instructed and:

(a) refuses a new work assignment that is similar to the claimant's previous assignments with the PEO, the job separation is a quit. The duties, wages, hours, and conditions of the new assignment will be considered in determining if the new assignment is similar to the previous assignments.

(b) refuses a new work assignment that is substantially different from the claimant's previous assignments, the job separation is a layoff and an offer of new work.

(c) the PEO has no new assignments, the job separation is a layoff.

(7) If the PEO does not intend to offer the claimant another assignment the PEO should not provide the written notice referenced in paragraph (4) of this section at the time of separation. If no notice is provided, the separation will be determined based on the reason for the separation from the client company.

(8) If the claimant does not contact the PEO after receiving notice given pursuant to paragraph (4) of this section, the job separation is a quit.

R994-405-101. Voluntary Leaving (Quit) - General Information.

(1) A separation is considered voluntary if the claimant was the moving party in ending the employment relationship. A voluntary separation includes leaving existing work, or failing to return to work after:

(a) an employer attached layoff which meets the requirements for a deferral under R994-403-108b(1)(c),

(b) a suspension, or

(c) a period of absence initiated by the claimant.

(2) Failing to renew an employment contract may also constitute a voluntary separation.

(3) Two standards must be applied in voluntary separation cases: good cause and equity and good conscience. If good cause is not established, the claimant's eligibility must be considered under the equity and good conscience standard.

R994-405-102. Good Cause.

To establish good cause, a claimant must show that continuing the employment would have caused an adverse effect which the claimant could not control or prevent. The claimant must show that an immediate severance of the employment relationship was necessary. Good cause is also established if a claimant left work which is shown to have been illegal or to have been unsuitable new work.

(1) Adverse Effect on the Claimant.

(a) Hardship.

The separation must have been motivated by circumstances that made the continuance of the employment a hardship or matter of concern, sufficiently adverse to a reasonable person so as to outweigh the benefits of remaining employed. There must have been actual or potential physical, mental, economic, personal or professional harm caused or aggravated by the employment. The claimant's decision to quit must be measured against the actions of an average individual, not one who is unusually sensitive.

(b) Ability to Control or Prevent.

Even though there is evidence of an adverse effect on the claimant, good cause will not be found if the claimant:

(i) reasonably could have continued working while looking for other employment,

(ii) had reasonable alternatives that would have made it possible to preserve the job like using approved leave, transferring, or making adjustments to personal circumstances, or,

(iii) did not give the employer notice of the circumstances causing the hardship thereby depriving the employer of an opportunity to make changes that would eliminate the need to quit. An employee with grievances must have made a good faith effort to work out the differences with the employer before quitting unless those efforts would have been futile.

(2) Illegal.

Good cause is established if the claimant was required by the employer to violate state or federal law or if the claimant's legal rights were violated, provided the employer was aware of the violation and refused to comply with the law.

(3) Unsuitable New Work.

Good cause may also be established if a claimant left new work which, after a short trial period, was unsuitable consistent with the requirements of the suitable work test in Section R994-405-306. The fact the claimant accepted a job does not necessarily make the job suitable. The longer a job is held, the more it tends to negate the argument that the job was unsuitable. After a reasonable period of time a contention the quit was motivated by unsuitability of the job is generally no longer persuasive. The Department has an affirmative duty to determine whether the employment was suitable, even if the claimant does not raise suitability as an issue.

R994-405-103. Equity and Good Conscience.

(1) If the good cause standard has not been met, the equity and good conscience standard must be considered in all cases except those involving a quit to accompany, follow, or join a spouse as provided in R994-405-104. If there are mitigating circumstances, and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed under the provisions of the equity and good conscience standard if the claimant:

(a) acted reasonably.

The claimant acted reasonably if the decision to quit was logical, sensible, or practical. There must be evidence of circumstances which, although not sufficiently compelling to establish good cause, would have motivated a reasonable person to take similar action, and,

(b) demonstrated a continuing attachment to the labor market.

A continuing attachment to the labor market is established if the claimant took positive actions which could have resulted in employment during the first week subsequent to the separation and each week thereafter. An active work search, as provided in R994-403-113c, should have commenced immediately after the separation whether or not the claimant received specific work search instructions from the Department. Failure to show an immediate attachment to the labor market may not be disqualifying if it was not practical for the claimant to seek work. Some circumstances that may interfere with an immediate work search include illness, hospitalization, incarceration, or other circumstances beyond the control of the claimant provided a work search commenced as soon as practical.

R994-405-104. Quit to Accompany, Follow or Join a Spouse.

(1) If a claimant quit work to join, accompany, or follow a spouse to a new locality, good cause is not established. Furthermore, the equity and good conscience standard is not to be applied in this circumstance. It is the intent of this provision to deny benefits even though a claimant may have faced extremely compelling circumstances including the cost of maintaining two households and the desire to keep the family intact. If the claimant's employment is contingent on the spouse's military assignment and the spouse is reassigned, the separation will be considered a discharge.

(2) For the purposes of this section, spouse is considered to include a significant other.

(3) Quitting to get married is also disqualifying as provided in R994-405-107(7)(a).

R994-405-105. Burden of Proof in a Quit.

The claimant was the moving party in a voluntary separation, and is the best source of information with respect to the reasons for the quit. The claimant has the burden to establish that the elements of good cause or of equity and good conscience have been met. The failure of the claimant to provide information will not necessarily result in a ruling favorable to the employer. If the claimant quit unsuitable new work, the burden of proof as described in R994-405-308 applies.

R994-405-106. Quit or Discharge.

(1) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

(2) Leaving Prior to Effective Date of Termination.

(a) If a claimant leaves work prior to the date of an impending reduction of force, the separation is a quit. Notice of an impending layoff does not establish good cause for leaving work. However, the duration of available work may be a factor in considering whether a denial of benefits would be contrary to equity and good conscience. If the claimant is not disqualified for quitting benefits will be denied for the limited period of time the claimant could have continued working, as there was a failure to accept all available work as required under Subsection 35A-4-403(1)(c).

(b) If the claimant quit to avoid a disqualifying discharge the separation will be adjudicated as a discharge.

(3) Leaving Work Because of a Disciplinary Action.

If the disciplinary action or suspension was reasonable, leaving work rather than submitting to the discipline, or failing to return to work at the end of the suspension period, is considered a quit unless the claimant was previously disqualified as a result of the suspension.

(4) Leave of Absence.

If a claimant takes a leave of absence for any reason and files a claim while on such leave from the employer, the

claimant will be considered unemployed and the separation is adjudicated as a quit, even though there still may be an attachment to the employer. If a claimant fails to return to work at the end of the leave of absence, the separation is a quit.

(5) Leaving Due to a Remark or Action of the Employer or a Coworker.

If a claimant hears rumors or other information suggesting he or she is to be laid off or discharged, the claimant has the responsibility to confirm, prior to leaving, that the employer intended to end the employment relationship. The claimant also has a responsibility to continue working until the date of an announced discharge. If the claimant failed to do so and if the employer did not intend to discharge or lay off the claimant, the separation is a quit.

(6) Resignation Intended.

(a) Quit.

If a claimant gives notice of his or her intent to leave at a future date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of the resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period as determined by the employer, even though the date of separation was determined by the employer. If a claimant resigns but later decides to stay and attempts to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining if the claimant quit or was discharged. For example, if the employer had already hired a replacement, or taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and the separation is a quit.

(b) Discharge.

If a claimant submitted a resignation to be effective at a definite future date, but was relieved of work responsibilities and was not paid regular wages through the balance of the notice period, the separation is considered a discharge as the employer was the moving party in determining the final date of employment. Merely assigning vacation pay not previously assigned to the notice period does not make the separation a quit.

(7) If an employer tells a claimant it intends to discharge the claimant but allows the claimant to stay at work until he or she finds another job and the claimant decides to leave before finding another job, the separation is a quit. Good cause may be established if it would be unreasonable to require a claimant to remain employed after the employer has expressed its intent to discharge him or her.

R994-405-107. Examples of Reasons for Quitting.

(1) Prospects of Other Work.

Good cause is established if, at the time of separation, the claimant had a definite and immediate assurance of another job or self-employment that was reasonably expected to be full-time and permanent. However, if the new work is later determined to have been unsuitable and it is apparent the claimant knew, or should have known, about the unsuitability of the new work, but quit the first job and subsequently quit the new job, a disqualification will be assessed from the time the claimant quit the first job unless the claimant has purged the disqualification through earnings received while on the new job.

If, after giving notice but prior to leaving the first job, the claimant learns the new job will not be available when promised, permanent, full-time, or suitable, good cause may be established if the claimant immediately attempted to rescind the notice, unless such an attempt would have been futile.

(a) A definite assurance of another job means the claimant has been in contact with someone with the authority to hire, has been given a definite date to begin working and has been informed of the employment conditions.

(b) An immediate assurance of work generally means the prospective job will begin within two weeks from the last day the claimant was scheduled to work on the former job. Benefits will be denied for failure to accept all available work from the prior employer under the provisions of Subsection 35A-4-403(1)(c) if the claimant files during the period between the two jobs.

(2) Reduction of Hours.

The reduction of an employee's working hours generally does not establish good cause for leaving a job. However, in some cases, a reduction of hours may result in personal or financial hardship so severe the circumstances justify leaving.

(3) Personal Circumstances.

There may be personal circumstances that are sufficiently compelling or create sufficient hardship to establish good cause for leaving work, provided the claimant made a reasonable attempt to make adjustments or find alternatives prior to quitting.

(4) Leaving to Attend School.

Although leaving work to attend school may be a logical decision from the standpoint of personal advancement, it is not compelling or reasonable, within the meaning of the Act.

(5) Religious Beliefs.

To support an award of benefits following a voluntary separation due to religious beliefs, the work must conflict with a sincerely held religious or moral conviction. If a claimant was not required to violate such religious beliefs, quitting is not compelling or reasonable within the meaning of the Act. A change in the job requirements, such as requiring an employee to work on the employee's day of religious observance when such work was not agreed upon as a condition of hire, may establish good cause for leaving a job if the employer is unwilling to make adjustments.

(6) Transportation.

If a claimant quits a job due to a lack of transportation, good cause may be established if the claimant has no other reasonable transportation options available. However, an availability issue may be raised in such a circumstance. If a move resulted in an increased distance to work beyond normal commuting patterns, the reason for the move, not the distance to the work, is the primary factor to consider when adjudicating the separation.

(7) Marriage.

(a) Marriage is not considered a compelling or reasonable circumstance, within the meaning of the Act, for quitting employment. Therefore, if the claimant quit to get married, benefits will be denied even if the new residence is beyond a reasonable commuting distance from the claimant's former place of employment.

(b) If the employer has a rule requiring the separation of an employee who marries a coworker, the separation is a discharge even if the employer allowed the couple to decide who would leave.

(8) Health or Physical Condition.

(a) Although it is not essential for the claimant to have been advised by a physician to quit, a contention that health problems required the separation must be supported by competent evidence. Even if the work caused or aggravated a health problem, if there were alternatives, such as treatment, medication, or altered working conditions to alleviate the problem, good cause for quitting is not established.

(b) If the risk to the health or safety of the claimant was shared by all those employed in the particular occupation, it must be shown the claimant was affected to a greater extent than other workers. Absent such evidence, quitting was not reasonable.

(9) Retirement and Pension.

Voluntarily leaving work solely to accept retirement

benefits is not a compelling reason for quitting, within the meaning of the Act. Although it may have been reasonable for a claimant to take advantage of a retirement benefit, payment of unemployment benefits in this circumstance is not consistent with the intent of the Unemployment Insurance program, and a denial of benefits is not contrary to equity and good conscience.

(10) Sexual Harassment.

(a) A claimant may have good cause for leaving if the quit was due to discriminatory and unlawful sexual harassment, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is causing the harassment, the requirement that the employer be given an opportunity to stop the conduct is not necessary. Sexual harassment is a form of sex discrimination prohibited by Title VII of the United States Code and the Utah Anti-Discrimination Act.

(b) "Sexual harassment" means unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when:

(i) submission to the conduct is either an explicit or implicit term or condition of employment, or

(ii) submission to or rejection of the conduct is used as a basis for an employment decision affecting the person, or

(iii) the conduct has a purpose or effect of substantially interfering with a person's work performance or creating an intimidating, hostile, or offensive work environment.

(c) Inappropriate behavior which has sexual connotation but does not meet the test of sexual discrimination is insufficient to establish good cause for leaving work.

(11) Discrimination.

A claimant may have good cause for leaving if the quit was due to prohibited discrimination, provided the employer was given a chance to take necessary action to stop the objectionable conduct. If it would have been futile to complain, as when the owner or top manager of the employer company is the cause of the discrimination, the requirement that the employer be given an opportunity to stop the conduct is not necessary. It is a violation of federal law to discriminate against employees regarding compensation, terms, conditions, or privileges of employment, because of race, color, religion, sex, age or national origin; or to limit, segregate, or classify employees in any way which would deprive or tend to deprive them of employment opportunities or otherwise adversely affect their employment status because of race, color, religion, sex, age or national origin.

(12) Voluntary Acceptance of Layoff.

If the employer wishes to reduce its workforce and gives the employees the option to volunteer for the layoff, those who do volunteer are separated due to reduction of force regardless of incentives.

R994-405-108. Effective Date of Disqualification and Period of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

R994-405-109. Proximate Cause in a Quit.

The claimant must show a relationship between the reason or reasons for quitting both as to cause and time. If the claimant did not quit immediately after becoming aware of the adverse conditions which led to the decision to quit, a presumption arises that the claimant quit for other reasons. The presumption may be overcome by showing the delay was due to the claimant's reasonable attempts to cure the problem.

R994-405-201. Discharge - General Definition.

A separation is a discharge if the employer was the moving party in determining the date the employment ended. Benefits will be denied if the claimant was discharged for just cause or for an act or omission in connection with employment, not constituting a crime, which was deliberate, willful, or wanton and adverse to the employer's rightful interest. However, not every legitimate cause for discharge justifies a denial of benefits. A just cause discharge must include some fault on the part of the claimant. A reduction of force is considered a discharge without just cause.

R994-405-202. Just Cause.

To establish just cause for a discharge, each of the following three elements must be satisfied:

(1) Culpability.

The conduct causing the discharge must be so serious that continuing the employment relationship would jeopardize the employer's rightful interest. If the conduct was an isolated incident of poor judgment and there was no expectation it would be continued or repeated, potential harm may not be shown. The claimant's prior work record is an important factor in determining whether the conduct was an isolated incident or a good faith error in judgment. An employer might not be able to demonstrate that a single violation, even though harmful, would be repeated by a long-term employee with an established pattern of complying with the employer's rules. In this instance, depending on the seriousness of the conduct, it may not be necessary for the employer to discharge the claimant to avoid future harm.

(2) Knowledge.

The claimant must have had knowledge of the conduct the employer expected. There does not need to be evidence of a deliberate intent to harm the employer; however, it must be shown the claimant should have been able to anticipate the negative effect of the conduct. Generally, knowledge may not be established unless the employer gave a clear explanation of the expected behavior or had a written policy, except in the case of a violation of a universal standard of conduct. A specific warning is one way to show the claimant had knowledge of the expected conduct. After a warning the claimant should have been given an opportunity to correct the objectionable conduct. If the employer had a progressive disciplinary procedure in place at the time of the separation, it generally must have been followed for knowledge to be established, except in the case of very severe infractions, including criminal actions.

(3) Control.

(a) The conduct causing the discharge must have been within the claimant's control. Isolated instances of carelessness or good faith errors in judgment are not sufficient to establish just cause for discharge. However, continued inefficiency, repeated carelessness or evidence of a lack of care expected of a reasonable person in a similar circumstance may satisfy the element of control if the claimant had the ability to perform satisfactorily.

(b) The Department recognizes that in order to maintain efficiency it may be necessary to discharge workers who do not meet performance standards. While such a circumstance may provide a basis for discharge, this does not mean benefits will be denied. To satisfy the element of control in cases involving a discharge due to unsatisfactory work performance, it must be shown the claimant had the ability to perform the job duties in

a satisfactory manner. In general, if the claimant made a good faith effort to meet the job requirements but failed to do so due to a lack of skill or ability and a discharge results, just cause is not established.

R994-405-203. Burden of Proof in a Discharge.

In a discharge, the employer initiates the separation and therefore has the burden to prove there was just cause for discharging the claimant. The failure of the employer to provide information will not necessarily result in a ruling favorable to the claimant. Interested parties have the right to rebut information contrary to their interests.

R994-405-204. Quit or Discharge.

The circumstances of the separation as found by the Department determine whether it was a quit or discharge. The conclusions on the employer's records, the separation notice, or the claimant's report are not controlling.

(1) Discharge Before Effective Date of Resignation.

(a) Discharge.

If a claimant notifies the employer of an intent to leave work on a definite date, and the employer ends the employment relationship prior to that date, the separation is a discharge unless the claimant is paid through the resignation date. Unless there is some other evidence of disqualifying conduct, benefits will be awarded.

(b) Quit.

If the claimant gives notice of an intent to leave work on a particular date and is paid regular wages through the announced resignation date, the separation is a quit even if the claimant was relieved of work responsibilities prior to the effective date of resignation. A separation is also a quit if a claimant announces an intent to quit but agrees to continue working for an indefinite period, even though the date of separation is determined by the employer. The claimant is not considered to have quit merely by saying he or she is looking for a new job. If a claimant resigns but later decides to stay and announces an intent to remain employed, the reasonableness of the employer's refusal to continue the employment is the primary factor in determining whether the claimant quit or was discharged. If the employer had already hired a replacement, or had taken other action because of the claimant's impending quit, it may not be practical for the employer to allow the claimant to rescind the resignation, and it would be held the separation was a quit.

(2) Leaving in Anticipation of Discharge.

If a claimant leaves work in anticipation of a possible discharge and if the reason for the discharge would not have been disqualifying, the separation is a quit. A claimant may not escape a disqualification under the discharge provisions, Subsection 35A-4-405(2)(a), by quitting to avoid a discharge that would result in a denial of benefits. In this circumstance the separation is considered a discharge.

(3) Refusal to Follow Instructions.

If the claimant refused or failed to follow reasonable requests or instructions, and knew the loss of employment would result, the separation is a quit.

R994-405-205. Disciplinary Suspension.

When a claimant is placed on a disciplinary suspension, the definition of being unemployed may be satisfied. If a claimant files during the suspension period, the matter will be adjudicated as a discharge, even though the claimant may have an attachment to the employer and may expect to return to work. A suspension that is reasonable and necessary to prevent potential harm to the employer will generally result in a disqualification if the elements of knowledge and control are established. If the claimant fails to return to work at the end of the suspension period, the separation is a voluntary quit and may then be adjudicated under Subsection 35A-4-405(1), if benefits had not been previously denied.

R994-405-206. Proximate Cause - Relation of the Offense to the Discharge.

(1) The cause for discharge is the conduct that motivated the employer to make the decision to discharge the claimant. If a separation decision has been made, it is generally demonstrated by giving notice to the claimant. Although the employer may learn of other offenses following the decision to terminate the claimant's services, the reason for the discharge is limited to the conduct the employer was aware of prior to making the separation decision. If an employer discharged a claimant because of preliminary evidence, but did not obtain "proof" of the conduct until after the separation notice was given, it may still be concluded the discharge was caused by the conduct the employer was investigating.

(2) If the discharge did not occur immediately after the employer became aware of an offense, a presumption arises that there were other reasons for the discharge. The relationship between the offense and the discharge must be established both as to cause and time. The presumption that a particular offense was not the cause of the discharge may be overcome by showing the delay was necessary to accommodate further investigation, arbitration or hearings related to the claimant's conduct. If a claimant files for benefits while a grievance or arbitration process is pending, the Department shall make a decision based on the best information available. The Department's decision is not binding on the grievance process nor is the decision of an arbitrator binding upon the Department. If an employer elects to reduce its workforce and uses a claimant's prior conduct as the criteria for determining who will be laid off, the separation is a reduction of force.

R994-405-207. In Connection with Employment.

Disqualifying conduct is not limited to offenses that take place on the employer's premises or during business hours. However, it is necessary that the offense be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate interests of employers include: goodwill, efficiency, employee morale, discipline, honesty and trust.

R994-405-208. Examples of Reasons for Discharge.

In the following examples, the basic elements of just cause must be considered in determining eligibility for benefits.

(1) Violation of Company Rules.

If a claimant violates a reasonable employment rule and just cause is established, benefits will be denied.

(a) An employer has the prerogative to establish and enforce work rules that further legitimate business interests. However, rules contrary to general public policy or that infringe upon the recognized rights and privileges of individuals may not be reasonable. If a claimant believes a rule is unreasonable, the claimant generally has the responsibility to discuss these concerns with the employer before engaging in conduct contrary to the rule, thereby giving the employer an opportunity to address those concerns. When rules are changed, the employer must provide appropriate notice and afford workers a reasonable opportunity to comply.

(b) If an employment relationship is governed by a formal employment contract or collective bargaining agreement, just cause may only be established if the discharge is consistent with the provisions of the contract.

(c) Habitual offenses may not constitute disqualifying conduct if the acts were condoned by the employer or were so prevalent as to be customary. However, if a claimant was given

notice the conduct would no longer be tolerated, further violations may result in a denial of benefits.

(d) Culpability may be established if the violation of the rule did not, in and of itself, cause harm to the employer, but the lack of compliance diminished the employer's ability to maintain necessary discipline.

(e) Serious violations of universal standards of conduct do not require prior warning to support a disqualification.

(2) Attendance Violations.

(a) Attendance standards are usually necessary to maintain order, control, and productivity. It is the responsibility of a claimant to be punctual and remain at work within the reasonable requirements of the employer. A discharge for unjustified absence or tardiness is disqualifying if the claimant knew enforced attendance rules were being violated. A discharge for an attendance violation beyond the claimant's control is generally not disqualifying unless the claimant could reasonably have given notice or obtained permission consistent with the employer's rules, but failed to do so.

(b) In cases of discharge for violations of attendance standards, the claimant's recent attendance history must be reviewed to determine if the violation is an isolated incident, or if it demonstrates a pattern of unjustified absence within the claimant's control. The flagrant misuse of attendance privileges may result in a denial of benefits even if the last incident is beyond the claimant's control.

(3) Falsification of Work Record.

The duty of honesty is inherent in any employment relationship. An employee or potential employee has an obligation to truthfully answer material questions posed by the employer or potential employer. For purposes of this subsection, material questions are those that may expose the employer to possible loss, damage or litigation if answered falsely. If false statements were made as part of the application process, benefits may be denied regardless of whether the claimant would have been hired if all questions were answered truthfully.

(4) Insubordination.

An employer generally has the right to expect lines of authority will be followed; reasonable instructions, given in a civil manner, will be obeyed; supervisors will be respected and their authority will not be undermined. In determining when insubordination becomes disqualifying conduct, a disregard of the employer's rightful and legitimate interests is of major importance. Protesting or expressing general dissatisfaction without an overt act is not a disregard of the employer's interests. However, provocative remarks to a superior or vulgar or profane language in response to a civil request may constitute insubordination if it disrupts routine, undermines authority or impairs efficiency. Mere incompatibility or emphatic insistence or discussion by a claimant, acting in good faith, is not disqualifying conduct.

(5) Loss of License.

If the discharge is due to the loss of a required license and the claimant had control over the circumstances that resulted in the loss, the conduct is generally disqualifying. Harm is established as the employer would generally be exposed to an unacceptable degree of risk by allowing an employee to continue to work without a required license. In the example of a lost driving privilege due to driving under the influence (DUI), knowledge is established as it is understood by members of the driving public that driving under the influence of alcohol is a violation of the law and may be punishable by the loss of driving privileges. Control is established as the claimant made a decision to risk the loss of his or her license by failing to make other arrangements for transportation.

(6) Incarceration.

When a claimant engages in illegal activities, it must be recognized that the possibility of arrest and detention for some period of time exists. It is foreseeable that incarceration will result in absence from work and possible loss of employment. Generally, a discharge for failure to report to work because of incarceration due to proven or admitted criminal conduct is disqualifying.

(7) Abuse of Drugs and Alcohol.

(a) The Legislature, under the Utah Drug and Alcohol Testing Act, Section 34-38-1 et seq., has determined the illegal use of drugs and abuse of alcohol creates an unsafe and unproductive workplace. In balancing the interests of employees, employers and the welfare of the general public, the Legislature has determined the fair and equitable testing for drug and alcohol use is a reasonable employment policy.

(b) An employer can establish a prima facie case of ineligibility for benefits under the Employment Security Act based on testing conducted under the Drug and Alcohol Testing Act by providing the following information:

(i) A written policy on drug or alcohol testing consistent with the requirements of the Drug and Alcohol Testing Act and that was in place at the time the violation occurred.

(ii) Reasonable proof and description of the method for communicating the policy to all employees, including a statement that violation of the policy may result in discharge.

(iii) Proof of testing procedures used which would include:

(A) Documentation of sample collection, storage and transportation procedures.

(B) Documentation that the results of any screening test for drugs and alcohol were verified or confirmed by reliable testing methods.

(C) A copy of the verified or confirmed positive drug or alcohol test report.

(c) The above documentation shall be admissible as competent evidence under various exceptions to the hearsay rule, including Rule 803(6) of the Utah Rules of Evidence respecting "records of regularly conducted activity," unless determined otherwise by a court of law.

(d) A positive alcohol test result shall be considered disqualifying if it shows a blood or breath alcohol concentration of 0.08 grams or greater per 100 milliliters of blood or 210 liters of breath. A blood or breath alcohol concentration of less than 0.08 grams may also be disqualifying if the claimant worked in an occupation governed by a state or federal law that allowed or required discharge at a lower standard.

(e) Proof of a verified or confirmed positive drug or alcohol test result or refusal to provide a proper test sample is a violation of a reasonable employer rule. The claimant may be disqualified from the receipt of benefits if his or her separation was consistent with the employer's written drug and alcohol policy.

(f) In addition to the drug and alcohol testing provisions above, ineligibility for benefits under the Employment Security Act may be established through the introduction of other competent evidence.

R994-405-209. Effective Date of Disqualification.

A disqualification based on a job separation begins the Sunday of the week in which the job separation took place. If the claimant did not file for benefits the week of the separation, the disqualification begins with the effective date of the new or reopened claim. The disqualification ends when the claimant earns requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

R994-405-210. Discharge for Crime - General Definition.

(1) A crime is a punishable act in violation of law, an offense against the State or the United States. Though in common usage "crime" is used to denote offenses of a more serious nature, the term "crime" as used in these sections, includes "misdemeanors". An insignificant, although illegal act, or the taking or destruction of something that is of little or no value, or believed to have been abandoned may not be sufficient to establish a crime was committed for the purposes of Subsection 35A-4-405(2)(b), even if the claimant was found guilty of a violation of the law. Before a claimant may be disqualified under the provisions of Subsection 35A-4-405(2)(b), it must be established the claimant was discharged for a crime that:

(a) was in connection with work,

(b) involved dishonesty constituting a crime or a felony or class A misdemeanor, and

(c) was admitted or established by a conviction in a court of law.

(2) Discharges that are not disqualifying under Subsection 35A-4-405(2)(b), discharge for crime, must be adjudicated under Subsection 35A-4-405(2)(a), discharge for just cause.

R994-405-211. In Connection with Work.

Connection to the work is not limited to offenses that take place on the employer's premises or during business hours nor does the employer have to be the victim of the crime. However, the crime must have affected the employer's rightful interests. The offense must be connected to the employment in such a manner that it is a subject of legitimate and significant concern to the employer. Employers generally have the right to expect that employees will refrain from acts detrimental to the business or that would bring dishonor to the business name or institution. Legitimate employer interests include goodwill, efficiency, business costs, employee morale, discipline, honesty, trust and loyalty.

R994-405-212. Dishonesty or Other Disqualifying Crimes.

(1) For the purposes of this subsection, dishonesty generally means theft. Theft is defined as taking property without the owner's consent. Theft also includes swindling, embezzlement and obtaining possession of property by lawful means and thereafter converting it to the taker's own use. Theft includes:

(a) obtaining or exerting unauthorized control over property;

(b) obtaining control over property by threat or deception;

(c) obtaining control knowing the property was stolen; and,

(d) obtaining services from another by deception, threat, coercion, stealth, mechanical tampering or by use of a false token or device.

(2) Felonies and Class A misdemeanors are also disqualifying even if they are not theft-related such as assault, arson, or destruction of property. Whether the crime is a felony or misdemeanor is determined by the court's verdict and not by the penalty imposed.

(3) A disqualification under this Subsection 35A-4-405(2)(b) may be assessed against Utah claimants based upon equivalent convictions in other states.

R994-405-213. Admission or Conviction in a Court.

(1) An admission offered to satisfy the requirements of R994-405-210(1)(c), must be a voluntary statement, verbal or written, in which a claimant acknowledges committing an act that is a violation of the law. The admission does not necessarily have to be made to a Department representative, however, the admission must have been made freely and not a false statement given under duress or made to obtain some concession.

(2) If the requirements of R994-405-210(1) have been met, a disqualification may be assessed even if no criminal charges have been filed and even if it appears the claimant will not be prosecuted. If the claimant agrees to a diversionary program as permitted by the court or enters a plea in abeyance, there is a rebuttable presumption, for the purposes of this subsection, that the claimant has admitted to the criminal act.

(3) A conviction occurs when a claimant has been found guilty by a court of committing an act in violation of the criminal code. Under Subsection 35A-4-405(2)(b), a plea of "no contest" is considered a conviction.

R994-405-214. Disqualification Period.

The 52-week disqualification period for Subsection 35A-4-405(2)(b) begins the Sunday immediately preceding the discharge even if this date precedes the effective date of the claim. A disqualification which begins in one benefit year shall continue into a new benefit year until the 52-week disqualification has ended.

R994-405-215. Deletion of Wage Credits.

The wage credits to be deleted are those from the employer who discharged the claimant under circumstances resulting in a denial under Subsection 35A-4-405(2)(b), "Discharge for Crime." All base period and lag period wages from this employer will be unavailable for current or future claims. Lag period wages are wages paid after the base period but prior to the effective date of the claim.

R994-405-216. Cancellations Not Allowed.

If a claimant is disqualified from the receipt of unemployment benefits because he or she was discharged for a crime in connection with work, the claim will be established for 52 weeks and cannot be canceled as provided in R994-403-102a(3).

R994-405-301. Failure to Apply for or Accept Suitable Work.

(1) The primary obligation of a claimant is to become reemployed. The intent of the unemployment insurance program is to assist people during periods of unemployment when suitable work is not available. However, if suitable work is available, the claimant has an obligation to properly apply for and accept offered work.

(2) A claimant will not be disqualified for failing to apply for or accept suitable work unless all of the following elements are established:

(a) Availability of a Job.

There must be an actual job opening the claimant could reasonably expect to obtain.

(b) Knowledge.

It must be shown that the claimant knew, or should have known, about the job including the wage, type of work, hours, general location, and conditions of the job. The claimant must understand a referral for work is being offered as opposed to a general discussion of job possibilities or labor market conditions. If a job offer is made, it must be clearly communicated as an offer of work.

(c) Control.

The failure of the claimant to obtain the employment must be the result of the claimant's own actions or behavior in failing to:

(i) accept a referral, or

(ii) properly apply for work, or

(iii) accept work when offered.

(3) If the elements of Subsection (2) above have been met, benefits will be denied under Subsection 35A-4-405(3) unless:

(a) the job is not suitable;

(b) the claimant had good cause for refusing a referral, the failure to apply for or accept the job; or

(c) a denial of benefits would be contrary to equity and good conscience.

R994-405-302. Failure to Accept a Referral.

(1) Definition of a Referral. A referral occurs when the department provides information about a job opening to the claimant and the claimant is given the opportunity to apply. The information must meet the requirements of R994-405-301(2)(b).

(2) Failure to Accept a Referral. A claimant fails to accept a referral when he or she prevents or discourages the Department from providing the necessary referral information. Failing to respond to a notice to contact the Department for the purpose of being referred to a specific job is the same as refusing a referral for possible employment.

(3) If there was a suitable job opening to which the claimant would have been referred, benefits will be denied unless good cause is established for not responding as directed, or the elements of equity and good conscience are established.

R994-405-303. Proper Application for Work.

A proper application for work is established if the claimant does those things normally done by applicants who are seriously and actively seeking work. Generally, the claimant must:

(1) meet with the employer at the designated time and place,

(2) report to the employer dressed and groomed in a manner appropriate for the type of work being sought,

(3) present no unreasonable conditions or restrictions on acceptance of the available work and

(4) report for and pass a drug test if necessary.

R994-405-304. Failure to Accept an Offer of Work.

It will be considered to be a refusal of new work if the claimant engages in conduct which discourages an offer of work, places unreasonable barriers to employment, or accepts an offer of new work but imposes unreasonable conditions which causes the offer to be rescinded. A refusal of work will not result in a denial of benefits if the claimant has accepted a definite offer of full-time employment which is expected to start within three weeks or has a date of recall to full-time work expected to begin within three weeks.

R994-405-305. Suitability of Work.

(1) A claimant must be allowed time to seek work comparable to the most advantageous base period employment if there is a reasonable expectation of obtaining that type of work.

(2) The unemployment compensation system is not intended to exert downward pressure on existing labor standards, nor is it intended to allow claimants to restrict availability to jobs with increased wages or improved working conditions.

(3) Workers should not feel compelled, through a threatened or potential denial of benefits, to accept work under less favorable conditions than those generally available in the area for similar work. The phrase "similar work" does not mean "identical work." Similar work is work in the same occupation or a different occupation which requires essentially the same skills.

R994-405-306. Elements to Consider in Determining Suitability.

A claimant is not required to accept an offer of new work unless the work is suitable. Whether a job is suitable depends on the length of time the claimant has been unemployed. As the length of unemployment increases, the claimant's demands with respect to earnings, working conditions, job duties, and the use of prior training must be systematically reduced unless the claimant has immediate prospects of reemployment. The following elements must be considered in determining the suitability of employment:

(1) Prior Earnings.

Work is not suitable if the wage is less than the state or federal minimum wage, whichever is applicable, or the wage is substantially less favorable to the claimant than prevailing wages for similar work in the locality.

The claimant's prior earnings, length of unemployment and prospects of obtaining work are the primary factors in determining whether the wage is suitable. If a claimant's former wage was earned in another geographical area, the prevailing wage is determined by the new area.

(a) During the first one-third of the claim, work paying at least the highest wage earned during or subsequent to the base period, or the highest wage available in the locality for the claimant's occupation, whichever is lower is suitable, but only if there is a reasonable expectation that work can be obtained at that wage.

(b) After a claimant has received one-third of the MBA for his or her regular claim, any work paying a wage that is equal to or greater than the lowest wage earned during the base period is suitable, as long as that wage is consistent with the prevailing wage standard.

(c) After a claimant has received two-thirds of the MBA for his or her regular claim, any work paying the prevailing wage in the locality for work in any base period occupation is suitable.

(2) Prior Experience.

If an initial claim or the reopening of a claim is filed following employment at the claimant's highest skill level, work that is not expected to utilize the claimant's highest skill level is not suitable. A worker must be given a reasonable time to seek work that will preserve his or her highest skills and earning potential. However, if a claimant has no realistic expectation of obtaining employment in an occupation utilizing his or her highest skill level, work in related occupations becomes suitable.

(a) After the claimant has received one-third of the MBA for his or her regular claim, work in any of the occupations in which the claimant worked during the base period is considered suitable.

(b) After the claimant has received two-thirds of the MBA for his or her regular claim, any work that he or she can reasonably perform consistent with the claimant's past experience, training and skills is considered suitable.

(3) Working Conditions.

"Working conditions" refers to the provisions of the employment agreement whether express or implied as well as the physical conditions of the work. If the working conditions are substantially less favorable than those prevailing for similar work in the area, the work is not suitable. Working conditions include the following:

(a) Hours of Work.

Claimants are expected to make themselves available for work during the usual hours for similar work in the area. If work periods are in violation of the law or if the hours are substantially less favorable than those prevailing for similar work in the area, the employment is not suitable. However, the hours the claimant worked during his or her base period are generally considered suitable. A claimant's preference for certain hours or shifts based on mere convenience is not good cause for failure to accept otherwise suitable employment.

(b) Benefits in Addition to Wages.

Work is not suitable if "fringe benefits" such as life and group health insurance; paid sick, vacation, and annual leave; provisions for leaves of absence and holiday leave; pensions, annuities, and retirement provisions; or severance pay are

substantially less favorable than benefits received by the claimant during the base period or than those prevailing for similar work in the area, whichever is lower.

(c) Labor Disputes or Law Violations.

Work is not suitable if the working conditions are in violation of any state or federal law, or the job opening is due to a strike, lockout, or labor dispute. If a claimant was laid off or furloughed prior to the labor dispute, and the former employer makes an offer of employment after the dispute begins, it is considered an offer of new work. The vacancy must be presumed to be the result of the labor dispute unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

(4) Prior Training.

The type of work performed during the claimant's base period is suitable unless there is a compelling circumstance that would prevent returning to work in that occupation. If a claimant has training that would now meet the qualifications for a new occupation, work in that occupation may also be suitable, particularly if the training was obtained, at least in part, while the claimant was receiving unemployment benefits under Department approval, or the training was subsidized by another government program.

(5) Risk to Health and Safety.

Work is not suitable if it presents a risk to a claimant's physical or mental health greater than the usual risks associated with the occupation. If a claimant would be required, as a condition of employment, to perform tasks that would cause or substantially aggravate health problems, the work is not suitable.

(6) Physical Fitness.

The claimant must be physically capable of performing the work. Employment beyond the claimant's physical capacity is not suitable.

(7) Distance of the Available Work from the Claimant's Residence.

To be considered suitable, the work must be within customary commuting patterns as they apply to the occupation and area. A claimant's failure to provide his or her own transportation within the normal or customary commuting pattern in the area, or failure to utilize alternative sources of transportation when available, does not establish good cause for failing to apply for or accept suitable work. Work is not suitable if accepting the employment would require a move from the current area of residence unless that is a usual practice in the occupation.

(8) Religious or Moral Convictions.

The work must conflict with sincerely held religious or moral convictions before a conscientious objection could support a conclusion that the work was not suitable. This does not mean all personal beliefs are entitled to protection. However, beliefs need not be acceptable, logical, consistent, or comprehensible to others, or shared with members of a religious or other organized group in order to show the conviction is held in good faith.

(9) Part-time or Temporary Work.

Part-time or temporary work may be suitable depending on the claimant's work history. If the major portion of a claimant's base period work history consists of part-time or temporary work, then any work which is otherwise suitable would be considered suitable even if the work is part-time or temporary. If the claimant has no recent history of temporary or part-time work, the work may still be considered suitable, particularly if the claimant has been unemployed for an extended period and does not have an immediate prospect of full-time work.

R994-405-307. New Work.

(1) All work is performed under a contract of employment between a worker and an employer whether written, oral, or implied. The contract addresses the job duties, as well as the terms and conditions under which the work is to be performed. A substantial change in the duties, terms, or conditions of the work, not authorized by the existing employment contract, is in effect a termination of the existing contract and the offer of a new contract and constitutes a separation and an offer of new work.

(2) The provisions of R994-405-310 are used to determine if the new contract constitutes suitable work. A request to perform different duties that are customary in the occupation and that do not result in a loss of skills, wages, or benefits, does not constitute an offer of a new work, even if those duties are not specified as part of the official job requirements. The contract of employment has not changed if it is customary for workers to perform short-term tasks involving different or new duties and those assignments do not replace the regular duties of the worker. It is not considered to be a termination of the existing contract and an offer of new work if the claimant fails to return after a vacation, with or without pay, or a short-term layoff for a definite period. A short-term layoff must meet the requirements for a deferral under R994-403-108b(1)(c).

(3) New work is defined as:

(a) work offered by an employer for whom the individual has never worked;

(b) work offered by an individual's current employer involving duties, terms, or conditions substantially different from those agreed upon as part of the existing contract of employment; or

(c) reemployment offered by an employer for whom the individual is not working at the time the offer is made, whether the conditions of employment are the same or different from the previous job.

R994-405-308. Burden of Proof.

(1) The statute requires that the wage, hours, and other conditions of the work shall not be substantially less favorable to the individual than those prevailing for similar work in the area in order to be considered suitable work. The Department has the burden to prove that the work offered meets these minimum standards before benefits can be denied. Before benefits may be denied, the Department must show:

(a) the job was available,

(b) the claimant had an opportunity to learn about the conditions of employment,

(c) the claimant had an opportunity to apply for or accept the job, and

(d) the claimant's action or inaction resulted in the failure to obtain the job.

(2) When the Department has established all of the elements in paragraph (1) of this subsection, a disqualification must be assessed unless it can be established that the work was not suitable, that there was good cause for failing to obtain the job, or the claimant or the Department can show that a disqualification would be contrary to equity and good conscience.

(3) The Department has the option, but not the obligation, to review Department records concerning the claimant's wages and work history to determine suitability in cases where the claimant has not provided a reason for refusing the job, or the claimant's stated reason for refusing the job was for a reason other than suitability. In these cases, department intervention would only be appropriate if the available information establishes that a denial would be an affront to fairness.

R994-405-309. Period of Ineligibility.

(1) The disqualification period imposed under Subsection 35A-4-405(3) begins the Sunday of the week in which the claimant's action or inaction resulted in the failure to obtain employment or the first week the work was available, whichever is later. The disqualification ends when the claimant earns

requalifying wages equal to six times his or her WBA in bona fide covered employment as defined in R994-201-101(9). The WBA used to determine requalifying wages under this section is the WBA of the original claim. A disqualification that begins in one benefit year will continue into a new benefit year unless the claimant has earned requalifying wages. Severance or vacation pay cannot be used as requalifying wages.

(2) A disqualification will be assessed as of the effective date of a new claim if the claimant refused an offer of suitable work after his or her last job ended and prior to the effective date of the claim. A disqualification will also be assessed as of the reopening date, if the claimant refused an offer of suitable work after his or her last job ended and prior to the reopening date.

R994-405-310. Good Cause.

(1) Good cause for failing to accept available work is established if the work is not suitable or accepting the job would cause hardship which the claimant was unable to overcome. Hardship can only be established if the claimant can show that the employment would result in actual or potential physical, mental, economic, personal, or professional harm.

(2) Good cause is limited to circumstances which were beyond the claimant's control or were compelling and reasonable.

(3) A claimant may have good cause for failing to obtain employment due to personal circumstances if acceptance of the employment would cause a substantial hardship and there are no reasonable alternatives. However, if a personal circumstance prevents the acceptance of suitable employment, there is a presumption the claimant is not able or available for work.

(4) Good cause is not established if a claimant refuses suitable work because the work will interfere with school or training. Claimants attending school full-time with Department approval are not required to seek work.

R994-405-311. Equity and Good Conscience.

A claimant will not be denied benefits for failing to apply for or accept work if it would be contrary to equity and good conscience, even though good cause has not been established. If there are mitigating circumstances and a denial of benefits would be unreasonably harsh or an affront to fairness, benefits may be allowed. A mitigating circumstance is one that may not be sufficiently compelling to establish good cause, but would motivate a reasonable person to take similar action. In order to establish eligibility under the equity and good conscience standard the following elements must be shown:

(1) Reasonableness.

The claimant must have acted reasonably and the decision to refuse the offer of work was logical, sensible, or practical.

(2) Continuing Attachment to the Labor Market.

The claimant must show evidence of a genuine and continuing attachment to the labor market by making an active and consistent effort to become reemployed. The claimant must have a realistic plan for obtaining suitable employment and show evidence of employer contacts prior to, during, and after the week the job in question was available.

R994-405-401. Strike.

Claimants may be ineligible for unemployment benefits when the unemployment is due to a strike.

R994-405-402. Elements Necessary for a Disqualification.

All of the following elements must be present before a disqualification will be assessed under Subsection 35A-4-405(4):

(1) the claimant's unemployment must be the result of an ongoing strike,

(2) the strike must involve workers at the factory or establishment of the claimant's last employment;

(3) the strike must have been initiated by the workers,

(4) the employer must not have conspired, planned or agreed to foment the strike,

(5) there must be a stoppage of work,

(6) the strike must involve the claimant's grade, group or class of workers, and,

(7) the strike must not have been caused by the employer's failure to comply with State or Federal laws governing wages, hours or other conditions of work.

R994-405-403. Unemployment Due to a Strike.

(1) The claimant's unemployment must be the result of an ongoing strike. A strike exists when combined workers refuse to work except upon a certain contingency involving concessions either by the employer or the bargaining unit. A strike consists of at least four components in addition to the suspended employer-employee relationship:

(a) a demand for some concession,

(b) a refusal to work with intent to bring about compliance with demands,

(c) an intention to return to work when an agreement is reached, and

(d) an intention on the part of the employer to re-employ the same employees or employees of a similar class when the demands are acceded to or withdrawn or otherwise adjusted.

(2) A strike may exist without such actions as a proclamation preceding a stoppage of work or pickets at the business or industry announcing an intent and purpose to go out on strike. Although a strike involves a labor dispute, a labor dispute can exist without a strike and a strike can exist without a union. The party or group who first resorts to the use of economic sanctions to settle a dispute must bear the responsibility. A strike occurs when workers withhold services. A lockout occurs when the employer withholds work because of a labor dispute including: the physical closing of the place of employment, refusing to furnish available work to regular employees, or by imposing such terms on their continued employment so that the work becomes unsuitable or the employees could not reasonably be expected to continue to work.

(3) The following are examples of when unemployment is due to a strike;

(a) a strike is formally and properly announced by a union or bargaining group, and as a result of that announcement, the affected employer takes necessary defensive action to discontinue operations,

(b) after a strike begins the employer suspends work because of possible destruction or damage to which the employer's property would not otherwise be exposed, provided the measures taken are those that are reasonably required,

(c) if the employer is not required by contract to submit the dispute to arbitration and the workers ceased working because the employer rejects a proposal by the union or bargaining group to submit the dispute to arbitration, or

(d) upon the expiration of an existing contract, whether or not negotiations have ceased, the employer is willing to furnish work to the employees upon the terms and conditions in force under the expired contract.

(4) The following are examples of when unemployment is not due to a strike;

(a) the claimant was separated from employment for some other reason that occurred prior to the strike, for example: a quit, discharge or a layoff even if the layoff is caused by a strike at an industry upon which the employer is dependent,

(b) the claimant was replaced by other permanent employees,

(c) the claimant was on a temporary layoff, prior to the strike, with a predetermined date of recall; however, if the

claimant refuses to return to his or her regular job when called on the predetermined date his or her subsequent unemployment is due to a strike,

(d) as a result of start up delays, the claimant is not recalled to work for a period after the settlement of the strike,

(e) the employer refuses to agree to binding arbitration when the contract provides that the dispute shall be submitted to arbitration, or

(f) the claimant is unemployed due to a lockout. The immediate cause of the work stoppage determines if it is a strike or a lockout depending on who first imposes economic sanctions. A lockout occurs when;

(i) the employer takes the first action to suspend operations resulting from a dispute with employees over wages, hours, or working conditions,

(ii) an employer, anticipating that employees will go on strike, but prior to a positive action by the workers, curtails operations by advising employees not to report for work until further notice. Positive action can include a walkout or formal announcement that the employees are on strike. In this case the immediate cause of the unemployment is the employer's actions, even if a strike is subsequently called., or

(iii) upon expiration of an existing contract where the employer is seeking to obtain unreasonable wage concessions, the employees offer to work at the rate of the expired agreement and continue to bargain in good faith.

R994-405-404. Workers at Factory or Establishment of the Claimant's Last Employment.

(1) "At the factory or establishment" of last employment may include any job sites where the work is performed by any members of the grade, group or class of employees involved in the labor dispute, and is not limited to the employer's business address.

(2) "Last employment" is not limited to the last work performed prior to the filing of the claim, but means the last work prior to the strike. If the claimant becomes unemployed due to a strike, the provisions of Subsection 35A-4-405(4) apply beginning with the week in which the strike began even if the claimant did not file for benefits immediately and continues until the strike ends or until the claimant establishes subsequent eligibility as required by Subsection 35A-4-405(4)(c). For example: the claimant left work for employer A due to a disqualifying strike, and then obtained work for employer B where he or she worked for a short period of time before being laid off due to reduction of force. If he or she then files for unemployment benefits, and cannot qualify monetarily for benefits based solely on his or her employment with employer B, the claimant is not eligible for unemployment benefits.

R994-405-405. Fomented by the Employer.

A strike will not result in a denial of benefits to claimants if the employer or any of its agents or representatives conspired, planned or agreed with any of the workers in promoting or inciting the development of the strike.

R994-405-406. Work Stoppage.

Work stoppage means that the claimant is no longer working but it is not necessary for the employer to be unable to continue to conduct business. For the purposes of this rule, a work stoppage exists when an employee chooses to withhold his services in concert with fellow employees.

R994-405-407. Grade, Group or Class of Worker.

(1) A claimant is a member of the grade, group or class if:

(a) the dispute affects hours, wages, or working conditions of the claimant, even if the claimant is not a member of the group conducting the strike or not in sympathy with its purposes,

(b) the labor dispute concerns all of the employees and as a direct result causes a stoppage of their work,

(c) the claimant is covered either by the bargaining unit or is a member of the union, or

(d) the claimant voluntarily refuses to cross a peaceful picket line even when the picket line is being maintained by another group of workers.

(2) A claimant is not included in the grade, group or class if:

(a) the claimant is not participating in, financing, or directly interested in the dispute or is not included in any way in the group that is participating in or directly interested in the dispute,

(b) the claimant was an employee of a company that has no work for him or her as a result of the strike, but the company is not the subject of the strike and whose employee's wages, hours or working conditions are not the subject of negotiation,

(c) the claimant was an employee of a company that is out of work as a result of a strike at one of its work sites but he or she is not participating in the strike, will not benefit from the strike, and the constitution of the union leaves the power to join a strike with the local union, provided the governing union has not concluded that a general strike is necessary, or

(d) work continues to be available after a strike begins and the claimant reported for work and performed work after the strike began and was subsequently unemployed.

(3) The burden of proof is on the claimant to show that he or she is not participating in any way in the strike.

R994-405-408. Strike Caused by Employer Non-Compliance with State or Federal Laws.

If the strike was caused by the employer's failure to comply with state or federal laws governing wages, hours, or working conditions, the claimant is not disqualified as a result of the strike. However, to establish the strike was caused by unlawful practices, the issue of an unfair labor practice must be one of the grievances still subject to negotiation at the time the strike occurs. The making of such an allegation after the strike begins will not enable workers to claim that such a violation was the initiating factor in the strike.

R994-405-409. Period of Disqualification.

The period of disqualification begins on the effective date of the new or reopened claim and continues as long as all the elements are present. If the claimant has other employment subsequent to the beginning of the strike which is insufficient when solely considered to qualify for a new claim, the disqualification under Subsection 35A-4-405(4) would continue to apply. It is not necessary for the employer involved in the strike to be a base period employer for a disqualification to be assessed.

R994-405-410. Wages Used to Establish Claim as Provided by Subsection 35A-4-405(4)(c).

(1) Ineligibility following a strike. A disqualification must be assessed if the elements for disqualification are present, even if the claim is not based on employment with the employer involved in the labor dispute. Wages for an employer not involved in the strike that are concurrent with employment for an employer that is involved in the strike will not be used independently to establish a claim in order to avoid a disqualification.

(2) New claim following strike. If a claimant is ineligible due to a strike, wages used in establishing a new claim must have been earned after the strike began. The job does not have to be obtained after the strike but only those wage credits obtained after the strike may be used to establish a new claim. If the claimant has sufficient wages to qualify for a new benefit year after his or her unemployment due to a strike, a new claim

may be established even if the claimant has a current benefit year under which benefits have been denied due to a strike.

(3) Redetermination after strike ends. No wages from the employer involved in the strike will be used to compute the new benefit amount, until after the provisions of Subsection 35A-4-405(4) no longer apply. Any such redetermination must be requested by the claimant and will be effective the beginning of the week in which the request for a redetermination is made.

R994-405-411. Availability.

If benefits are not denied under Subsection 35A-4-405(4), the claimant's availability for work will be considered including the amount of time spent walking picket lines and working for the bargaining unit. A refusal to seek work except with employers involved in a lockout or strike is a restriction on availability that will be considered in accordance with Subsection 35A-4-405(3) and R994-403-115c. A refusal to accept work with an employer involved in a lockout or strike is not disqualifying.

R994-405-412. Suitability of Work Available Due to a Strike.

Subsection 35A-4-405(3)(b) provides that new work is not suitable and benefits will not be denied if the position offered is vacant due directly to a strike, lockout or other labor dispute. If the claimant was laid off or furloughed prior to the strike, and an offer of employment is made after the strike begins by the former employer, it is considered an offer of new work. The vacancy must be presumed to be the result of the strike unless the claimant had a definite date of recall, or recall has historically occurred at a similar time.

R994-405-413. Strike Benefits.

Strike benefits received by a claimant, which are paid contingent upon walking a picket line or for other services, are reportable income that must be deducted from any weekly benefits to which the claimant is eligible in accordance with provisions of Subsection 35A-4-401(3). Money received for performance of services in behalf of a striking union may not be subject wages used as wage credits in establishing a claim. However, money received as a general donation from the union treasury that requires no personal services is not reportable income.

R994-405-701. Payments Following Separation - General Definition.

Vacation and severance payments which a claimant is receiving, has received or is entitled to receive are treated as wages and the claimant's WBA is reduced as provided in R994-401-301(1). This is true even though vacation or severance payments do not meet the statutory definition of wages.

R994-405-702. Definition of Disqualifying Vacation and Severance Pay.

(1) Before a disqualification is assessed, the claimant must be entitled to vacation or severance pay in addition to regular wages.

(a) Entitled To Receive. The claimant may not receive unemployment benefits for any week if he or she is eligible to receive payment from the employer whether the payment has already been made or will be made. The week in which the payment is actually received is not controlling in determining when the payment is deductible. It is not necessary for the employer to assign such payment to a particular week on the payroll records.

(b) Severance or Vacation Pay Which Is Subject to Negotiation. If there is a question of whether the claimant is entitled to receive a payment and the matter is being negotiated by the court, a union, or the employer, it has not been established the claimant is entitled to payment and therefore a disqualification cannot be assessed. However, when it is determined the claimant is entitled to receive payment from the employer, a disqualification will be assessed beginning with the week in which the agreement is made establishing the right to payment, provided the other elements are present. An overpayment will be established as appropriate.

(2) Vacation Pay.

Vacation pay is not considered earned during the period of time the claimant worked to qualify for the vacation pay, even if the amount of vacation pay is dependent upon length of service.

(3) Separation Payments.

(a) Any form of separation payment may subject the claimant to disqualification under Subsection 35A-4-405(7) if the payment would not have been made except for the severance of the employment relationship. If the payment is given at the time of the separation but would have been made even if the claimant was not separated, it is not a separation payment, but is considered earnings assignable to the period of employment subject to the provisions of Subsection 35A-4-401(7). The controlling factor is not the method used by the employer to determine the amount of the payment, but the reason the payment is being made. The history of similar payments is indicative of whether the payment is a bonus or is being made as the result of the separation. Whether a payment is based on the number of years of service or some other factor does not determine if the payment is disqualifying. Payments made directly to the claimant after separation and intended for the purchase of health insurance, whether made in a lump sum or periodically, are considered separation payments. When a business changes owners and some employees are retained by the new owners, but all employees receive a similar payment from the prior owner, the payment is not made subject to the separation of the employees and therefore would be a bonus and not a separation payment. Accrued sick leave, paid at the time of separation not because of an illness or injury is not considered a separation payment and will not result in a disqualification or a reduction in benefits under Subsection 35A-4-405(7).

(b) Payments for Remaining on the Job.

When an employer offers an additional payment for remaining on the job until a job is completed, the additional remuneration will be considered an increased wage or bonus attributable to a period of time prior to the date of separation, not a severance payment.

(4) Attributable to Weeks Following the Last Day of Work.

All vacation and severance payments are attributable to a period of time following the last day worked after a permanent separation and assigned to weeks according to the following guidelines:

(a) Designated as Covering Specified Weeks. If the employer specified that the payment is for a number of weeks which is consistent with the average weekly wage, the payment is attributable to those weeks. For example, if the claimant was entitled to two weeks of vacation or severance pay at his or her regular wage or salary, the last day worked was a Wednesday, and his or her normal working days were Monday through Friday, the claimant is considered to have two weeks of pay beginning on the Thursday following the last day of work. The claimant's earnings for the first week, including his or her wages would normally exceed the weekly benefit amount; the claimant would have a full week of pay for the second week, and would have reportable earnings for Monday, Tuesday and Wednesday of the following week.

(b) Lump Sum Payments. A lump sum payment is assigned to a period of time by comparison to the employee's most recent rate of pay. The period of assignment following the

last day of work is equivalent to the number of days during which the worker would have received a similar amount of his or her regular pay. For example, if the claimant received $500 in severance pay, and last earned $10 an hour working a 40 hour week, the claimant's customary weekly earnings were $400 a week. The claimant is denied benefits for one week and must report $100 as if it were earnings on the claim for the following week. The Department will ordinarily use a claimant's base salary for calculations in this paragraph but if the claimant provides verifiable evidence of a rate of pay higher than the base salary in the period immediately preceding separation, that can be used.

(c) Payments Less than Weekly Benefit Amount. If separation payments are paid out over a specific period of time and the claimant does not have the option to receive a lump sum payment, the claimant will be entitled to have benefits reduced as provided by Subsection 35A-4-401(3), pursuant to offset earnings if the amount attributed to the week is less than the weekly benefit amount.

(d) If the claimant is entitled to both vacation and separation pay, the payments are assigned consecutively, not concurrently.

(5) Temporary Separation.

A claimant is not entitled to benefits if it is established that the week claimed coincides with a week:

(a) Designated as a week of vacation. If the separation from the employer is not permanent and the claimant chooses to take his or her vacation pay, or is filing during the time previously agreed to as his or her vacation, the vacation pay is assigned to that week. If the employer has prepaid vacation pay and at the time of a temporary layoff the claimant may still take his or her vacation time after being recalled, the vacation pay is not assigned to the weeks of the layoff unless the claimant chooses to have the vacation pay assigned to those weeks, or the employer, because of contractual obligations, must pay any outstanding vacation due the claimant.

(b) Designated as a vacation shutdown. If the claimant files during a vacation shutdown, and is entitled to vacation pay equivalent to the length of the vacation shutdown, the vacation pay is attributable to the weeks designated as a vacation shutdown, even if the claimant chooses to actually take his or her time off work before or after the vacation shutdown. A holiday shutdown is treated the same as a vacation shutdown.

R994-405-703. Period of Disqualification.

Only those payments equal to or greater than the claimant's weekly benefit amount require a disqualification. Payments less than the weekly benefit amount are treated the same as earnings and deductions are made as provided by Subsection 35A-4-401(3).

R994-405-704. Disqualifying Separations.

If the claimant has been disqualified as the result of his or her separation under either Subsections 35A-4-405(1) or 35A-4-405(2), the vacation or separation pay cannot be used to satisfy the requirement to earn six times the weekly benefit amount in bona fide covered employment.

R994-405-705. Base Period Wages.

Vacation pay is used as base period wages. Separation payments attributable to weeks following the separation can be used as base period wages if the employer was legally required to make such payments as provided in Section 35A-4-208. Separation payments that are treated as wages will be assigned to weeks in the manner explained in Subsections R994-405-702(4).

R994-405-801. Services in Education Institutions - General Definition.

Subsection 35A-4-405(8) denies unemployment benefits during periods when the claimant's unemployment is due to school not being in session provided the claimant has been given a reasonable assurance that he or she can return to work when school resumes and the claimant intends to return when school resumes. Schools have traditionally not been in session during the summer months, holidays and between terms. This circumstance is known to employees when they accept work for schools. In extending coverage to school employees, it was intended such coverage would only be available when the claimant is no longer attached in any way to a school and the reason for the unemployment is not due to normal school recesses or paid sabbatical leave.

R994-405-802. Elements Required for Denial.

(1) The claimant is ineligible if all of the following elements are met:

(a) The Claimant is an Employee of an Educational Institution.

The claimant's benefits are based on employment for an educational institution or a governmental agency established and operated exclusively for the purpose of providing services to an educational institution. The service performed for the educational institution may be in any capacity including professional employees teachers, researchers and principals and all non-professional employees including secretaries, lunch workers, teacher's aides, and janitors.

(b) School is Not in Session or the Claimant is on a Paid Sabbatical Leave.

Benefits are only denied if the week for which benefits are claimed is during a period between two successive academic years or a similar period between two regular terms whether or not successive, during a period of paid sabbatical leave provided in the contract, or during holiday recesses and customary vacation periods.

(c) The claimant has a reasonable assurance of returning to work for an educational institution at the next regular year or term.

R994-405-803. Educational Institution (School).

(1) To be considered an educational institution it is not necessary the school be non-profit or that it be funded or controlled by a school district. However, the instruction provider must be sponsored by an "institution" that meets all of the following elements:

(a) An institution in which participants, trainees, or students are offered an organized course of study or training designed to transfer to them knowledge, skills, information, doctrines, attitudes or abilities from, by or under the guidance of an instructor or teacher.

(b) The course of study or training is academic, technical, trade, or preparation for gainful employment in an occupation.

(c) The instruction provider is approved or licensed to operate as a school by the State Board of Education or other government agency authorized to issue such license or permit.

(2) Head start programs operated by community based organizations, Indian tribes, or governmental associations as a side activity in a sponsorship role do not meet the definition of educational institution and therefore are not subject to the disqualifying provisions of this rule.

R994-405-804. Employee for an Educational Institution.

(1) All employees of an educational institution, even though not directly involved in educational activities, are subject to the disqualifying provisions of Subsection 35A-4-405(8). Also, employees of a state or local governmental entity are not eligible for benefits provided the entity was established and operated exclusively for the purpose of providing services to or on behalf of an educational institution. For example, if a

school bus driver is employed by the city rather than the school district, he or she is not subject to a disqualification under Subsection 35A-4-405(8).

(2) Ineligibility under Subsection 35A-4-405(8) shall only apply if there are base period wages from an educational institution. If the claimant had sufficient non-school employment in the base period to qualify for benefits, the claimant may establish a claim based only on the non-school employment and benefits would be payable during the period between successive school terms, provided he or she is otherwise eligible. If the claimant continues to be unemployed when school commences, he or she may be entitled to benefits based upon the combined school and non-school employment. In most cases this would result in higher weekly and maximum benefit amounts, less the benefits already received. A revision of the monetary determination will be made effective the beginning of the week in which the claimant submits a request for a revision to include school employment.

R994-405-805. Reasonable Assurance.

(1) "Reasonable assurance" is defined as a written, oral, or implied agreement that the employee will perform service in the same or similar capacity during the ensuing academic year, term, or remainder of a term.

(2) Reasonable Assurance Presumed.

A claimant is presumed to have implied reasonable assurance of employment during the next regular school year or term with an educational institution if he or she worked for the educational institution during the prior school term and there has been no change in the conditions of his or her employment that would indicate severance of the employment relationship. Under such circumstances benefits initially will be denied.

(3) Advised on Non-Recall.

If the claimant has been advised by proper school administrative authorities that he or she will not be offered employment when the next school term begins, benefits would not be denied under Subsection 35A-4-405(8).

(4) Offer of New Work by an Educational Institution.

Reasonable assurance is not limited to the same school where the claimant was employed during the base period or the same type of work, but includes any bona fide offer of suitable work at any educational institution. Reasonable assurance exists if the terms and conditions of any new work offered in the second term are not substantially less suitable, as defined by Subsection 35A-4-405(3), than the terms and conditions of the work performed during the first term. A disqualification under Subsection 35A-4-405(8) would begin with the week the employment is offered, and a disqualification under Subsection 35A-4-405(3) may begin with the week in which the offered employment would become available. For example: if a claimant was advised that due to reduction in enrollment he or she will not be recalled by the school where he or she last worked as a teacher's aide, but then obtains an offer of employment as a librarian from another school or another school district, a disqualification under Subsection 35A-4-405(8) would be assessed beginning with the week in which the offer of employment was made to the claimant, and a disqualification under Subsection 35A-4-405(3) would begin at the beginning of the school term if the work is not accepted.

(5) Separated Due to a Quit or Discharge.

If the employment relationship is severed either due to a quit or discharge, the provisions of Subsection 35A-4-405(8) do not apply, but Subsections 35A-4-405(1) or 35A-4-405(2) may apply and a disqualification, if assessed, would begin with the effective date of the separation or the claim, whichever is later.

R994-405-806. Substitute Teachers.

A substitute teacher is treated the same as any other school employee. If the claimant worked as a substitute teacher during the prior school term, he or she is presumed to have a reasonable assurance of having work under similar conditions during the next term and benefits will be denied when school is not in session. However, for any weeks the claimant is not called to work when school is in session, a disqualification under Subsection 35A-4-405(8) would not apply.

R994-405-807. Period of Disqualification.

The effective date of the unemployment insurance claim does not have to begin between regular school terms for a disqualification to apply, but benefits will be denied for a week that begins during a period when school is not in session or the claimant is on a paid sabbatical leave. A disqualification under Subsection 35A-4-405(8) can only be assessed for weeks:

(1) between two successive academic years or terms, or

(2) during a break in school activity between two regular terms even if the terms are not successive, including school vacations and holidays as well as the break between academic terms, or

(3) when the claimant is on a paid sabbatical leave if the claimant worked during the prior school year and has a contract or reasonable assurance of working in any capacity for an educational institution in the school term following the sabbatical leave. When the claimant is on an unpaid sabbatical leave, benefits may be allowed provided he or she is otherwise eligible including meeting the eligibility requirements of Subsection 35A-4-403(1)(c) and R994-405-106(4).

R994-405-808. Retroactive Payments.

Retroactive payments under Subsection 35A-4-406(2) may be made after a disqualification has been assessed only if the claimant:

(1) is not a professional employee in an instructional, research or administrative capacity,

(2) was not offered an opportunity for employment for an educational institution for the second academic years or terms,

(3) filed weekly claims in a timely manner as instructed, and

(4) benefits were denied solely by reason of Subsection 35A-4-405(8).

R994-405-901. Professional Athletes.

(1) Eligibility for Professional Athletes.

A claimant who has performed services as a professional athlete for substantially all of his or her base period is not eligible for benefits between successive sports seasons or similar periods when the claimant has a reasonable assurance of performing those services in the next sports season or similar period.

(2) Substantially All Services Performed in a Base Period.

A claimant has performed services as a professional athlete for substantially all of his or her base period when the base period wages from that work equal 90 percent or more of the claimant's total base period wages.

(3) Definition of Professional Athlete.

For the purposes of determining eligibility for benefits, a claimant is a professional athlete when he or she is employed as a competitive athlete or works as a specified ancillary employee. Employment as a competitive athlete includes preparing for and participating in competitive sports events. Specified ancillary employees are managers, coaches, and trainers who are employed by professional sports organizations and referees and umpires employed by professional sports leagues or associations.

(4) Reasonable Assurance.

(a) The claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period when the claimant has:

(i) a multi-year contract with a professional sports

organization, league or association;

(ii) a year-to-year contract and no indication of release;

(iii) no contract but the employer affirms intent to recall;

(iv) no contract but an employer representative confirms that the claimant is being considered for next season; or

(v) no contract but plans to pursue employment as a professional athlete.

(b) The claimant does not have a reasonable assurance if he or she has no contract and has withdrawn from sports as a professional athlete.

R994-405-902. Base Period Wage Credits.

(1) If the claimant has a reasonable assurance of performing services as a professional athlete during the next sports season or similar period and 90 percent or more of the claimant's base period wage credits were earned as a professional athlete, neither those wage credits nor any other base period wage credits can be used to establish monetary eligibility for any weeks that begin during a period between the applicable sports seasons or similar periods.

(2) All of the claimant's base period wage credits can be used if the claimant did not earn 90 percent or more of his or her base period wage credits as a professional athlete.

(3) All of the claimant's base period wages credits can be used to establish monetary eligibility for any weeks that begin during the applicable sports season or similar period.

R994-405-1001. Aliens - General Definition.

The protection provided by the unemployment insurance program is limited to American citizens and people who are lawfully admitted to the United States. It is not the intent of this program to subsidize people who have worked unlawfully or who cannot legally accept employment. All claimants will be required, as a condition of eligibility, to sign a declaration under penalty of perjury stating whether the claimant is a citizen or national of the United States, or if not, whether the claimant is lawfully admitted to the United States with permission to work. A claimant who certifies to lawful admission must present documentary evidence. A denial of benefits under Subsection 35A-4-405(10) can only be made if there is a preponderance of evidence the claimant is not legally admitted to work. Benefits must be denied to claimants who are NOT United States citizens unless they are lawfully present BOTH during the base period of the claim and while filing for benefits. In addition, to be considered "available for work," a claimant must be legally authorized to work at the time benefits are claimed.

R994-405-1002. Alien Status.

(1) An alien may establish wage credits and qualify for benefit payments if he or she was:

(a) Lawfully admitted for permanent residence at the time the services were performed, or

(b) Lawfully present for the purpose of performing the services, or

(c) Permanently residing in the United States under color of law at the time the services were performed, or

(d) Granted the status of "refugee" or "asylee" by the Immigration and Nationality Act, United States Code Title 8, Section 1101 et seq.

(2) The status of temporary residence or the granting of work authorization does not confer retroactive lawful presence for purposes of monetary entitlement or work authorization.

R994-405-1003. Lawfully Admitted for Permanent Residence.

A claimant who is lawfully admitted for permanent residence must be given a dated employment authorization or other appropriate work permit by the US Citizenship and Immigration Services (USCIS).

R994-405-1004. Lawfully Present for the Purpose of Performing Services.

These are aliens with work permits issued by USCIS who have received permission to work in the United States. Aliens who do not possess USCIS documentation have not been processed through USCIS procedures and are not lawfully present in the United States. Aliens permitted to reside in the United States temporarily have privileges accorded by USCIS which may include work authorization. The claimant's work authorization must be printed on the document or stamped on the form.

R994-405-1005. Permanently Residing in U.S. Under Color of Law.

Eligibility can be established if:

(1) The USCIS knows of the alien's presence and has provided the alien with written assurance that deportation is not planned, and

(2) The alien is "permanently residing" which means the USCIS has given the alien permission to remain in the U.S. for an indefinite period of time. Individuals who have been granted the status of refugees or have been granted asylum have been defined by the USCIS as individuals who are permanently residing "under color of law."

R994-405-1006. Section 1182(d)(5)(A) of the Immigration and Nationality Act.

For reference, 8 USC 1182(d)(5)(A) includes people, referred to as parolees, admitted under specific authorization given by the United States Attorney General and those paroled into the United States temporarily for emergent reasons or for reasons rooted in the public interest, including crew members refused shore leave who are admitted on parole for medical treatment. All of these individuals are issued USCIS forms endorsed to show work status.

R994-405-1007. Procedural Requirements.

(1) Verification of Status.

If the claimant states he or she is an alien, the claimant must present documentary evidence of alien status. Acceptable evidence includes:

(a) An alien registration document or other proof of immigration registration from USCIS that contains the claimant's alien admission number or alien file number, or

(b) Other documents that constitute reasonable evidence indicating a satisfactory alien status such as a passport.

(2) Verification by the Department.

The Department must verify documentation referred to in Subsection R994-405-1007(1) with the USCIS through an automated system or other system designated by the USCIS. This system must protect the claimant's privacy as required by law. The Department must use the claimant's alien file number or alien admission number as the basis for verifying the alien status. If the claimant provides other documents, the Department must submit a photocopy of the documents to USCIS for verification. Pending verification of the alien's documentation, the Department may not delay, deny, reduce or terminate the claimant's eligibility for benefits.

(3) Claimant Rights.

(a) Reasonable Opportunity to Submit Documentation.

The Department will provide the claimant with a reasonable opportunity to submit documentation establishing satisfactory alien status if such documentation is not presented at the time of filing. The Department will also provide the claimant reasonable opportunity to submit evidence of satisfactory alien status if the documentation presented is not verified by the USCIS. The claimant will initially be given three weeks to provide documentation or advise the Department as to any circumstances that would justify an extension of the

time allowed. Failure to provide documentation or request an extension of time will result in a denial of benefits under Subsection 35A-4-403(1)(e) or Sections R994-403-122e through R994-403-128e.

(b) Disqualification Restrictions.

The Department will not delay, deny, reduce or terminate a claimant's eligibility for benefits on the basis of alien status until a reasonable opportunity has been provided for the claimant to present required documentation or pending its verification after the claimant presents the documents. The claimant will be considered at fault in the creation of any overpayment if benefits were paid based on the claimant's unverifiable assertion of legal admission.

(c) Notice of Disqualification.

When benefits are denied by reason of alien status, a written, appealable decision must be issued to the claimant stating the evidence upon which the denial is based, the findings of fact, and the conclusion of law.

R994-405-1008. Preponderance of Evidence.

Benefits will be denied only if the preponderance of evidence supports denial. Aliens are presumed lawfully admitted or lawfully present under the Immigration and Nationality Act until it is established by a preponderance of evidence they are not lawfully admitted. The preponderance of evidence required to support a denial of benefits is not satisfied by a lack of evidence. Therefore, the claimant's certification as to citizenship or legal alien status should be accepted while USCIS is being contacted for verification.

R994-405-1009. Availability for Work.

While filing for benefits, an alien must show authorization to work to be considered available for work as required under Subsection 35A-4-403(1)(c). An alien with temporary resident status may be granted authorization to engage in employment in the United States. In such cases the alien will be provided with an "employment authorized" endorsement or other appropriate work permit. Termination of "temporary residence status" can be made by the United States Attorney General only upon a determination the alien is deportable.

R994-405-1010. Periods of Ineligibility.

Any wages earned during a period of time when the alien was not in legal status, cannot be used in the monetary determination, and a disqualification must be assessed under Subsection 35A-4-405(10). If the claimant was in legal status during a portion of the base period, only wages earned during that portion may be used to establish a claim. If the alien did earn sufficient wage credits while in legal status, but is no longer in legal status at the time the benefits are claimed, the claimant is ineligible under Subsection 35A-4-403(1)(c) because he or she cannot legally obtain employment.

KEY: unemployment compensation, employment, employee's rights, employee termination

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